

LEGAL CONSEQUENCES OF DEEDS OF GRANTS TO LAND MADE BY NOTARIES

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Abstract

Legal action in conducting grant towards land and properties are closely related within the authorities of Pejabat Pembuat Akta Tanah (PPAT) in producing Authentic Act in the form of Grant Act. The authorities of PPAT in producing Grant Act for land is governed under numerous laws which becomes the basis for its authorities. Nevertheless, there are still instances in which Notaries are producing Grant Act. This study will analyse the legal aspect of Grant Act which was made by Notaries. This study utilizes normative legal method of analysis with an emphasis on law and comparative studies. The research finds that: 1) Grant Acts which has been produced by notaries can result in the illegality of the Act; 2) Inability to conduct rights transfers in the land authority office which will result in major loss for the applying party, and; 3) Potential for the notary to be given civil sanction in form of punitive damages.

Keywords: Grant Deed, Land, Notary, Land Deed Making Officer (PPAT).

INTRODUCTION

Land has an important role in the life of the nation and state, so that problems that arise related to land will have a great effect on all aspects of the country. Land is essentially not only used as a place to live and settle, but also intended to do business to as collateral for various forms of loans. Currently, development development development in Indonesia is increasing in line with the increasing amount of investment.¹

The high need for land is also in line with the potential problems related to land

ownership and the process of transferring land. Problems related to the transfer of land rights such as grants often harm many parties in good faith, one of which is related to the process of making a deed of transfer of rights, such as general officials who are authorized to make the deed in question.

The transfer of rights to land may occur due to legal events and legal acts. The transfer of land rights can occur by a sale and purchase, exchange, grant, income in the company and other legal acts of transfer of

¹ <https://law.ui.ac.id/v3/dr-suparjo-pembicara-dalam-diskusi-jual-beli-tanah/> , diakses pada tanggal 29 Agustus 2022.

rights, except that the transfer of rights through auction can only be registered if it is proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations.² Certain legal acts that result in the transfer of rights to land can only be proven by a deed made by the Land Deed Making Officer (PPAT)).³

In Government Regulation Number 37 of 1998, the definition of PPAT reads as follows: "The General Officer of land deeds, hereinafter referred to as PPAT, is a General Officer who is authorized to make authentic deeds regarding certain legal acts regarding land katas rights or Property Rights to Flats Units."⁴

In addition, in Government Regulation Number 24 of 1997 also defines PPAT as follows: "Land Deed Making officers, hereinafter referred to as PPAT are general officials who are authorized to make certain land deeds."⁵ Based on the legal basics outlined above, it can be concluded that any grant of land and buildings must be carried out with the Deed Making Officer's Deed of Land (PPAT)).

Nevertheless, there is still a grant certificate on the land made by the Notary as in the verdict No. 493/Pdt. G/2014/PN.Mdn, the last of which was decided through the Supreme Court ruling No. 1298 K/Pdt/2019. The Notary himself is given the authority to carry out his position as stipulated in Law No. 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which reads: "A notary is a general official who is authorized to make authentic

deeds and other authorities as referred to in this Law".⁶

A Notary is classified as a position because a Notary is a general official appointed by the Minister based on the direct authority of the state attributively under the Act. The minister referred to in this case is the Minister of Law and Human Rights who takes care of the civil relations of the community that requires evidence. Thus a Notary is a general official who carries out some of the special state public functions in the field of civil law that serves the public to make authentic evidence. In addition, based on Article 15 of the UUJN, Notaries as General Officers also have authority that is not given to other officials. Notaries receive duties from the state, so the appointment of Notaries is also a form of granting positions from the state.⁷

The Deed of Grant on land made by the Notary has the potential to cause legal problems in the future because based on the provisions as outlined above that any grant of land must be made by a Deed made by the Land Deed Making Officer. So it can be said that the Notary is not a general official who has the authority to make a Grant Deed on land.

Prajudi Atmusudirjo mentioned "Authority is the power to carry out a public legal act."⁸ While Authority has the same meaning as authority, the Great Dictionary Indonesian namely "the right and power to do something. Authority (*authority*) as a right or power to give orders or act to influence the

² Florianus S.P.Sangsun, *Tata Cara Mengurus Sertifikat Tanah*, (Jakarta Selatan: Transmedia Pustaka, 2008), hal. 57.

³ Urip Santoso, *Pejabat Pembuat Akta Tanah Perspektif Regulasi, Wewenang, dan Sifat Akta*, (Jakarta: Prenadamedia Group, 2016), hal. 139.

⁴ Indonesia, *Peraturan Pemerintah Tentang Peraturan Jabatan PPAT*, PP Nomor 37 Tahun 1998, Pasal 1 angka 1.

⁵ Indonesia, *Peraturan Pemerintah Tentang Pendaftaran Tanah*, PP Nomor 24 Tahun 1997, Pasal 1 angka 24.

⁶ Indonesia, *Undang-Undang Tentang Jabatan Notaris*, Undang-Undang No. 2 Tahun 2014 tentang Perubahan atas Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris, Ps. 1 angka 1.

⁷ Habib Adjie, *Meneropong Khazanah Notaris dan PPAT Indonesia (Kumpulan Tulisan tentang Notaris dan PPAT)*, (Bandung : Citra Aditya, 2009), hal. 2-3.

⁸ Prajudi Atmusudirjo (I), *Hukum Administrasi Negara*, (Jakarta: Ghalia Indonesia, 1981), Hlm. 29.

actions of others, so that something is done as desired”.

1.1. Research Problem

The problem of making a Land Grant Deed made by a general official who does not have the authority is important to analyze. Based on this, the problems in this study are:

1. How are the legal consequences of grant deeds on land made by Notaries in terms of applicable laws and regulations?
2. What is the position of land grants in a positive legal perspective in Indonesia?
3. What are the legal consequences of making a deed of grant on land carried out by a Notary Public?

1.2. Research Method

This form of research is normative juridical research. Normative juridical research is research that is focused on examining the application of positive legal rules or norms.⁹

The data used in this study are secondary data. Secondary data is data obtained through literature or documentation tracing. Secondary data used in this study were obtained from primary legal sources and secondary legal sources.¹⁰ Primary sources of law are legal materials whose content is binding on society.¹¹ Primary legal sources used in this study include:

- a. Civil Code;
- b. Law No. 4 of 1996 concerning Dependent Rights to Land and Objects Related to Land;
- c. Notary Position Law Number 2 of 2014 concerning Amendments to Law

Number 30 of 2004 concerning the Position of Notary;

- d. Government Regulation No. 24 of 1997 concerning Land Registration;
- e. Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian State / Head of the National Land Agency No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration

Secondary legal sources are materials that provide information or matters relating to the content of the primary source and its implementation.¹² Secondary legal sources are materials that provide information or matters relating to the content of the primary source and its implementation.

Techniques for processing and analyzing legal materials This research has the form of prescriptive-analytical research results, namely studying the purpose of law, the values of justice, the validity of the rule of law, legal concepts, and legal norms.¹³

2. DISCUSSION

2.1. General Grants and Grant Deeds

A grant is basically a gift from a person during his lifetime to someone else. Based on the Civil Code, Grants are defined as follows: "A grant is an agreement by which the grantor in his lifetime, freely and irrevocably, delivers an item for the purposes of the grantee who accepts the surrender.¹⁴ Meanwhile, what is meant by a will grant based on the Civil Code, namely as follows:

A Will Grant is a special testamentary determination by which the person who

⁹ Johnny Ibrahim, *Teori dan Metodologi Penelitian Hukum Normatif*, (Malang: Bayumedia Publishing, 2006), halaman 295.

¹⁰ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif (suatu Tinjauan Singkat)*, (Jakarta: Raja Grafindo Persada, 2004), halaman 12.

¹¹ *Ibid.*, halaman 12.

¹² *Ibid.*, halaman 13.

¹³ Bambang Sunggono, *Metode Penelitian Hukum*, (Jakarta: PT. Raja Grafindo Persana, 2001)

¹⁴ Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek], diterjemahkan oleh R. Subekti dan R. Tjitrosudibio. (Jakarta: Balai Pustaka, 2009), Ps. 1666.

bequeaths to one or more gives some of his goods of a certain type such as for example all his movable or immovable goods or gives the right of use of the proceeds over all or part of his estate.¹⁵

Grants and Will Grants are two different things but still often interpret the same for people who don't understand them. What distinguishes the two if interpreted in the definition above is in the grant the delivery of goods carried out while the grantor is still alive. While the Grant of Will for the delivery of his goods is carried out when the will giver dies.

A grant given by a person to another person must be made with a form of authentic deed in the form of a grant deed. The grant deed can be interpreted in the form of a letter of proof in which there is a clause or rule relating to the grantor's grantor to the grantee, where the grantor surrenders the right to the land free of charge and cannot be withdrawn.

According to Asser-Kamphuisen, the sentence "irrevocable" does not mean that an agreement cannot be undone, but the intent of the sentence is to prohibit any condition (*voorwaarde*), e.g., strict terms and void conditions (*opschortende dan ontbindende voorwaarde*), which depends on the will of the benefactor. Thus it can be concluded that the grant cannot be attached to any condition to the grantee because the grant is classified as a free agreement with the will of one of the parties to give.¹⁶

Based on Government Regulation No. 24 of 1997, when making a deed, it must be attended by the party who committed the legal act and witnessed by at least 2 (two) witnesses who are qualified to act as witnesses in the legal act.¹⁷ As for the Subject in the grant deed, i.e.:¹⁸

- a. Grantors;

- b. Grantees.

In making a grant deed, the deed must have a structure, namely, as follows:¹⁹

1. Title and Deed Number

Each PPAT deed must be given a title and deed number. The PPAT deed has a number that repeats every year.

2. Head of Deeds

Each head of the PPAT deed must contain the day, date, month and year of making the deed, then followed by the full name of the PPAT, filled in the position of the Officer who issued the decision on the appointment / appointment of the PPAT concerned, the date and number and also mentioned the PPAT work area according to the appointment of the PPAT office.

3. Parties (Compensatory)

- a. Grantors;
- b. Grantees.

The grantor's and grantee's compensatory compensators contain the identity of the appellant and information about the position of the appellant's acting and the legal basis. Compensatory for a PPAT deed, to determine whether a person facing the PPAT has the ability and authority to act in the deed. The editorial formulation in the compensatory section can be reviewed based on the way the person acts in the PPAT deed, namely:

- Act for yourself, with or without consent;
- Act as a power of attorney (person or legal entity);
- Act as a representative of a legal entity;
- Act as a representative for the sake of the law;
- Acts in combinations 1 to 4.

4. Premise

- a. Grant Object

The object of the grant i.e. a piece of land includes also: everything that exists, is

¹⁵ *Ibid.*, Ps. 957.

¹⁶ Tan Khong Kie, *Studi Notariat & Serba Serbi Praktek Notaris*, (Jakarta: PT Ichtar Baru Van Hoeve, 2013), hlm. 580.

¹⁷ Indonesia, *Peraturan Pemerintah Tentang Pendaftaran Tanah*, Pasal 38 Ayat (1).

¹⁸ Salim HS, *Peraturan Jabatan dan Kode Etik Pejabat Pembuat Akta Tanah (PPAT)*, (Depok: Rajawali Pers 2020) hal. 93.

¹⁹ Xavierius Arsin, *Buku Ajar Teknik Pembuatan Akta PPAT*, hlm 67

embedded, placed and erected on such land which, by its intent, is of its nature or according to the establishment of the Act including as a fixed property.²⁰

In the formulation of the object of land rights in the deed should be observed normative parameter, that is, :²¹

- a. Nomor hak kepemilikan tanah yang tercatat atas nama Pihak Pertama sebagaimana tercantum dalam sertipikat kepemilikan tanah;
 - b. Tanggal dan nomor surat ukur atau gambar situasi dalam sertipikat yang bersangkutan;
 - c. Luas tanah sebagaimana tercantum dalam sertipikat;
 - d. NIB, apabila NIB tersebut sudah ada dan tercantum dalam sertipikat dan SPPT PBB Nomor Objek Pajak (NOP) dari bidang tanah, serta jenis penggunaan dan pemanfaatan tanahnya sesuai dengan keadaan lapangan; dan
 - e. Letak tanah sebagaimana tercantum dalam sertipikat. Apabila nama jalan tidak tercantum dalam sertipikat maka ruang untuk nama jalan dikosongkan.
5. Isi Akta
Pasal-pasal atau klausul-klausul yang termuat dalam akta hibah harus sesuai dengan ketentuan sebagaimana diatur dalam lampiran Perkab No. 08 Tahun 2012.²²

6. Akhir Akta

Akhir akta harus menguraikan secara lengkap keterangan mengenai saksi-saksi beserta identitas lengkapnya. Sebagai bukti kebenaran pernyataan yang dikemukakan oleh Pihak pertama dan Pihak Kedua maka akta hibah tersebut ditandatangani oleh Pihak pertama, Pihak kedua, saksi-saksi dan PPAT sebanyak 2 rangkap asli (lembar pertama dan lembar kedua), dimana rangkap pertama

disimpan di kantor PPAT dan 1 rangkap lembar kedua disampaikan kepada Kantor Pertanahan Kabupaten untuk keperluan pendaftaran peralihan hak akibat hibah tersebut.²³

2.2. The Role of PPAT in Making Grant deeds

Legal actions that result in the transfer of land rights such as grants can only be proven by a deed made by the Land Deed Making Officer (PPAT). The making of the grant deed must be done in the presence of a general official who certainly has the authority to make the grant deed.

PPAT will carry out some land registration activities by making deeds as evidence of certain legal actions regarding land rights. The position of PPAT is desired in law that has the aim of helping and serving the community who need authentic written evidence related to the land regarding circumstances, events or legal acts.²⁴

The deed made by PPAT has two functions, namely:

- a. Deeds of Land Deed Making Officers as evidence of certain legal acts regarding land rights and property rights to units of flats;

The Deed of the Land Deed Making Officer will be used as the basis for registration of changes in land registration data to the District/ City Land Office whose working area includes the location of the land concerned.²⁵

The deed made by PPAT is an authentic deed that has strong evidence in the form of a letter made in writing. It is stated in civil law also that the proof is perfect and binding as to the truth contained in the deed for the parties, heirs and assignees, with the exception that if

²⁰ *Ibid.*, hal. 69

²¹ *Ibid.*

²² *Ibid.*, Hlm. 70

²³ *Ibid.*

²⁴ Anisitus Amanat, *Membagi Warisan Berdasarkan Pasal-Pasal Hukum Perdata BW*, (Jakarta: Raja Grafindo Persada, 2001), hal. 70.

²⁵ Santoso, *Pejabat Pembuat Akta Tanah Perspektif Regulasi, Wewenang, dan Sifat Akta*, hlm.126

the listed have no direct relationship with the deed.²⁶

PPAT is a general official who is authorized to make a certain authentic deed or a right to land. The authority of PPAT to make grant deeds is regulated in several statutory provisions, including:

1. Law Number 4 of 1996 concerning Dependent Rights to Land along with Objects Related to Land, reads as follows:

“The Land Deed Making Officer, hereinafter referred to as the PPAT, is a general officer who is authorized to make a deed of transfer of rights to land, a deed of encumbrance of land rights, and a deed of grant of power of attorney to impose dependent rights according to the applicable laws and regulations.”²⁷

2. Article 1 number 24 of Government Regulation Number 24 of 1997 concerning Land Registration, reads as follows: "Land Deed Making Officers, as called PPAT are general officials who are authorized to make certain land deeds." and Article 37 Paragraph (1) which reads as follows:²⁸

“The transfer of rights to land and property rights to units of flats through buying and selling, exchanges, grants, income in the company and other legal acts of transfer of rights, except that the transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations.”

3. Government Regulation No. 24 of 2016 About Changes to Government Regulation No. 37 of 1998 concerning the Regulation of Office of Land Act Maker Officials (PJPPAT): "PPAT is a general official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or property rights to units of flats.”²⁹

4. Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Making Officers:

“Land Deed Making Officers, hereinafter referred to as PPAT are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or property rights to units of flats.”³⁰

“PPAT deed is a land deed made by PPAT as evidence of the implementation of certain legal actions regarding land rights or property rights to units of flats.”³¹

“PPAT is in charge of carrying out some of the land registration activities by making deeds as evidence of certain legal actions regarding land rights or property rights to units of flats which will be used as the basis for registering changes in land registration data caused by the legal act.”³²

5. Peraturan Kepala Badan Pertanahan Nasional No. 8 Tahun 2012 Tentang Perubahan Atas Peraturan Menteri

²⁶ Kitab Undang-Undang Hukum Perdata [Burgerlijk Wetboek], diterjemahkan oleh R. Subekti dan R. Tjitrosudibio. (Jakarta: Balai Pustaka, 2009), Pasal 1870, Pasal 1871, Pasal 1875

²⁷ Indonesia, *UU tentang Hak Tanggungan atas Tanah beseerta Benda-Benda yang Berkaitan dengan Tanah*, UU No. 4 Tahun 1996, Ps. 1 Ayat (4).

²⁸ *Ibid.*, Pasal 37 Ayat (1).

²⁹ Indonesia, *PP Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah*, PP No. 37 Tahun 1998, Ps. 1 butir 1

³⁰ Badan Pertanahan Nasional, *Perkaban Tentang tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah*, Perkaban No. 1 tahun 2006, Ps. 1 butir 1.

³¹ *Ibid.*, Ps. 1 butir 4.

³² *Ibid.*, Ps. 2 ayat 1.

Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah, yang berbunyi sebagai berikut:

“Akta tanah yang dibuat oleh PPAT untuk dijadikan dasar pendaftaran perubahan data pendaftaran tanah adalah:

- a. Deed of Sale and Purchase;
- b. Deed of Exchange;
- c. Grant Deed;
- d. Deed of Income into the Company;
- e. Deed of Division of Common Rights;
- f. Deed of Grant of Dependent Rights;
- g. Deed of Grant of Building Use Rights to Land Title.
- h. Deed of Grant of Right of Use over Land Title.”³³

The nature of the PPAT position is:³⁴

1. PPAT is a general official who is given a special task and authority to provide services to the community in the form of making a deed that proves that it has been carried out before him a legal act in the form of transfer of rights to land, Property Rights to Flats Units or the granting of Dependent Rights to land;
2. The deed made by PPAT is an authentic deed, where only PPAT has the right to make it;
3. PPAT is a State Administrative Officer because of its duties and authorities in the field of organizing land registration which

is an activity in the field of State Administration;

4. The PPAT deed is not a decree of the State Administrative Officer, because the deed is a written report from the deed maker in the form of a statement regarding legal actions carried out by a certain party at a time referred to in the related deed;
5. The decision of the PPAT as a State Administrative Officer is the decision to refuse or grant the request of the party who comes before him to make a deed for legal acts carried out by the parties. So that the decision to refuse or grant the party's request is an obligation of the PPAT in carrying out its duties and authorities.

So that it can be concluded that the PPAT in his position has the following position:³⁵

1. Independent;
2. Impartial (impartial);
3. It was not the subordinates or subordinations of the other party who raised him;
4. Have authority that has been determined based on the rule of law that regulates the position (attributive);
5. His accountability to society, the country, and God..

PPAT also has the authority to refuse to make grant deeds requested by the parties in the event of matters as outlined in PP 24/1997, which reads as follows:³⁶

“PPAT may refuse to make a deed in the event that:

- a. Regarding the already registered plots of land or title to the units of flats, to him was not conveyed the original certificate of the right in question or the certificate

³³ Badan Pertanahan Nasional, *Perkaban Tentang Perubahan Atas Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah*, Perkaban No. 08 tahun Tahun 2012, Ps. 95 Ayat (1).

³⁴ Boedi Harsono, *Hukum Agraria Indonesia – Sejarah Pembentukan Undang-Undang Pokok Agraria,*

Isi dan Pelaksanaannya, (Jakarta : Djambatan, 2005), hal. 485

³⁵ Habib Adjie (d), *Merajut Pemikiran Dalam Dunia Notaris & PPAT*, (Bandung : PT. Citra Aditya Bakti, 2011), hal. 102

³⁶ Indonesia, *PP Tentang Pendaftaran Tanah*, Pasal 39.

- submitted was not in accordance with the register in the Land Office; or
- b. Regarding land plots that have not been registered, he was not conveyed: 1) A letter of proof of rights as referred to in Article 24 paragraph (1) or a certificate of the Village Head / Kelurahan stating that the person concerned controls the land plot as referred to in Article 24 paragraph (2); and 2) A certificate stating that the land plot concerned has not been certified from the Land Office, or for land located in an area far from the position of the Land Office, from the relevant rights holder by being corroborated by the Village Head/Kelurahan; or
 - c. One or the parties to the legal act concerned or one of the witnesses referred to in Article 38 are not entitled or ineligible to act in such a manner; or
 - d. One of the parties or the parties acts on the basis of an absolute power of attorney which essentially contains a legal act of transfer of rights; or
 - e. For legal acts to be carried out, the permission of the authorized officer or agency has not been obtained, if the permit is required according to the applicable laws and regulations; or
 - f. The object of the legal act concerned is in dispute regarding its physical data and or juridical data; or
 - g. Not fulfilled by other conditions or violated the prohibitions specified in the relevant laws and regulations.”

2.3. Deed of Land Grant Made by a Notary Public.

A deed is a writing that is deliberately made to be used as evidence of an event and

signed.³⁷ According to MR. C. J. J de Jonchere, signing is a legal fact and a statement of the willingness of the sign maker, by affixing a signature under a writing wishing that the writing in law be considered his own writing.³⁸

Prior to the existence of Government Regulation Number 24 of 1997 concerning Land Registration, the grant deed was made by a Notary in written form based on civil law, but after the existence of PP Number 24 of 1997, the granting of land and building grants must be done with a PPAT Deed.³⁹

However, in reality today there is still a grant deed made by a Notary. Notary himself is an unmun official who is authorized to make authentic deeds and has other authorities regulated in the laws and regulations.⁴⁰

In Article 15 Paragraph (1) of the Notary Office Act reads as follows:

“The notary is authorized to make authentic Deeds regarding all deeds, agreements, and determinations required by laws and regulations and/or desired by the interested person to be stated in the authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide grosse, copies and quotations of the deed, all of which are so long as the making of the deed is not assigned or excluded to other officials or other persons stipulated by law”.⁴¹

Furthermore, in Article 15 Paragraph (2) it is explained again about the authority of the notary, namely:⁴²

“In addition to the authority of the Notary in Article 15 Paragraph (1), the Notary is also authorized:

- a. Certify the signature and establish the certainty of the date of the letter under the hand by registering in a special book;

³⁷ Subekti (b), *Hukum Pembuktian*, Cet. 17. (Jakarta: PT. Pradnya Paramita, 2008), hal. 27

³⁸ Tan Thong Kie, *Studi Notariat Serba Seri Praktek Notaris*, (Jakarta : Ichtiar Baru Van Hoeve, 1994), hal. 472-473

³⁹ Suwahyono, “Kepemilikan Hak Atas Tanah Melalui Hibah Berdasarkan Undang-Undang Nomor 5

Tahun 1960 tentang UUPA”, Lex Privatum, Vol. 6, No. 3, 2018, hlm.70

⁴⁰ Indonesia, *Undang-Undang Tentang Perubahan Atas UU Nomor 30 Tahun 2004 Tentang Jabatan Notaris*, UU No. 02 Tahun 2014, Pasal 1 Ayat (1).

⁴¹ *Ibid.*, Pasal 15 Ayat (1)

⁴² *Ibid.*, Pasal 15 Ayat (2)

- b. Book an underhand letter by registering in a special book;
- c. Make a copy of the original letter under hand in the form of a copy containing the description as written and described in the letter in question;
- d. Attestation of the match of the photocopy with the original letter;
- e. Providing legal counseling in connection with the making of deeds;
- f. Make deeds relating to land; or
- g. Make a deed of auction minutes.”

In Article 15 Paragraph (2) letter f above, it is stipulated that the notary is authorized to make a deed regarding land, but it is not clearly regulated. Furthermore, if referring to the provisions in Article 15 Paragraph (1) which reads: “..... so long as the making of the deed is not assigned or excluded to any other official or any other person prescribed by law”. Therefore, article 15 paragraph (1) regulates the limitation of the authority possessed by the notary where the authority to make a deed regarding the land can be carried out if the making of the deed is not assigned to another official who is stipulated by the applicable provisions.

Then, referring to the provisions of Article 37 Paragraph (1) of PP Number 24 of 1997 which regulates the granting of land and building grants must be carried out by the PPAT Deed.⁴³ Then it is clear that there is another official assigned to make the land deed, in which case the law has determined that the official is a PPAT.

Based on this, the authority of the notary is limited to making a grant deed to guarantee in advance the bond of rights and obligations between the grantor and the grantee, while related to the management of proof of ownership of land rights becomes the authority of another official, namely PPAT.⁴⁴

⁴³ Olivia Maudira Olanda, “Tanggungjawab Notaris Terhadap Pembuatan Akta Hibah yang Dibuat Tanpa Persetujuan Ahli Waris,” *Jurnal Kertha Semaya* Vol. 10 No. 7 Tahun 2022 hlm. 1706-1717.

⁴⁴ *Ibid.*

Moreover, in Article 16 Paragraph (1) letter l of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary requires a Notary to read the deed before the interceptor attended by at least 2 (two) witnesses and signed at that time by the interceptor, witness, and Notary.⁴⁵ Thus, at the time of reading and bringing it, the Notary should understand his authority in carrying out his position.

Notaries in carrying out their positions must be based on a law and other regulations related to legal acts on the deeds he made. If the notary does not do so then the notary will be sanctioned. The sanctions given to notaries who are considered to have committed mistakes in their positions can be in the form of administrative, civil to criminal sanctions.⁴⁶ The notary who made the deed of grant on land has obviously carried out his position as a general officer without being based on applicable laws and regulations. This will have legal consequences, including, namely, as follows:

1. The grant submission can only be given by an authentic deed made by an authorized official as specified in Article 1687 of the Civil Code. The definition of an authentic deed has been regulated in Article 165 of the HIR (Het Herziene Indonesich Reglement), which means:

“An authentic deed i.e. a person done so thus by or before a public servant authorized to make it, makes sufficient evidence for both parties and their heirs and all persons entitled from him, namely about all matters, which are mentioned in the letter and also about those in the letter as notice only, but such one is

⁴⁵ Indonesia, *UU tentang Jabatan Notaris*, UU No. 2 Tahun 2014 Tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004, Ps. 16 Ayat (1) huruf l.

⁴⁶ *Ibid.*

merely that which is notified it relates directly to the subject matter in the deed".⁴⁷

The content of the authentic deed is considered undeniable to be true, unless it can be proved, that what the general official recorded as true, but it is not so.⁴⁸

Suatu akta dikatakan autentik apabila memenuhi syarat, yaitu:⁴⁹

- a. The deed must be made by or in the presence of a general official.
- b. The deed must be made in the form prescribed by the Act;
- c. The General Officer by whom or before whom the deed was made must have the authority to make the deed.

Based on the foregoing, considering that a Notary is a general official who is not authorized to make a deed related to land, the grant deed he made becomes an inauthentic deed because of the non-fulfillment of the requirements of an authentic deed. Because the deed of grant of land made by the Notary is not an authentic deed, it becomes an underhand deed. An underhand deed has the same evidentiary power as an authentic deed if the deed is not denied and acknowledged by the parties against whom the deed is used as evidence.

The difference between the two is related to the power of proof, that is, if there is a party that denies the truth of the authentic deed, then the party who denies it is the one who has the obligation to prove what it denies. Meanwhile, against the deed under hand, if there is a party who denies the truth of the deed, then the party who denies it does not have to prove. As for what must prove the truth of the deed, it is the party who uses the deed as evidence.⁵⁰

2. Furthermore, the creation of a grant deed carried out by a notary resulted in the process of registration and transfer

of his rights at the land office. As for Article 37 PP No. 24 of 1997, which reads as follows:

"Transfer of rights to land and property rights to units of flats through buying and selling, exchange, grants, income in the company and other legal acts of transfer of rights, except transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of the applicable laws and regulations."⁵¹

Based on this, it is clear that the Grant Deed will be constrained in the process of transferring land at the land office because it must be proven by the grant deed made by the PPAT. With the inability to carry out the registration process and the transfer of rights at the land office, this will bring losses to the parties in good faith.

3. In connection with the loss suffered by a good faith party as number 2 above, then if the notary has made a mistake in his position, it is possible for the notary to get civil sanctions in the form of compensation for parties who feel aggrieved as a result of his actions in making a grant deed on land without having the authority to do so..

This is regulated in the provisions of Article 16 Paragraph (12) of the Notary Position Law which stipulates that the notary can be held liable for reimbursement of costs as well as compensation and interest if there is a claim from the party suffering losses for the notary's actions.⁵² To be subject to this liability, the notary's actions must be proven whether there are unlawful acts that cause

⁴⁷ Herzien Inlandsch Reglement (H.I.R), Ps. 165.

⁴⁸ *Ibid.*

⁴⁹ Habib Ajie (a), *Hukum Notariat di Indonesia (Tafsir Tematik Terhadap Undang-Undang No. 30 Tahun 2004 tentang Jabatan Notaris)*, (Jakarta: PT. Refika Aditama, 2009), hal. 120

⁵⁰ Herzien Inlandsch Reglement (H.I.R), Ps. 165.

⁵¹ Indonesia, *PP Tentang Pendaftaran Tanah*, Pasal 37

⁵² Indonesia, *Undang-Undang Jabatan Notaris*, Pasal 16 Ayat (12).

losses to the parties.⁵³ Apabila hal tersebut dapat dibuktikan, dimana perbuatan Notaris baik kesengajaan maupun kelalaian seperti kurang hati-hati, tidak cermat atau tidak teliti sehingga menyebabkan kerugian bagi orang lain, maka notaris dimaksud dapat dimintakan pertanggungjawaban berupa ganti kerugian.⁵⁴

CONCLUSION

Based on the above analysis, it can be concluded that the Notary who has made a grant deed on the land has carried out his position without being based on applicable laws and regulations. This will have legal consequences, including, namely, as follows:

1. The grant deed he had made did not meet the authentic requirements of the deed i.e. it was made by or before a public officer who had the authority to make the deed. Because it does not meet the requirements of an authentic deed, the deed becomes an underhand deed. A deed under the hand has the power of proof like an authentic deed if the deed is recognized as true as a piece of evidence.
In the deed under hand, if there is a party who denies the truth of the deed, then the party who denies it does not need to prove the truth of the deed, but the party who uses the deed must prove its correctness.
2. The Deed of Grant on land made by the notary cannot be carried out the process of transferring rights at the land office because it must be proven by the grant deed made by the PPAT. By not being able to carry out the registration process and the transfer of rights, this will bring losses to the parties in good faith.
3. In connection with the losses suffered by good faith parties as in paragraph 2 above, the notary who made a mistake in his position does not rule out the possibility of obtaining civil sanctions in the form of compensation for parties who feel aggrieved.

SUGGESTION

Based on the conclusions above, there are suggestions that can be submitted. First, the Notary must understand his duties and authorities as a general officer so that in carrying out his position must be careful, more thorough and careful and comply with the provisions of the applicable laws and regulations and bind him. Second, the Notary Supervisory Board needs to actively supervise so that similar things do not happen, where the notary makes a deed that is not his authority.

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⁵³ Prawira, I Gusti Bagus Prayoga, "Tanggung Jawab PPAT terhadap Akta Jual Beli Tanah", Jurnal IUS

Kajian dan Keadian, Volume IV, Nomor 1, April 2016, hlm 72.

⁵⁴ *Ibid.*, Hlm. 73.

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