

Authority Notary Of Making Land Deeds

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Abstract : The authority of the Land Agency of the Republic of Indonesia is based on the regulation of the President of the Republic of Indonesia Number 10 of 2006 concerning the National Land Agency, Article 2 states: The National Land Agency of the Republic of Indonesia carries out the duties of the Government in the field of land nationally, sectorally, regionally. Based on the description above, the author's goals in this study are to find out and analyze what is the basis of the Notary's authority in making land-related deeds, as well as to find out and analyze the form of Notary's authority in making land-related deeds. To answer the problems studied, the author uses normative juridical legal research. The approach used by the author in this study is a statutory approach (Statute Approach), and a conceptual approach (Conceptual Approach). The results show that the meaning of the deed related to land which is the authority of the Notary is narrow, meaning that the Notary can make a deed related to land as long as the deed is not the authority of the PPAT. In this study, it was concluded that the authority of the Notary in making the deed related to land is stated in Article 15 paragraph (2) letter f of the UUJN, but in his authority it is also limited because there are other officials who are given the authority to make the deed on land, namely the Land Deed Maker Officer. (PPAT).

Keywords: Notary; PPAT; Deed, Land.

1. Introduction

Economic development as part of the national development that we actively carry out is an effort to achieve the national goals of the Republic of Indonesia as stated in the Preamble to the Constitution of the Republic of Indonesia Year 1945 (UUD Year 1945) paragraph IV, namely protecting the entire Indonesian nation and all Indonesian bloodshed and to promote general welfare, educate the life of the nation and participate in implementing world order based on lasting peace, independence, and social justice. The implementation of national development is not solely the responsibility of the government but also the responsibility of the community.

Natural wealth in Indonesia is controlled by the state and used for the prosperity of the people in Indonesia. This is stated in Article 33 paragraph (3) of the 1945 Constitution which says that the Earth and water and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people. Therefore, it is an obligation for the Indonesian people to utilize and manage these natural resources optimally in order to achieve the ideals of the Indonesian nation.

As we know, land is an important thing in the life of the Indonesian nation. Some Indonesian people are people whose lives come from farming, or it can be said that some people in Indonesia make a living as farmers. As a society that is mostly

farmers, the existence of land is a must. The importance of the existence of land is often the subject of dispute, especially in terms of ownership rights over land. Moreover, coupled with high population growth, the need for land or land becomes high, making land prices high. To maintain the utilization of agrarian resources or natural resources that are so large, the government carries out development in the field of law. One of them is the promulgation of laws and regulations on land known as Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) on September 24, 1960. The birth of UUPA is one of the solutions of land law dualism, so that land law in Indonesia is national. The birth of UUPA is because the agrarian law in force in Indonesia has a dualism nature, with the enactment of customary law in addition to agrarian law based on western law.¹

In obtaining Land Rights, UUPA guarantees that people in Indonesia can obtain Land Rights. Land as one of the important things in Indonesia has various uses. The use of the land is as a place to live, as a place to work and also find a livelihood by gardening or farming. Land is very important in Indonesia, this is due to the large population level, while the land supply is running low. The selling price of land soared due to development in the area around the land, making it more difficult for people to get land. The development of education in our country has caused people to begin to realize that written evidence is an important evidentiary tool in legal traffic.

Certainty, order, and legal protection demand that legal traffic in people's lives requires the existence of valid evidence, so that people get legal certainty over their ownership. Notary who are in the profession are actually authorized agencies in making authentic deeds. The authority of Notary in providing valid evidence is regulated in a law at the level of law. The provisions regarding the position of a notary are currently regulated in Law Number 30 of 2004 concerning Notary Position (UUJN). The authority of Notary is regulated in Chapter III, Part One on Authority. Article 15 paragraph (1) of the UUJN says that Notary are authorized to make authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and / or desired by those interested to be stated in authentic deeds, guarantee the certainty of the date of making deeds, store deeds, give grosse, copies and quotations of deeds, all of that as long as the making of the deeds is not also assigned or excluded to other officials or other persons who stipulated by law.

Article 15 paragraph (1) of the UUJN intends to affirm the position of notary as a general official authorized to make authentic deeds. Arrangements regarding authentic deeds made by authorized officials are regulated in Article 1868, Article 1870 of the Civil Code (KUHPercivil), and Article 1 number 7 of the UUJN. Article 1868 of the Civil Code says that an authentic deed is a deed which, in the form prescribed by law, is made by or in the presence of public officials authorized for it at the place where the deed was made. Article 1870 of the Civil Code also says that a deed gives between the parties and their heirs or persons entitled to them, a perfect proof of what is contained therein.

While Article 1 number 7 of UUJN says that a Notary Deed is an authentic deed made by or before a Notary according to the forms and procedures stipulated in this

¹ Consideration Considering letter c of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles.

Law. Making authentic deeds in Indonesia is not only done by a notary. This is because there are still several professions in Indonesia that have the right to make authentic deeds. The provision of the ability to make an authentic deed is given by laws and regulations. The making of an authentic deed made other than by a notary can be seen in Article 15 paragraph (1) at the end of the sentence saying " ... all so long as the making of the deeds is not assigned or exempted to any other officer or other person prescribed by law".

Article 15 paragraph (1) intends to say that not all authentic deeds are made by a notary. Other officials besides Notary who can make authentic deeds include sub-districts, Land Deed Making Officials (PPAT), Religious Affairs Offices, and Ambassadors. PPAT at this time is mandated by existing laws and regulations to make authentic deeds related to land. Provisions regarding the position of PPAT are currently regulated in Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer (PP Number 37 of 1998). The promulgation of Government Regulation Number 37 of 1998 is based on the mandate of the UUPA which mandates the government to carry out land registration. The mandate of the UUPA in carrying out land registration was then implemented with the issuance of Government Regulation Number 24 of 1997 concerning Land Registration. With the promulgation of Government Regulation Number 24 of 1997 concerning Land Registration, it stipulates that PPAT is given the authority to make evidence regarding certain legal acts regarding land rights and Ownership Rights over Flats. Article 1 point 1 of PP Number 37 of 1998 says that PPAT is a general official who is authorized to make authentic deeds regarding certain legal deeds regarding land rights or Property Rights over Flats. Article 1 point 1 of PP Number 37 of 1998 has given authority to PPAT to make authentic deeds.

The authority given by the Government to PPAT in PP Number 37 of 1998 is to make deeds related to land. As an official authorized in making authentic deeds, Notary have been given the authority in UUJN to make various authentic deeds. The authority of the Notary is regulated in Article 15 of the UUJN. The authority to make an authentic deed has been mentioned in Article 15 paragraph (1) of the UUJN. Article 15 paragraph (2) of UUJN describes various authentic deeds that can be made by a notary. The authorities include:²

- 1) certify the signature and establish the certainty of the date of the letter under the hand by registering in a special book;
- 2) book the papers under the hands by registering in a special book;
- 3) make copies of the originals of the letters under hand in the form of copies containing the description as written and described in the letter concerned;
- 4) validate the photocopy match with the original letter;
- 5) provide legal counseling in connection with the preparation of deeds;
- 6) make acts relating to landing; Or
- 7) Make an Auction Leaflet Act.

The authority given to a notary has been clearly stated in Article 15 paragraph (2) of the UUJN. However, from some of the authorities given to Notary mentioned above, there is authority that at this time is a problem among Notary and also PPAT.

² Article 15 Paragraph (2) of Law Number 30 of 2004 concerning Notary Position.

Article 15 paragraph (2) letter f of UUJN, says that Notary are authorized to make deeds related to land. The policy regulated in Article 15 paragraph (2) letter f of UUJN cannot run properly, this is due to a conflict that occurs between the authority owned by the Notary and the authority owned by the PPAT. The presence of Article 15 paragraph (2) letter f of UUJN has caused cross-opinions that until now have not been resolved. There are three interpretations of the article, namely:³

- 1) The notary has taken all PPAT authority into notary authority or has added notary authority.
- 2) The land parcel has returned to the authority of the notary.
- 3) There is still no takeover from PPAT or taking authority to a notary, both PPAT and notary have their own authority.

These interpretations sometimes cause conflicts between PPAT and Notary.

A. Problem Statement

What is the basis for notary authority in making deeds related to land ?

B. Purpose

To find out the basis of notary authority in making deeds related to land

2. Research Methods

Research methods are the most important part of a study, because research methods will be the direction and guidance for a study. The approach method used in this study is the ⁴normative juridical method. Normative juridical means that this research is analyzed using various books, laws and regulations in the field of notarial science as secondary data. The specification of this study is Descriptive Analytical research. This research conducts analysis only to the level of description, which is to analyze and present facts systematically so that it can be easier to understand and conclude. The research approach used in this study is the statutory approach (⁵*Statute Approach*) and conceptual approach (*Conceptual Approach*). Using a normative research legislation approach because what will be analyzed is the rule of law that is the focus as well as the central theme of a study. The data sources obtained are primary data sources, secondary data sources, and tertiary data. Analysis in normative research uses qualitative analysis. Qualitative analysis provides worded descriptions of the findings during this study so as to prioritize the quality of legal materials.⁶

3. Discussion

³ Habib Adjie, *Observing the Notary and PPAT Khazanah*, Bandung: PT Citra Aditya Bakti, 2009, 83.

⁴ ND, Mukti Fajar and Achmad, 2010, *Dualism of Normative and Empirical Legal Research*. Yogyakarta: Student Library, 54

⁵ Suharto, 1999, *Social Research Methods A Research Technique*. Bandung: Remaja Rosda Karya, 35

⁶ Suteki. (2018). *Legal Research Methodology (Philosophy, Theory, and Practice)*. Depok: Legal Research Methodology (Philosophy, Theory, and Practice), 69

A. The Basic of Notary Authority in Making Deeds Relates

In theory, land has economic value, so it can be seen the importance of the meaning of land for people's lives. Land is very closely related to human life, because humans need land in addition to shelter as well as for plantations, agriculture, animal husbandry, roads and other needs. In a legal sense, land is not only intended as the surface of the earth or the topmost layer of the earth, but includes the space above and below the surface of the earth and every object that grows above and / or permanently attached to the surface of the earth, including those related to the ownership of land.⁷

The position of Notary in Indonesia is regulated in UUJN as one of the products of national law. This UUJN is an implementation of Article 1868 of the Civil Code which states that, an authentic deed is a deed made in the form prescribed by the Law by or before a public official authorized for it at the place where the deed was made. Notary position as a functionary in society as an official who can be relied on by the community. Article 15 paragraph (2) of UUJN states that Notary are authorized to make authentic deeds regarding all deeds, agreements, and provisions required by laws and regulations and / or desired by those interested to be stated in authentic deeds, guarantee the certainty of the date of making the deed, save the deed, give grosse, copies and quotations of deeds, all of that as long as the making of the deeds is not also assigned or excluded to other officials or other persons stipulated by the Act.

The authority contained in Article 15 is not only limited to making authentic deeds, but also given other authorities as stated in Article 15 paragraph (2) of the UUJN, namely:

- 1) Certify the signature and establish the certainty of the date of the letter under the hand by registering in a special book;
- 2) Book the letters under hand by registering in a special book;
- 3) Make copies of the originals of the letters under hand in the form of copies
- 4) containing the description as written and described in the letter
- 5) concerned;
- 6) Verify the match of the photocopy with the original letter;
- 7) Provide legal counseling in connection with the making of deeds;
- 8) To make acts relating to landing;
- 9) Making an act of auction leaflets.

The authority given to Notary is attribution authority, this is because the authority is given by UUJN. The authority that exists in a Notary Public does not come from other government institutions, but the authority based and granted by law. Therefore, the authority possessed by a Notary Public is the authority of attribution. One of the authorities granted by the Law is the authority to make deeds related to land. This authority is contained in Article 15 paragraph (2) letter f of the UUJN. Juridically, this authority has been granted by law, but in its implementation Notary have not been able to make deeds related to land. At this time, the preparation of deeds related to land made by Notary is still restricted.

⁷ Yudhi Setiawan, *Mixed Law Instruments (gemeenschapelijkrecht) in Land Consolidation*, (Jakarta: RajaGrafindo Persada, 2009), 161.

This limitation of authority is owned by a Notary in making deeds on land because there are other officials who are given authority in making deeds on land, namely PPAT.

Notary profession as a general official who is authorized to make an authentic deed is needed by the people of Indonesia. In the duties and responsibilities of a Notary in making authentic deeds aims to provide legal certainty in carrying out certain legal deeds carried out by the community. The community often carries out various activities that cause legal actions, therefore the community needs someone who can be trusted and can provide a solution in a legal act carried out by the community. Article 15 of the UUJN has given authority to a Notary. The authority given to Notary is of course not given as free freedom. The authority given to the Notary is followed by various other provisions that follow.⁸

Because of this importance, to regulate human life, especially in terms of land, a land registration is needed. Land registration is an important issue in the life of the nation and state, so in Indonesia land registration is regulated in the UUPA. Land registration is the beginning of the process of the birth of a proof of ownership of land, it is intended to ensure legal certainty for the owner, as mandated by law. As mentioned in Article 19 of the UUPA concerning the need for land registration for legal certainty, the implementation regulation was formed PP No.24 of 1997 concerning land registration. In this land registration process, evidence is then needed that provides clarity about a person's rights and obligations as a legal subject. The authentic deed as the strongest and fullest evidence has an important role, because through this authentic deed clearly defined rights and obligations, guarantees legal certainty and is also expected to avoid disputes. In Article 9 of PP No. 24 of 1997, it is mentioned about the object of land registration which includes Land management rights, Dependent rights, Waqf land, Ownership rights over flats, Land plots owned with property rights, business use rights, building use rights and use rights, State Land.⁹

The authority stated in Article 15 paragraph (2) letter f of the UUJN is still a debate between Notary and PPAT. The PPAT captures that the Notary has taken the authority that should be owned by the PPAT. While the Notary catches that what should be done by the Notary is based on applicable laws and regulations. The difference of opinion between the two professions has not been resolved until now. The existence of unclear authority granted by UUJN in Article 15 paragraph (2) point f must be resolved by changing UUJN as the basis of Notary authority. This is to clarify and provide clarity regarding the authority obtained by the Notary. (Sumardjono, 2007).

Based on what H.D. Van Wijk/Willem Konijnenbelt said which defines three ways to obtain authority, Notary are given the authority by law to carry out their profession as state officials who can make authentic deeds. The granting of this

⁸ Habi Adjie, 2007, Law Indonesian Notary, Thematic Interpretation of Law Number 30 of 2004 concerning Notary Position. Surabaya: Refika Aditama.59

⁹ Abdullah, Notary Authority in the Making of Acts Relating to Pertaanahan in the Context of Land Registry, 2019, 9

authority is included in the grant by way of attribution. Notary have obtained the authority granted in Article 15 of the UUJN. This acquired authority must be exercised properly and in a professional manner. The existence of Article 15 paragraph (2) letter f of UUJN which has become a debate among the Notary profession itself, makes UUJN a product of unhealthy laws and regulations.

This is due to differences of opinion regarding the unclear authority of the Notary Public authorized to make land deeds. (Himawan, 2004). A land deed made by a Notary Public is a valid deed and has binding legal force as an authentic deed, because the Notary's land deed fulfills the elements as an authentic deed, and the Notary himself according to UUJN is authorized to make it. However, judging from the PPAT product in the form of a PPAT deed, the PPAT is a general official who is given the authority to perpetuate a legal act of land rights between the parties into a deed. Notary who do not concurrently serve as PPAT do not have the competence to make land rights transfer agreements. Land deeds made by Notary also cannot be used as a basis for land registration at the Office of the National Land Agency (BPN), because judging from UUJN considerations, Notary are not partners of BPN in land affairs.

This is different from what is in consideration of PP Number 37 of 1998 concerning PPAT which confirms that PPAT is a working partner of BPN in the land sector. The meaning of a deed related to land which is the authority of a Notary is narrow, meaning that a Notary can make a deed related to land as long as the deed is not the authority of the PPAT. Article 1 point (4) of PP Number 37 of 1998 states that PPAT is a general official who is given the authority to make certain land deeds. The existence of various polemics that occur among Notary and PPAT is expected not to be widespread and can harm the community.

The authority that has been granted by the UUJN in Article 15, should be reaffirmed by the mandate to give the government to form a regulation under the UUJN in terms of granting authority to a Notary. Problems that exist in the authority to make land deeds should be resolved at the level of law. The House of Representatives (DPR RI) has now established a national legislation program (prolegnas). One of the agendas in the national legislation is changes to the UUJN. One of the problems that must be resolved in the amendment of the UUJN is Article 15 paragraph (2) letter f. The authority of the Notary in making the land deed is a land deed that is outside the authority of the PPAT as mentioned in Article 2 paragraph (2) of PP Number 37 of 1998.

4. Conclusion

Based on the description and discussion that the author has submitted, the following conclusions can be drawn: Notary as officials authorized to make authentic deeds have been regulated in laws and regulations. This Notary Authority has been regulated in Article 15 paragraph (2) of UUJN. The authority of Notary in making authentic deeds is an authority of an attributive nature, where the authority is granted by law. Notary can make deeds related to land, but their authority is limited. The authority to make deeds related to land is in Article 15 paragraph (2) letter f of the UUJN, but in its authority it is also limited, this is regulated in Article 15 paragraph (1) of the UUJN. This restriction occurs because PPAT as one of the officials who

makes authentic deeds regarding land is also given attributive authority by laws and regulations governing PPAT.

5. References

Books

- Abdullah, Notaris Authority in the Making of Acts Relating to Pertaanahan in the Context of Land Registration, 2019
- Adjie, H. (2007). Indonesian Notary Law, Thematic Interpretation of Law Number 30 of 2004 concerning Notary Positions. Surabaya: Refika Aditama.
- Habib Adjie, Observing the Notary and PPAT Khazanah, Bandung: PT Citra Aditya Bakti, 2009
- ND, Mukti Fajar and Achmad, Y. (2010). Dualism of Normative and Empirical Legal Research. Yogyakarta: Student Library.
- Suteki. (2018). Legal Research Methodology (Philosophy, Theory, and Practice). Depok: Legal Research Methodology (Philosophy, Theory, and Practice).
- Suharto, I. (1999). Social Research Methods A Research Technique. Bandung: Remaja Rosda Karya.
- Yudhi Setiawan, Mixed Law Instrument (gemeenschapelijkrecht) in Land Consolidation, (Jakarta: RajaGrafindo Persada, 2009)

Legal Law

- Basic Agrarian Law Number 5 of 1960. Notary Office Act (UUJN) of 1860 (Reglement op het Notary-ambt in Indonesie).
- Law Number 30 of 2004 jo Law Number 2 of 2014 concerning Notary Position.
- Government Regulation Number 24 of 1997 concerning Land Registration.
- Government Regulation Number 37 of 1998 concerning PPAT Position Regulations.
- Presidential Regulation of the Republic of Indonesia Number 10 of 2006 concerning the National Land Agency of the Republic of Indonesia Civil Code