

LEGAL VALIDITY OF A LAND DEED EXECUTED BY A LAND DEED OFFICIAL WITHOUT BEING READ BEFORE THE PARTIES

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Abstract

The Deed of the Land Deed Official plays an essential role in guaranteeing legal certainty over the transfer of land rights. However, in practice, violations of formal requirements often occur, such as the failure to read the deed before the parties. This study aims to analyze the validity of a deed of grant that was not read in the presence of the parties, as well as the legal liability of the Land Deed Official for executing a deed that does not comply with the prescribed procedures. This research employs a normative juridical method with a statutory approach and a case study analysis of Decision Number 298/Pdt.G/2021/PN Kpg. The results of the study indicate that a Land Deed Official's deed that is not read before the parties constitutes a deed with a formal defect, causing it to lose its status as an authentic deed and, consequently, depriving it of full legal evidentiary strength. In addition, a Land Deed Official who neglects the obligation to read the deed may be held legally liable administratively, civilly, as well as ethically under professional conduct standards. In conclusion, the reading of the deed before the parties is not merely a procedural formality, but rather constitutes a form of legal protection and a moral responsibility of the Land Deed Official to ensure validity and fairness in every legal act concerning land affairs.

Keywords: Land Deed Official; Validity of Deed; Reading of the Deed; Legal Liability; Grant

INTRODUCTION

The deed of the land deed official is one form of authentic deed that has a high legal force in the field of land affairs. This deed serves as a legitimate basis for the transfer of land rights, including sales, grants, exchanges, as well as the granting of mortgage rights. As an authentic deed, the validity of the deed issued by the land deed official is strictly regulated by various laws and regulations, including Law Number 5 of 1960 concerning the Basic Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, and Government Regulation Number 37 of 1998 concerning the Position of the Land Deed Official (Moechthar, 2024). One of the fundamental provisions stipulated in Article 22 of Government Regulation No. 37 of 1998 states that the officer who drafts land deeds is required to read or explain the contents of the deed to the interested parties, witnessed by at least two people, before the deed is signed by the parties, witnesses, and the officer drafting the land deed. This provision emphasizes that the reading of the deed is an important formal requirement to ensure understanding, agreement, and the validity of a land legal act (Hardian, 2021).

However, in practice, violations of these provisions are still frequently found (Alia & Musyafah, 2023). One notable case is Decision Number 298/Pdt.G/2021/PN Kpg issued by the Kupang District Court. In this case, the plaintiff challenged the validity of Deed of Grant Number 8/KO/VII/HBA/2004 created by the Land Deed Official, because the deed was neither read aloud nor signed in the presence of an authorized official. As a result of the deed not being read, there was a misunderstanding of its contents, where the name of the grantee did not match the intention of the grantor. This incident led to a prolonged legal dispute, while also emphasizing the importance of reading the deed as an integral part of the professional responsibility of the land deed official.

From the perspective of civil law, the reading of a deed is important as a guarantee of the free will and agreement of the parties. Without the reading, the deed becomes formally defective and loses its authentic nature, which affects the evidential strength of the deed. From the point of view of land administration law, the official who creates the land deed bears juridical and ethical responsibility for the formal accuracy of the data and the procedures of making the deed, because the deed is subsequently used as the basis for registering rights at the Land Office (K. M. Putri et al., 2022). Thus, the negligence of the land deed official in conducting the reading of the deed can result in legal consequences in the form of civil liability, administrative sanctions, and even violations of professional ethical codes.

In social practice, the notion still prevails among the public as well as among land deed officials themselves that the reading of the deed is merely an administrative formality that can be ignored, especially if the parties trust each other or are already familiar with the contents of the deed. This view is mistaken, because the reading of the deed is a primary instrument to prevent errors in data entry, manipulation, or discrepancies with the parties' intentions. Therefore, violating the obligation to read the deed is not only a violation of legal norms but also a neglect of the function of land deed officials as public officials who ensure legal certainty and justice (Syipawati, 2025).

Cases like this indicate a gap between normative rules and field practice. Reasons of time efficiency or the assumption that the parties have understood the contents of the deed cannot be used as a basis to ignore provisions of an imperative nature (Muhammad & Sesung, 2024). If this condition continues to be allowed, the authenticity of deeds as the highest form of evidence in civil law could be degraded, and public trust in the land administration system would also diminish. Therefore, stricter supervision and the consistent application of sanctions against land deed officials who neglect the obligation to read the deed are required (Wiryawan, 2025).

Thus, this discussion becomes important for examining two main issues. First, the validity of a grant deed that is not read in the presence of the parties from the perspective of agrarian law and Indonesian civil law. Second, the form of legal responsibility of the land deed official for deeds that do not meet the formal requirements. Through this study, it is expected to gain a comprehensive understanding of the limits of responsibility of land deed officials and the legal consequences of procedural violations in the creation of land deeds, while also contributing to the enhancement of integrity, professionalism, and legal certainty in the practice of land deed officials.

RESEARCH METHODS

This research uses a normative juridical research method, which is an approach that focuses on the study of legislation, legal doctrines, and court decisions related to the legal issues being investigated (Zainuddin & Karina, 2023). This approach was chosen because the problem being analyzed relates to the validity of the deeds made by land deed officials and the legal responsibility of these officials as public officers, which fundamentally directly concerns written legal norms. In normative legal research,

law is understood as a set of norms that govern behavior in society, so the analysis is focused on legal texts and their implementation in practice (Wiraguna, 2024).

The data used in this study are secondary data consisting of primary, secondary, and tertiary legal materials. Primary legal materials include relevant legislation, such as: Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 37 of 1998 concerning the Position of Land Deed Officials, and the Civil Code. In addition, Decision Number 298/Pdt.G/2021/PN Kpg is used as legal material that reflects the application of norms in concrete cases. Secondary legal materials consist of books, scientific journals, and academic writings discussing the validity of authentic deeds, land law, and the responsibility of public officials. Meanwhile, tertiary legal materials are used to clarify the understanding of legal terminology through legal dictionaries and encyclopedias.

The method of collecting legal materials is carried out through library research by reviewing legal documents and relevant literature to obtain a comprehensive understanding of the issues being studied (G. Putri et al., 2024). After all legal materials have been collected, the analysis is conducted using the statute approach to examine the applicable legal norms, as well as the case approach to observe the application of the law through court decisions (Tan, 2021). The analysis results are presented in a descriptive-analytical manner, by describing the facts and legal circumstances that occur in cases where the deeds of land deed officials are not read in the presence of the parties, and then relating them to the applicable legal provisions.

Through this method, this research is expected to provide a systematic understanding of how legal norms regulate the validity of deeds made by land deed officials, as well as the forms of legal responsibility that must be borne by land deed officials if there are violations of formal provisions in the drafting of deeds.

RESULT AND DISCUSSIONS

The Validity of a Grant Deed That Is Not Read in the Presence of the Parties

The deed of a land deed official is an authentic deed that has full legal force if made in accordance with the provisions of the legislation (Utomo, 2020). As an authentic deed, fulfilling formal requirements is essential for the deed to be valid and to have full evidentiary power. One important requirement stipulated in Article 22 of Government Regulation Number 37 of 1998 concerning the Position of Land Deed Officials states that before being signed, the deed must be read or explained to the parties in the presence of at least two witnesses (Wonte, 2022). This provision indicates that the reading of the deed is not merely an administrative procedure but a substantive stage to ensure that the contents of the deed are understood and agreed upon by the concerned parties.

In practice, the reading of deeds serves as an implementation of the principles of prudence and clarity of intent (consensus) (Azwardi & Arum, 2022). If the deed is not read aloud, there is an assumption that the parties signed the deed without understanding its contents and legal consequences. This condition causes the deed to be formally defective. Such a defect does not automatically render the deed null and void by law, but it reduces its evidentiary status and strength, so the deed can be treated as a private deed if it is proven that the reading was not carried out according to the rules. Thus, the validity of the deed made by the land deed official that is not read aloud can be challenged from a formal aspect, even though, materially, the transfer of rights may still occur if the substantive requirements of the grant have been fulfilled.

This is evident in the Kupang District Court Decision Number 298/Pdt.G/2021/PN Kpg, where the plaintiff, H. Ismail Inam Koho, contested the validity of Grant Deed Number 8/KO/VII/HBA/2004 made by Land Deed Official namely Albert Wilson Riwukore, S.H. The deed was not read aloud, not signed in the presence of the Land Deed Official, and no witnesses attended, but was instead signed at the plaintiff's house. As a result, the plaintiff was unaware that the beneficiary of the deed was not his child as he intended, but his son-in-law, Barry Fabriansyah. This mistake caused losses and prolonged legal disputes. The panel of judges in its consideration stated that the absence of the official who made the land deed and the failure to read the deed constitute a violation of the formal provisions for making an authentic deed. Therefore, the deed loses its authenticity and can be declared to have no binding legal force (Pomantow, 2018). The judge emphasized that the reading of the deed is an element of legal protection that must be carried out to prevent errors, fraud, or misleading actions by certain parties in a legal act (Tjipto, 2020).

Theoretically, a deed can be classified as an authentic deed if it fulfills three essential elements: (1) it is made by or before a competent public official; (2) it is executed in the form prescribed by law; and (3) it is prepared in accordance with the procedures established by law. The reading of the deed is included within the third element. If this element is not fulfilled, the deed loses its character as an

authentic deed and only possesses evidentiary value as a private deed. From the perspective of the principles of legal certainty and legal protection, the failure to read the deed effectively deprives the parties of their right to fully understand and consciously consent to the legal act being undertaken (Wijaya, 2024). In the case in Kupang, the plaintiff was disadvantaged because they were unaware of the contents of the deed signed on their behalf. This indicates that the negligence of the land deed official in carrying out the procedure of reading the deed has the potential to result in an unjust legal mechanism that harms the public (Pugung, 2021).

Furthermore, from the perspective of professional ethics, the actions of a land deed official who fails to carry out the obligation to read the deed reflect a lack of integrity and professional responsibility. Land deed officials have a moral duty to ensure that each party understands the content and legal consequences of the act being performed. Violations of this duty not only result in legal losses but also undermine public trust in the profession of land deed officials and the land administration system (Hidayanti, 2021). Therefore, stricter supervision is required from the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency as well as professional organizations such as the Association of Land Deed Officials to ensure that the execution of duties by land deed officials aligns with legal provisions and professional ethics. This effort is important to maintain the integrity of the profession and to ensure legal certainty in every process of land rights transfer.

Legal Liability of the Land Deed Official for Gift Deeds That Are Not Read in the Presence of the Parties

The land deed official holds a strategic role as a public officer authorized by the state to create authentic deeds in the field of land affairs. Therefore, every action taken by the land deed official must be based on legal provisions and carried out with full responsibility (Srimufi & Mahlill Adriaman, 2025). That responsibility is not only administrative in nature, but may also lead to civil legal consequences or ethical sanctions if there is a violation of the deed-making procedures.

Article 22 of Government Regulation Number 37 of 1998 explicitly stipulates that before the deed is signed, the official who drafts the land deed is required to read or explain the contents of the deed to the parties in the presence of at least two witnesses. This provision emphasizes that the reading of the deed is not merely an administrative formality but an essential procedure to ensure that the parties understand, agree to, and are aware of the legal consequences of the legal acts they are undertaking. Thus, the reading of the deed becomes an important instrument in ensuring the principles of prudence and conformity of will (consensus).

In case Number 298/Pdt.G/2021/PN Kpg, the negligence of the land deed official in carrying out the procedure became the main basis of the lawsuit. Deed of Grant Number 8/KO/VII/HBA/2004 was proven to have been signed at the plaintiff's house without the presence of the land deed official or witnesses, and without reading the contents of the deed. The plaintiff also did not know that the recipient of the grant in the deed was not their biological child, but their son-in-law. The panel of judges assessed that this action constituted a serious violation of the formal requirements for making an authentic deed, so the deed lost its full evidentiary power and could no longer be considered as a binding authentic deed. The judge then ordered the restoration of land ownership rights to the plaintiff. This shows that the responsibility of the Land Deed Official is directly related to the validity of the legal products they create (Adistia, 2024).

The accountability of the land deed official in such cases can be reviewed from three aspects (Wibawa, 2019). First, administrative responsibility, which refers to violations of official procedures that can result in warnings, temporary suspension, or even revocation of the official license. Second, civil liability, where land deed officials can be sued to pay damages under Article 1365 of the Civil Code for negligence that causes harm to another party. Third, professional ethical responsibility, which entails moral and disciplinary sanctions imposed by the Indonesian Association of Land Deed Officials as a professional organization if there is a violation of the code of ethics.

The case in Kupang shows that the negligence of land deed officials is not merely a technical issue, but is directly related to professional integrity and legal protection for the community. Land deed officials should perform their role as neutral officers who ensure transparency and the accuracy of the parties' intentions. By failing to conduct the reading of the deed, land deed officials have violated the principles of openness, honesty, and accountability that form the basis of the legitimacy of public office (Rahadjie et al., 2022).

However, supervision over the implementation of the duties of land deed officials in Indonesia still faces challenges (Krismiatri, 2022). Although the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, together with professional organizations, have the authority for guidance and supervision, its implementation has not been fully effective. Therefore, strengthening

evaluation mechanisms, enforcing consistent sanctions, and implementing integrity-based track record supervision need to be carried out to prevent similar cases from recurring (Wira, 2020).

Ultimately, the responsibility of the land deed official is measured not only by compliance with administrative procedures but also by the commitment to ensure legal protection for the community (Sihombing, 2019). A land deed is an instrument of legal certainty, and if the process of its creation is invalid, that certainty turns into a potential dispute. Therefore, officials who create land deeds must perform their duties professionally, transparently, and accountably to ensure that every deed made is truly valid, accurate, and reflects the will of the parties fairly and with legal awareness.

CONCLUSION

Based on the description and analysis that have been conducted, it can be asserted that the process of reading the deed by the land deed official is an essential formal element in the formation of an authentic deed. This obligation is not merely an administrative procedure but a legal requirement that determines the validity of a deed as evidence with full legal force. This duty is explicitly stated in Article 22 of Government Regulation Number 37 of 1998 concerning the Position of Land Deed Officials, which stipulates that the land deed official is obliged to read or explain the contents of the deed to the parties in the presence of at least two witnesses before signing takes place. The reading of the deed functions as a legal safeguard to ensure that the parties fully understand the content and legal consequences of the legal act they are undertaking, thereby truly upholding the principles of consensualism and free will.

If the formal requirements are ignored, the deed created loses its characteristics as an authentic deed and becomes a legally defective deed. This means that the deed no longer possesses full evidentiary power, and its status can be equated with a private deed. This consequence is evident in the Kupang District Court Decision Number 298/Pdt.G/2021/PN Kpg, where a grant deed that was neither read aloud nor signed in the presence of the land deed official was declared invalid and legally unenforceable. The court assessed that the violation of the formal requirements for creating the deed contravened statutory provisions, and therefore the deed could not serve as a basis for evidence with full evidentiary power. Thus, the reading of the deed by the land deed official is not merely a formality, but an instrument for protecting the legal interests of the parties and a prerequisite for maintaining the integrity and legitimacy of authentic deeds within the civil evidentiary system in Indonesia.

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