

DUTIES AND AUTHORITY OF A NOTARY IN PRODUCING LAND DEEDS

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Abstract

Case Study 179/PDT.G/2022/PN.PLG is used to examine the roles and responsibilities of notaries in the creation of land deeds. Two primary lines of inquiry emerge from this statement of need for more study: (1) what are the responsibilities and powers of a notary in producing land deeds, and (2) what is the notary's responsibility for the land deeds he makes? A normative judicial methodology was used for this study. The result of this research is a notary's power to create land deeds is limited by Article 15 of the Law on the Position of Notaries. In compliance with legal mandates like the Government Regulation on PPAT, the Land Deed Making Officer (PPAT) is also empowered to create land deeds. A notary's ability to create certain property deeds, such as a Sale and Purchase Agreement Deed, is constrained by the PPAT's duties. The notary's obligation for land deeds depends on the cause of the inaccuracy. If the notary's mistake causes financial harm, the victim may file a civil lawsuit against the official. The UUJN also suggests possible criminal and administrative consequences, such as temporary termination. If the notary has followed all applicable laws and regulations and an honest mistake has occurred, the notary is immune from liability. This study's findings give a summary of the complexities involved in notaries' roles in drafting property deeds and fulfilling their obligations under relevant laws.

Keywords: Notary, PPAT, Land Deed, Legal Liability

INTRODUCTION

Humans have a wide range of requirements to meet on a daily basis. There are three things everyone needs to survive: food, clothing, and a safe place to sleep. Having a safe and secure place to call home is a necessity for all people. As the population expands in a country, the amount of land available, one of which is meant for housing, will decrease. One reason a regulation protecting the community's ownership rights to property is important is to prevent such conflicts in the future.

Property rights, building use rights, business use rights, and other rights to land are all recognised by Law No. 05 of 1960 regarding Basic Agrarian Regulations (UUPA) in Indonesia. It is possible to acquire these rights by negotiating a transfer with the rights holder. Land rights can be acquired in a number of methods, including purchase, rental, inheritance, grant, and others. If the transfer is carried out by sale and purchase, then the transfer is made by a deed before a land deed maker, or if there are several conditions that have not been met, then the parties can choose to make a deed of sale and purchase agreement before a notary whose aim is to bind both parties. both parties. PPJB stands for "Purchase and Sale by Purchase Agreement." (Alfiansyah, 2015).

Article 1457 of the Civil Code defines a sale and purchase agreement as a contract between a seller and a buyer wherein the seller promises to transfer ownership of an item to the buyer in exchange for the agreed upon purchase price. This indicates that the seller and the buyer now have rights and responsibilities as a result of the agreement (Larasati & Bakri, 2018). Meanwhile, according to article 1320 of the Civil Code, in order to create a legitimate agreement, the following four (4) conditions must be met:

1. Their binding agreement;
2. The skill of those making the contract;
3. A certain thing; And
4. A legitimate cause.

A written agreement can be made as proof of an agreement or agreement that is binding on the parties if these four elements are met. This ensures legal clarity and protection for the parties. This kind of written contract can be signed in the presence of a Notary Public. UUJN Article 1 defines a notary as a public official with the authority to make authentic deeds and other authorities as intended in this Law or based on other laws.

Then, Article 15 UUJN specifies that a notary in his position is authorised to make authentic deeds with respect to all deeds, agreements, and stipulations that are required by statutory regulations and/or that are desired by interested parties to be stated in authentic deeds, providing certainty of the date of making the deed, keeping the deed, providing grosse, copy, and quotation of the deed, so long as the making of the deed is done. As a result, according to article 15, a notary has authority over land deeds unless another official has jurisdiction over the deed.

Notaries with offices in Palembang are able to make a variety of land deeds, including the Deed of Transfer and Transfer of Land Rights. Article 16 UUJN requires a notary to act in a trustworthy, honest, thorough, independent, and impartial manner and to protect the interests of parties involved in legal actions when making an authentic deed; however, it is not uncommon for notaries to act in a less than trustworthy, honest, thorough, independent, and impartial manner in practise. An unfavourable dispute arises when a notary public draws out a deed, which might involve anybody from the original signatories to third parties who stand to lose out. Decision 179/Pdt.G/2022/Pn.Plg. describes a similar situation involving a land dispute.

Mrs. E.'s discovery that the land in issue was being sold with a deed of transfer and release of rights between the parties sparked the beginning of the conflict. Deeds of Transfer and Transfer of Rights Nos. 32, 33, and 4 of 2021 were recorded by Notary NN between the purchasers and sellers, CM, HB, SE, J, and E, respectively, with regards to 2 (two) parcels of land in the Ilir Barat I District of Palembang City. But the 1991 Sale and Purchase Deeds Nos. 38 and 39 showed that the land actually belonged to Mrs. E.

The parties who buy and sell land that is the subject of a dispute based on a deed of transfer and release of rights are not legally competent, according to the criterion for the legality of an agreement known as the competence of the parties making the agreement. There is a Deed of Sale and Purchase between Mrs. E and the current owner of the title certificate for the land in question, which proves that Mrs. E. In order for Mrs. E to become the legal owner of the contested land, a transaction must first take place between her and the certificate holder. Any attempt to transfer ownership of the contested land that is not carried out by Mrs. E. right is null and void.

Given the above context, it is worthwhile to examine notaries' responsibilities and powers when it comes to drafting land deeds in an effort to enhance the quality of notarial services and reduce the frequency with which conflicts arise. This study seeks to address (1) What are the responsibilities and

powers of a notary in drawing up land deeds? and (2) In what ways should the notary be held accountable for the land contracts he draws up?

RESEARCH METHOD

This study falls under the category known as normative legal research. Examining materials found in libraries (also known as "library research") serves as the foundation for normative legal research, which also includes searching for statutory rules and literature that is relevant to the issue that is being investigated (Makarim, 2020). This study makes use of secondary data in the form of primary legal materials obtained from relevant laws and regulations and relates to the power of notaries in producing deeds relating to property. The primary legal documents have been gathered from various countries throughout the world. After that, a descriptive analysis was performed on the data.

RESULTS AND DISCUSSION

Duties and Authorities of Notaries in Making Land Deeds

Notaries as public officials are a personification of the law of truth, justice and even a guarantee of legal certainty for society (Handayana & Puspawati, n.d.). This implies that the public looks to Notaries for assistance in gaining legal clarity in the acts they do. Because notarial acts are public documents subject to public scrutiny and must not violate the rights of other parties, notaries must exercise extreme caution and attention to detail while performing their official responsibilities.

A notary's official obligations may be broken down into two categories: those of a land recorder and those of an authenticating official. A notary's primary responsibilities are to serve the public by creating legally binding documents (deeds) and to verify the identities of witnesses to such documents (Hartono & Raisah, 2023):

1. Provide responsibility for legal certainty to the community in ratifying binding agreements and to provide legal reinforcement for legal bindings provided by law.
2. Ratifying the legalization of legal obligations carried out by the community, especially in the land sector.

A notary's passive attitude to his work might be seen as his waiting for clients to come to him for services, such as the creation of notarial acts in accordance with the notary's authority, rather than actively seeking them out (Tobing, 2010). All of a notary's powers and responsibilities as a creator of genuine deeds are laid forth in UUJN Law Number 2 of 2014, which amends UUJN Law Number 30 of 2004. An authentic deed is a deed produced in the form stipulated by law before an authorised public authority, and UUJN was created to enhance those requirements of the Civil Code (Doly, 2016). Legislators are directed under this article to establish rules for public officials, the form of genuine deeds, and the authority of public authorities (Sakinah & Hoesin, 2022). Article 1868 of the Civil Code contains the requirements for a deed to be said to be authentic, namely (Latumeten, 2018, p. 1):

1. The deed must be made by or in the presence of a public official;
2. The deed must be made in the form determined by law;
3. The public official who makes the deed must have the authority to make the deed.

The provisions of the UUJN should be consulted by notaries in the course of performing their official responsibilities. Article 16 of the UUJN spells out the notary's responsibilities in detail, including the following as part of his official duties:

1. Acting trustworthy, honest, thorough, independent, impartial and safeguarding the interests of parties involved in legal actions;
2. Make a deed in the form of a deed minute and save it as part of the notary protocol;
3. Attach letters and documents as well as the applicant's fingerprints to the minutes of the deed;
4. Issue grosse deeds, copies of deeds or extracts of deeds based on minutes of deeds;
5. Providing services in accordance with the provisions of this law, unless there is a reason to refuse it;
6. Keep everything regarding the deed he or she makes confidential and all information obtained for the purpose of making the deed in accordance with the oath/promise of office, unless the law stipulates otherwise;
7. Binding the deeds made within 1 (one) month into a book containing no more than 50 (fifty) deeds, and if the number of deeds cannot be contained in one book, the deeds can be bound into more than one book, and record the number of minutes of the deeds, month and year of creation on the cover of each book;
8. Make a list of deeds of protest against non-payment or non-receipt of securities;
9. Make a list of deeds relating to wills in order of when the deeds were made each month;

10. Send the list of deeds as referred to in letter i or the nil list relating to wills to the center for the will register at the ministry that handles government affairs in the legal sector within 5 (five) days of the first week of each following month;
11. Record in the repertory the date of delivery of the list of wills at the end of each month;
12. Have a seal or seal containing the symbol of the Republic of Indonesia and in the space surrounding it the name, position and place of the relevant position are written;
13. Reading the deed in front of the presenter in the presence of at least 2 (two) witnesses, or 4 (four) special witnesses for making a private will, and signed at that time by the presenter, witness and notary; And
14. Accepting apprentice notary candidates.

Article 17 of the UUJN outlines the limitations imposed on notaries in order to promote legal clarity, preserve the professionalism of notaries, and safeguard the public.

1. Carrying out office outside the area of office;
2. Leaving his/her area of office for more than 7 (seven) consecutive working days without a valid reason;
3. Concurrently as a civil servant;
4. Concurrently serving as a state official;
5. Concurrently serving as an advocate;
6. Holding a position as leader or employee of a state-owned enterprise, regional-owned enterprise or private enterprise;
7. Concurrently serving as Land Deed Making Official and/or Class II Auction Official outside the Notary's place of residence;
8. Become a substitute notary; or
9. Carrying out other work that is contrary to religious norms, morality or propriety which could affect the honor and dignity of the notary's position.

The public's faith in notaries, who are tasked with acting impartially, depends on the enforcement of the restriction against notaries having concurrent jobs. Since a notary's dual roles as an employee and a representative of a corporation provide a potential for the notary to be seen as partial or biased.

According to paragraph one of Article one of the UUJN, a Notary has the power to authenticate documents. That is to say, a notary may do more than merely make a legally binding document. Articles in the UUJN provide this jurisdiction, although this does not exclude the possibility of future rules stating further notarial powers.

The term "authority" means "the right and power to act, decide, command, and delegate responsibility" in the Big Indonesian Dictionary. Legal standing is the power to create binding legal obligations under the authority of statute and regulation (Indroharto & Civil, 1994). In accordance with Administrative Law, one may gain power in one of three ways (Ridwan, 2011):

1. Attribution, or the delegation of power by the legislature to an existing or newly created governmental body. This suggests that the government body itself carries authority in accordance with the position and powers delegated to it.
2. Delegation, or the assignment of duties from one government body to another. Delegation may be seen as the act of entrusting someone else with responsibility that was previously within one's control. To ensure that the delegatee bears full responsibility for the responsibilities associated with the delegation.
3. Mandate, or the act of giving power to lower-ranking individuals. The purpose of this delegation is to allow subordinates to act on the mandate giver's behalf (Philipus, Martosoewignjo, & Basah, 1994). The recipient of the mandate (the mandatary) has no liability for any actions taken in accordance with the terms of the mandate. The mandate-issuer has all accountability.

The Notary's authority in this circumstance is attribution authority since it is derived from a legislative rule, in this case UUJN. Unless otherwise allocated or prohibited by law, notaries are vested with the authority to create valid deeds under Article 15 paragraph (1) UUJN. So the notary's jurisdiction is restricted to deeds which according to law are the authority of another official, which implies that aside from deeds which according to law are the authority of another official, they are still within the scope of the notary's power. Land transfer deeds, deeds of sale and purchase, deeds of conveyance, etc.

Article 15 paragraph (2) UUJN governs notaries' additional abilities, outside of the creation of genuine acts, in the following ways:

1. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
2. Record letters privately by registering them in a special book;

3. Make a copy of the original letter under your hand in the form of a copy containing the description as written and depicted in the letter concerned;
4. Validate the suitability of the photocopy with the original letter;
5. Providing legal counseling regarding the making of deeds;
6. Make deeds related to land; or
7. Make a deed of auction minutes.

Paragraph 3 of Article 15 UUJN specifies that notaries have additional powers according to statute. Among these additional powers are the ability to attest to digitally conducted transactions (cyber notary), pledge waqf property, and mortgage aircraft.

Duties and Authorities of Notaries in Making Land Deeds

When citing section 15.2.f of the article. A notary's authority includes the ability to draw property deeds. It is possible to modify the notary's power to make land deeds in light of the authority of other authorities, in this instance the Land Deed Making Officer (PPAT). Government Regulation Number 37 of 1998 pertaining to Position Regulations for Land Deed Making Officials (PP PPAT) establishes the parameters within which officials who issue land deeds must operate. As stated in Article 2 paragraph (1) of the PP PPAT, the primary function of PPAT is to perform certain land registration tasks by producing deeds. The deed is evidence that a transaction involving land or flat ownership has been recorded in a public record. Later, these documents will serve as the foundation for updating land registry information:

1. Buy and sell;
2. Exchange;
3. Grant;
4. Entry into the Company (inbreng);
5. Sharing of Joint Rights;
6. Granting Building Use Rights/Use Rights over Freehold land;
7. Granting Mortgage Rights;
8. Granting power of attorney imposes mortgage rights.

A public official authorised by another legislation has the ability to create a deed for a property right that does not need a deed listed in article 2 paragraph (2) PP PPAT. Article 15 paragraph (2) letter f of the PP PPAT grants notaries the ability to create deeds relating to land, which are deeds that are not covered in Article 2 paragraph (2) of the PP PPAT.

However, a notary is permitted to make a land deed if the notary has taken and passed the exam to be appointed as a Land Deed Official (Supriadi, 2023). Therefore, before being designated as a PPAT, a notary's authority is restricted to drafting a Deed of Preliminary Agreement Granting property Rights, and only so long as the document in question does not fall outside the purview of the PPAT's exclusive power to create property deeds (Ridodi, 2017). A deed that, by its terms, should be made before the PPAT but, because the recipient of the right does not meet the requirements for obtaining that right, the deed must be made before a notary, is still legally binding so long as it is made in accordance with the applicable provisions and guided by the UUJN (Supriadi, 2023).

Naturally, the National Land Agency, or BPN for short, is intimately connected to all land-related legal proceedings, including all changes in land rights. According to Presidential Regulation No. 48 of 2020 on the National Land Agency, BPN is responsible for executing governmental functions related to land in compliance with legal requirements.

1. BPN's obligations include, but are not limited to, those listed in Article 3.
2. Preparation and determination of policies in the land sector;
3. Formulation and implementation of policies in the field of land surveying and mapping;
4. Formulation and implementation of policies in the field of determining land rights and registration;
5. Formulation and implementation of policies in the field of land redistribution, empowerment of community land, land use, land management according to spatial planning, and arrangement of coastal areas, small islands, borders and certain areas;
6. Formulation and implementation of policies in the field of land acquisition and land development;
7. Formulation and implementation of policies in the field of controlling and regulating land control and ownership, as well as use and utilization of land according to spatial planning;
8. Formulation and implementation of policies in the field of handling and preventing disputes and conflicts as well as handling land cases;
9. Supervision of the implementation of tasks within BPN;

10. Carrying out task coordination, coaching and providing administrative support to all organizational units within BPN;
11. Implementation of sustainable management of data and information on land and food agricultural land;
12. Implementation of research and development in the land sector; And
13. Implementation of human resource development in the land sector.

As per the legislative provisions, in this instance PP PPAT, all sale and purchase deeds produced by PPAT must be registered with the Office. BPN is the official who has a working connection with PPAT, thus any changes to land data must be recorded with BPN via PPAT. Land. That's why the land deed a Notary who isn't a BPN working partner in land issues draws out can't be used to register property at the BPN Office.

Notaries may only make deeds to property that is either merely a rental right or rights that are overlaid on other land rights, or land for which the period has ended and the land has become state land. Transfer of Rights Deeds, Sale and Purchase Agreement Deeds, Grant Agreement Deeds, Relinquishment of Rights Deeds, etc. are the only types of deeds created. Meanwhile, the PPAT deed is utilised for property whose rights have not yet expired or for land ownership rights.

The restriction of a notary's jurisdiction based on the UUJN regarding the creation of a deed is as long as the making of the deed is not assigned or excluded for or to another official. In this context, "deeds" refer to documents such as birth and death certificates issued by the Civil Registry Office, auction minutes recorded by Auction Officials, and deeds of transfer and encumbrance of property rights issued within the PPAT's jurisdiction. In this instance, Notary NN operated within his scope of competence as a Notary since the deed he executed was performed within his jurisdiction (Palembang City) and did not need approval from the PPAT.

Notary's Responsibilities Regarding the Land Deed He Makes

As an official who has the authority to make an authentic deed, a Notary is seen as someone whose statements can be relied upon and trusted, whose signature and seal or stamp provide a guarantee and strong proof of the authentic deed he or she has made (Sumardjono, 2006). Since a notary's authenticated deed is a legal product, he or she must take reasonable precautions to ensure that it will not give rise to conflicts in the event of its subsequent downgrading or cancellation. For the simple reason that notaries, as public officials responsible for creating legally binding documents, must always be able to keep their word. Because of this, notaries must use the precautionary principle whenever they write a deed.

If a notary is concerned about getting themselves into legal trouble, they can take precautions by applying the precautionary principle when writing a deed, such as (Paramaningrat Manuaba, Parsa, & Ketut Ariawan, 2018):

1. Identify the person's identity. Before starting to make the deed, the notary will of course be confronted by the parties who want to make the deed. It is best for the notary to check the person's identity, such as the person's KTP or Passport, match the photo of the identity owner with the person present, in order to prevent falsification of the identity of the deed that will be made.
2. Carefully verify subject data and facing objects. The purpose of verifying subject data from the parties is to check whether the parties are legally authorized and competent in carrying out legal actions, so that they can fulfill the conditions for the validity of the agreement. Meanwhile, object verification is the process of checking object documents brought by the person present, for example checking the land certificate with BPN to check whether the certificate is genuine or fake, or whether it is true or not that the person facing the certificate is the owner.
3. Provide a grace period for processing the authentic deed. In working on a deed so that it is a good deed, the notary should give a grace period so that he is not rushed and can work carefully and meticulously so that there are no mistakes in the process.
4. Act carefully, carefully and thoroughly in the process of making the deed. It is best for a notary to act carefully, accurately and meticulously in the process of writing each word in the deed, because in its implementation it very often happens that the deed made by a notary is questioned because the words stated are not clear or give rise to multiple interpretations.
5. Fulfill all technical requirements for making notarial deeds. In making a deed, a notary must fulfill the formal and material requirements of a deed based on the UUJN so that the deed is far from indicative of legal problems. The formal requirements for making a deed are regulated in Article 38 UUJN, while the material requirements that must be fulfilled in making an authentic deed are regulated in Article 1320 of the Civil Code.
6. Report to the authorities if there are indications of money laundering in notary transactions.

Notary NN in this case was not careful in making the Deed of Transfer of Rights and Transfer of Rights, resulting in the deed becoming null and void. Notary NN should first check with BPN regarding the status of the land that is the object of the agreement, and check whether the parties are the parties with authority over the object. However, because the Notary is not obliged to investigate the truth of the material contents of the authentic deed, and the form of implementation of the precautionary principle is as a preventative action that is recommended to be taken and not as an obligation, then in this case Notary NN cannot be burdened with responsibility for the deed said, except that the deed can be canceled by law by a judge, and therefore will reduce the credibility of Notary NN.

The notary's responsibilities for the deed he makes include:

1. The civil liability of a notary for the deed he or she makes, in this case, if the authentic deed made by the notary does not meet the subjective requirements for the validity of an agreement in Article 1320 of the Civil Code, then the deed can be cancelled. Meanwhile, if the deed does not meet the objective requirements, then the deed is null and void.
2. The notary's criminal responsibility for the deed he or she makes, in this case the notary commits a criminal act in his capacity as a Public Official who has the authority to make deeds, not in the context of an individual as a citizen in general.
3. The notary's administrative responsibility for the deed he or she makes. Administrative sanctions that can be given to notaries who violate UUJN provisions are:
 - a. Verbal warning;
 - b. Written warning;
 - c. Temporary suspension;
 - d. Dismissal with honor; and
 - e. Dishonorable discharge.

A notary's form of responsibility in drawing up land deeds is the same as that of a notary in drawing up deeds in general. A notary's duty is mostly in line with the error-based notion of liability. There must be an act, an element of error, a loss, and a causal relationship between the error and the loss for the principle of liability based on errors to apply.

If the notary makes a mistake while performing official duties and that mistake results in financial harm for the party who requested the notary's services and for anyone else whose interests were adversely affected by the notary's deed, the notary may be held liable for those losses. Because of this, a notary's actions as an authentic deed maker require great care.

However, even if the notary is truthful, thorough, and impartial, he or she could still be put in danger by faked documents or false declarations from the parties. The Notary's reputation can be damaged even if the signer or witness presents a fake document or makes false comments in the presence of the Notary. A Notary's deed is legally binding since it is signed by a public official with the authority to do so; nevertheless, if an error is made or the deed does not comply with the conditions as required by law, the deed loses its evidential force and is treated as a private deed, or is even ruled null and void by a judge (Anshori, 2009).

Making a deed relating to real property is an example of a notary's civil duty, in which the notary must exercise due diligence to ensure that the document is free of any mistakes and gives all parties involved in the transaction the assurance they need to move forward with confidence. In addition to the parties to the deed, the notary's reputation as an official who has made an authentic deed rests on the thoroughness and accuracy of the legal product he has prepared.

The notary's role as the official who makes the authentic deed is limited to putting the parties' intentions in writing, and the notary's responsibility is limited to the legal requirements for the authentic deed's form, while the contents of the deed represent the parties' will and agreement. The notary merely summarises the events as they were described to him by the witnesses, makes any necessary adjustments to the formal criteria for generating a genuine deed, and inserts the resulting document into the chain of title (Afifah, 2017).

If a notary makes a mistake in a land deed or the deed itself contains an error, it is the notary's duty to fix the deed and, if the error results in financial loss, to compensate the party who suffered the loss. As long as the Notary concerned carries out his authority in accordance with the regulations, the Notary concerned cannot be held responsible if the error occurs not because of the Notary's intention, or if the problem is caused by the dishonesty of the parties bound by the deed, and the issuance of the deed causes losses to third parties. This is because the Notary only records what is conveyed by the parties to be included in the deed. It is the obligation of the parties to rectify any false information they have provided (Mamminanga, 2008).

CONCLUSION

Article 15 of the Law on the Position of Notaries establishes the parameters within which a Notary may execute a land deed, providing that the Notary may do so unless specifically prohibited by law. The Land Deed Making Officer (PPAT) has the authority to create land deeds in accordance with statutory requirements such as the Government Regulation on PPAT. Land deeds that can be made by a notary, such as a Sale and Purchase Agreement Deed, are limited since the PPAT has specific rights. A notary's ability to draught conveyancing documents is distinct from his power under the PPAT. Whether or not the notary is responsible for an error in a land deed depends on whether the mistake was made by the notary or by a witness.

An injured party might file a lawsuit against a negligent notary if the notary's mistake costs them money. Criminal and administrative duties can also be implemented, including sanctions of temporary dismissal according to the UUJN. Since the notary is not responsible for verifying the veracity of the information presented to them, they cannot be held liable if the inaccuracy results from the presenter's dishonesty. As long as the notary abides by the relevant rules and regulations, the presenter is responsible for the substance of the authentic deed.

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