

The Authority of a Notary in the Creation of Deeds in the Field of Land Affairs

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The Authority of a Notary in the Creation of Deeds in the Field of Land Affairs

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Abstract. The land holds significant importance for the people in Indonesia and is one of the country's natural resources. As an agricultural country, a large portion of the Indonesian population relies on agriculture as their primary source of livelihood. Farming, which involves cultivating land to produce food, has long been a cornerstone of rural economies. Notaries and Land Deed Officials (PPAT) play a critical role in Indonesia's legal and land administration systems. Notaries, governed by Law No. 2 of 2014 and Article 1868 of the Indonesian Civil Code (KUHPerdata), are authorized to create authentic deeds, ensure legal certainty, and maintain document custody. Meanwhile, PPATs, under Government Regulation No. 37 of 1998 and Law No. 4 of 1996, are responsible for drafting deeds related to land registration and mortgage rights, including transactions involving the sale, purchase, and transfer of land rights. The distinct authority of notaries and PPATs is clearly defined by the relevant regulations, with the Constitutional Court Decision No. 5/PUU-XII/2014 affirming that their jurisdictions do not overlap, thereby safeguarding legal certainty in land administration.

Keywords: Agrarian Law; Notary; Land Affairs

1. INTRODUCTION

Economic development, as an integral part of national development currently being vigorously pursued, is an effort to achieve the national objectives outlined in the Preamble of the 1945 Constitution of the Republic of Indonesia, particularly in paragraph IV. These objectives include the protection of the entire Indonesian nation and its territory, the promotion of general welfare, the intellectual advancement of the nation, and contributions to establishing a world order based on eternal peace, freedom, and social justice. The implementation of this national development is not solely the responsibility of the government but also requires active participation from all levels of society in realizing these shared aspirations.

Indonesia's abundant natural wealth, including natural resources such as land, water, and minerals, is controlled by the state and utilized for the prosperity of the people. This principle is enshrined in Article 33, paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the land, water, and natural resources contained therein are controlled by the state and used to the greatest extent for the people's welfare. This principle

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emphasizes that the management of Indonesia's natural resources must always be directed toward the public interest and not merely for the benefit of a few individuals or groups. Therefore, as a nation blessed with extraordinary natural wealth, all Indonesians must utilize and manage these resources optimally to achieve national goals.

³⁴ Land plays a central role in the lives of the Indonesian people as an agricultural country, where a large portion of the population relies on the agricultural sector for their livelihood. Farming, which involves the cultivation of land for food production, is one of the main pillars of the rural economy and underpins the social and economic structure of society. Therefore, land not only holds high economic value as an asset for agricultural activities but also plays a crucial role in ensuring the well-being and sustainability of farmers and communities dependent on agricultural products. As the primary resource for producing food, land is an invaluable and vital component in daily life and in maintaining the country's economic stability.

The importance of land in the lives of the Indonesian people often leads to conflicts, especially concerning ownership rights. In both rural and urban areas, land disputes frequently arise due to the increasing demand for land caused by rapid population growth. This situation has led to a sharp rise in land prices, which not only creates difficulties for those in need of land for farming but also widens the economic gap between those who have access to land and those who do not. This condition demands serious attention from the government and society in managing land under the principles of social justice and general welfare. To address these issues, the Indonesian government undertook legal reforms by enacting ¹¹ Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). The UUPA, promulgated on September 24, 1960, aims to resolve the dualism of land law in Indonesia, where customary law and agrarian law based on Western law coexist. Through the UUPA, the government strives to create a national land law system so that the Indonesian people can obtain land rights in a fair and orderly manner.

⁴ Article 1, number (1) of Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Position of Notary stipulates ⁵ that a Notary is a Public Official (Openbaar Ambtenaar) authorized to draw up authentic deeds and has other authorities regulated by law. Public Official (Openbare Ambtenaren) refers to an official whose duties relate to the public interest. In this context, a notary serves as an official responsible for drafting authentic deeds as part of public services. Authentic deeds by a notary carry stronger legal force than private deeds,

and the notary has an important responsibility to ensure legal certainty for those who require valid legal documents.

As a Public Official, the notary plays a significant role closely related to the definition of an authentic deed as stipulated in Article 1868 of the Civil Code (KUH Perdata), a deed made in a form prescribed by law by or before a competent public official. Notaries are appointed to serve the interests of the public engaging in legal actions, to act as witnesses in legal acts, and to record what they witness. As public officials appointed and dismissed by the government, notaries are given the authority and responsibility to provide services to the public in the drafting and legalization of agreements and deeds. This authority enables notaries to help maintain legal certainty in various transactions and legal acts undertaken by the community.

According to Article 15 of the Notary Position Act (UUJN), notaries have the authority to create authentic deeds related to various actions, agreements, and determinations required by law. The notary must formulate the parties' intentions in an authentic deed by applicable legal rules. In addition, Article 15, paragraph 2 of the UUJN grants special powers to notaries, such as verifying signatures, determining the date of private documents, registering private documents, authenticating copies of documents, providing legal counsel regarding deed creation, drafting land deeds, and preparing auction minutes. Notaries also have the authority to correct typographical or clerical errors in the Minuta deed through a Correction Deed as regulated in Article 51 of the UUJN.

The authority and duties of notaries are closely linked to agreements, actions, and determinations that give rise to rights and obligations between the parties, serving as evidence to ensure legal certainty. One of the notary's authorities often debated is the authority to create deeds related to land affairs. According to Article 15, paragraph (2) letter f of the Notary Position Act (UUJN), notaries have the authority to draft deeds related to land affairs. Although the explanation in the law is deemed "clear enough" and should not lead to differing interpretations, there remains much debate regarding the limits of a notary's authority in drafting land deeds, as this authority is often seen as part of the duties of a Land Deed Official (PPAT). Therefore, the main issue is how the notary's authority in drafting land deeds can be clearly explained and implemented without overlapping with the authority of the PPAT.

2. METHOD

The normative juridical writing method in discussing the authority of notaries in the creation of deeds in the field of land affairs will focus on the examination of applicable legislation, legal doctrines, and the opinions of legal experts. This research will employ a statute approach by analyzing the provisions within the Notary Position Act (UUJN), particularly Article 15, paragraph (2), letter f, as well as other relevant laws such as the Basic Agrarian Law (UUPA) and regulations concerning Land Deed Officials (PPAT). Additionally, a conceptual approach will be used to understand the concept of a notary's authority in land acts and to explore legal interpretations and perspectives from various literature and court decisions. This analysis is expected to identify the limits and scope of a notary's authority in the creation of deeds in the field of land affairs and its relationship to the duties and functions of PPAT. [6]

Approach

The normative approach is a method used to examine issues within the context of law and legislation, including the rules that can serve as a basis for assessing legal matters and their consequences. In this case, examples include Law No. 2 of 2014 on the Position of Notary (UUJN) and Law No. 5 of 1960 on Basic Agrarian Principles (UUPA). The normative approach focuses on specific legislation or written laws related to law enforcement in land affairs. This research describes the situation of the subject under study, with an emphasis on regulations and Agrarian concepts.[7]

3. RESULT AND DISCUSSION

Notary Position and Land Deed Maker Office Position

A notary's status as a societal functionary is a crucial aspect of the legal system, where the notary serves as a reliable official in legal document creation. A notary is a trustworthy source for obtaining valid legal advice and an authority authorized to draft documents with high legal force. According to Article 1868 of the Indonesian Civil Code (KUHPerdata), an authentic deed is created in a form specified by law, in the presence of a public official authorized to do so. In this context, notaries are designated as the public officials authorized to create such authentic deeds. Law No. 2 of 2014 on the Position of Notary (UUJN) is a national legal product that governs the notary profession in Indonesia, implementing the provisions of Article 1868 of the Civil Code. The UUJN stipulates that a notary is authorized

to draft, certify, and sign legal documents, providing strong legal validity to the deeds they create, and ensuring that these documents comply with applicable legal provisions. Thus, notaries play a role not only in the drafting of legal documents but also as protectors of the public's interests in legal transactions.

⁴ Article 1, point 1 of Law No. 2 of 2014 on the Position of Notary (UUJN) establishes that a notary is a public official authorized to create authentic deeds and has other powers as specified by the law. The UUJN is an improvement on colonial-era legislation and unifies most of the laws regulating notarial practice that is no longer aligned with current legal developments and societal needs. The UUJN was designed to adjust notarial regulations to modern legal contexts and practical needs, replacing an outdated system with one more relevant to contemporary social and economic dynamics. With the UUJN, it is expected that notaries can perform their functions and exercise their authority more effectively and by prevailing legal standards.

The history of notarial law in Indonesia shows that the profession has existed since the 17th century, beginning with the Dutch East India Company (Oost Ind. Compagnie), which brought Western legal systems to the archipelago. The role of the notary was essential as society needed an official who could provide reliable legal documentation, and whose signature and seal would offer strong legal guarantees and evidence. Notaries serve as impartial experts and trusted legal advisors, functioning to prevent future disputes. While an advocate defends a person's rights when difficulties arise, a notary aims to anticipate and prevent legal problems through valid and lawful documents, ensuring legal certainty and protection for the parties involved.

The 1860 Notarial Position Regulation (PJN), also known by its original name, "Reglement op het Notarisambt in Indonesie," explicitly states that notarial work is an official duty (ambtelijke verrichtingen) and ³¹ that the notary is the sole public official authorized to create authentic deeds. This regulation emphasizes the exclusive position of notaries in the creation of valid deeds, stating that no other public official has similar authority unless another regulation assigns such authority to a different official. Thus, the PJN of 1860 reflects the principle of centralized notarial power in the creation of valid deeds and plays a crucial role in Indonesia's legal system, establishing notaries as the primary authority in drafting and authenticating important documents that require legal validity.

The role and position of Land Deed Officials (PPAT) are regulated by Government Regulation (PP) No. 37 of 1998, which serves to provide legal certainty in the land registration process in Indonesia. Land registration activities are further regulated by PP No. 24 of 1997, which states in Article 6, paragraph (2) that the Head of the Land Office is assisted by PPAT and other officials assigned to specific activities by the legislation. PPAT plays an important role in the creation of land deeds and in providing updated juridical data to the Land Office, ensuring that all information related to land ownership and registration is recorded accurately and legally. [10]

The existence of Land Deed Officials (PPAT) is not only regulated by Government Regulation (PP) No. 37 of 1998 but also by Law No. 4 of 1996 on Mortgage Rights (UUHT) and Government Regulation No. 24 of 1997 on Land Registration. Article 1, point (4) of the UUHT designates PPAT as public officials authorized to create deeds of land rights transfer, encumbrance of land rights, and granting of powers to encumber mortgage rights by applicable laws and regulations. Additionally, PPAT is mentioned in PP No. 24 of 1997 and is empowered to create certain deeds related to land registration, ensuring that all transactions and transfers of land rights are legally and accurately recorded.

Notary's Authority in Making Land Deeds

A notary is a public official with exclusive authority to create authentic deeds related to all acts, agreements, and stipulations required by law or requested by interested parties to be formalized in an authentic deed. The main duties of a notary include ensuring the certainty of the date of the deed's creation, safeguarding these documents, and providing copies, extracts, and excerpts from the deeds made. This authority is unique and cannot be granted or delegated to other officials or individuals unless explicitly provided for by general regulations.

As a public official, the notary holds a unique role compared to other public officials such as Land Deed Officials (PPAT) and Auction Officials. Although all these public officials have certain duties in public administration, notaries have a special responsibility in the implementation of civil law. Recognized under the Notary Position Regulation, notaries are authorized to create authentic deeds, and documents that formalize the intent and agreements of the parties in a legally prescribed form. The authentic deeds created by notaries carry significant evidentiary weight and are legally recognized, making them crucial tools in society for ensuring legal certainty and protecting the rights and obligations of the

parties involved. The unique authority of notaries as public officials distinguishes them from other public officials, whose duties may be more limited to certain administrative or registration functions.

According to the Indonesian Dictionary (KBBI), authority refers to the right and power to act, make decisions, command, and delegate responsibility to others. In legal terms, this word is often equated with "bevoegheid" in Dutch law, which is used in both public and private law, while in Indonesia, the term is more commonly associated with public law. Legally, authority refers to the ability granted by law to create legal consequences. Authority is a legal act regulated and provides a particular office based on applicable laws, which also establishes the limits of that authority. In administrative law, authority is divided into three categories based on how it is acquired: attribution, delegation, and mandate. Attribution refers to the direct granting of authority by law, delegation involves the transfer of authority from one official to another, and a mandate is the granting of authority to act on behalf of another party.

A notary's authority is the authorized power granted by legislation and specifically regulated by the Law on Notary Position (UUJN). As a public official, a notary's authority is firmly and clearly defined by relevant laws. It requires a valid legal basis, and any act outside this authority is considered unlawful. The notary's authority is formally regulated and not derived from legislative discussions or opinions. The notary's authority is outlined in Article 15 paragraphs (1), (2), and (3) of Law No. 2 of 2014, which divides this authority into three categories: general authority, special authority, and authority to be determined later.

One special authority granted to notaries is the creation of deeds related to land matters, as stipulated in Article 15 paragraph (2) of Law No. 2 of 2014. However, there are three main interpretations regarding this authority: first, some believe that notaries have taken over all the powers of the PPAT, making it a notary's authority or adding to their authority; second, some view that land matters have now become the exclusive domain of notaries; and third, others interpret that there has been no takeover of PPAT's authority, but rather that notaries and PPAT have their respective authorities in the domain of land matters. To resolve this authority dispute, various efforts have been made through seminars, discussions, and systematic interpretations. A generally accepted interpretation needs to be established as this authority dispute requires a definitive resolution. In practice, it is often assumed that the ideal pairing is for a notary to also hold the position of PPAT and vice versa. However, with the existence of Article 15 paragraph (2) letter f of the UUJN, it seems that notaries claiming this

authority often attempt to create land-related deeds, which should be the exclusive domain of the PPAT.

In practice, the authority of notaries and Land Deed Officials (PPAT) is distinct, especially in drafting deeds related to land matters. PPAT has specific authority to create deeds linked to land rights, which is regulated by the Head of BPN Regulation No. 8 of 2012 concerning Amendments to the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 3 of 1997. These deeds include Sale and Purchase Deeds, Exchange Deeds, Grant Deeds, Company Contribution Deeds, Shared Rights Division Deeds, Mortgage Deeds, Building Use Rights Deeds, Usage Rights Deeds on Land Ownership, and Deeds of Authority to Encumber Mortgage Rights. These deeds are within the authority of the PPAT as public officials tasked with creating authentic deeds related to specific legal actions concerning land rights or Ownership Rights of Apartment Units. The PPAT institution originates from officials who transferred land rights under customary law.[14]

Therefore, a notary is only authorized to create deeds related to uncertified lands and state lands, by applicable legal provisions. The Indonesian Constitutional Court Decision No. 5/PUU-XII/2014 affirms that notaries and PPAT each have their authority, which is regulated by law, ensuring that their roles and responsibilities remain separate and do not overlap. This authority is established to ensure that each official carries out their functions according to their respective fields and duties without altering the existing system of power relations and accountability. One example of a notary's authority in the context of land matters is the creation of a Sale and Purchase Agreement, a crucial step in the land sale process to meet the legal requirements of the transaction. Article 15 paragraph (2) letter f of the UUJN does not extend the notary's authority in land matters or take over the PPAT's authority but instead sets clear boundaries for each official's authority to maintain legal certainty and the effectiveness of land administration.

4. CONCLUSION

Notaries and Land Deed Officials (PPAT) play a crucial role in Indonesia's legal system and land administration. Notaries, as public officials, are authorized to draft authentic deeds as stipulated by Law No. 2 of 2014 concerning the Position of Notary (UUJN) and Article 1868 of the Civil Code, bearing the responsibility to prepare and authenticate legal documents, thereby ensuring legal certainty for the public. Meanwhile, PPATs, regulated

under Government Regulation No. 37 of 1998 and Law No. 4 of 1996 on Mortgage Rights (UUHT), are tasked with drafting deeds related to land registration and mortgage rights. PPATs ensure the accuracy of land registration by Government Regulation No. 24 of 1997, including deeds such as sale and purchase agreements, grants, and transfers of land rights. The distinct roles of notaries and PPATs are reflected in the regulations governing their respective positions, with notaries focusing on the drafting of more general authentic deeds while PPATs handle specific deeds related to land rights and land registration.

As public officials, notaries hold exclusive authority to draft authentic deeds related to various legal acts by statutory provisions, including certifying the date, safeguarding documents, and providing copies of deeds. The authority of notaries is regulated by Law No. 2 of 2014 (UUJN), which encompasses the creation of deeds with substantial legal force. Although some interpretations suggest that notaries may draft deeds related to land matters, in practice, their authority differs from that of PPATs, governed by the Head of the National Land Agency Regulation No. 8 of 2012 and Law No. 4 of 1996, covering deeds concerning land rights. Notaries are only authorized to draft deeds for uncertified land under state ownership. The Constitutional Court Decision No. 5/PUU-XII/2014 affirms that the authorities of notaries and PPATs are distinct and non-overlapping, ensuring legal certainty in land administration by requiring each official to perform their duties by the applicable regulations.

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