NOTARY AUTHORITY IN MAKING INHERITANCE DISTRIBUTION DEED FOR INHERITANCE IN THE FORM OF LAND

Dinda Namira Anindya[1,)], F.X. Arsin Lukman[2]*
[1,2]Magister Kenotariatan, Faculty of Law Universitas Mulawarman, Samarinda, Indonesia
dindanamira26@gmail.com[1,)], arsinlukman@gmail.com[2]*

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Abstract

One of the authorities of the Notary as mandated in the Undang-undang Jabatan Notaris (UUJN) is the making of authentic deeds related to land. In line with this provision, the Government Regulation on Land Registration stipulates that one of the deeds required in the event of a transfer of land rights due to inheritance is a deed of inheritance division which can take the form of a notarial deed or an underhand deed. However, in addition to notaries, there are other officials authorized to make deeds in the land sector, namely Pejabat Pembuata Akta Tanah (PPAT). The purpose of this research is to analyze the authority of Notary in making deeds related to land including inheritance division deeds and the comparison between inheritance division deeds which are notarial deeds and joint rights division deeds which are PPAT deeds. This research is juridical-normative research, namely research based on legal norms contained in applicable laws and regulations. The result of this research is that the authority of Notary to make deeds in the land sector, including the deed of inheritance division on inherited land does not conflict with the authority of PPAT, and the deed of inheritance division and the deed of division of joint rights are two different deeds, both in terms of form and material.

Keywords: Notary, Deed of Division of Inheritance, Deed of Division of Joint Rights

INTRODUCTION

In carrying out social life, people need legal certainty related to civil relations. One of the efforts to realize this legal certainty is the existence of written evidence that has authentic evidentiary power. Based on this, a social institution known as "notariat" is present in the community, with the main purpose of providing services to the community in terms of the need for authentic evidence in civil relations. (G.H.S. Lumban Tobing, 2018) In Indonesia, notaries began to appear in the early 17th century with the existence of the *"Oost Ind. Compagnie"* and the appointment of Melchior Kerchem as the first Notary in Indonesia. (H.S Lumban Tobing, 2019) The main task of the Notary at that time was to serve the making of letters, such as wills or testaments, underhand wills, marriage agreements, and other letters. (Supriadi, 2016)

Currently, the regulation of Notaries in Indonesia is regulated by Law Number 30 of 2004 on the Position of Notary ("UUJN") which has been partially amended by Law Number 2 of 2014 on the Amendment to Law Number 30 of 2004 on the Position of Notary ("UUJN Amendment"). In the Amended UUJN, Notary is defined as a public official who is authorized to make authentic deeds and has other authorities, as referred to in this Law or based on other laws. (Indonesia, 2014) The term "public official" is a translation of the term *Openbare Amtbtenaren in Article 1 of the Reglement op het Notaris Ambt in Indonesia*. *(Ord. van Jan. 1860) S.1860* or also known as the Notary Position Regulation (PJN) and Article 1868 *Burgerlijk Wetboek* or the Civil Code. In essence, what is meant by a public official is an office held or given to those who are authorized by the rule of law to make authentic deeds, one of which is a Notary. (Habib Adjie & Rusdianto Sesung, 2020a)

In Article 15 paragraph (1), of the Law on National Notaries, it is stipulated that Notaries are authorized to make authentic deeds regarding all acts, agreements, and stipulations required by laws and regulations or desired by interested parties to be stated in the form of authentic deeds, as long as the authority to make such deeds is not assigned to other officials or persons in the law. In addition, Article 15 paragraph (2) of the Revised Law stipulates that one of the authorities of other Notaries is to make deeds related to land. (UUJN Perubahan Tahun 2014, 2014)

One of the legal events that will definitely be experienced by humans is death, which will cause inheritance. In essence, inheritance is the transfer of rights and obligations from the testator or the person who died to his heirs. If there is someone who dies by leaving an inheritance in the form of land rights or property rights over apartment units, then the inheritance falls to his heirs. The transfer of land rights due to inheritance occurs by operation of law when the right holder dies. From then on, the heirs become the new land rights holders. (Adrian Sutedi, 2007) However, administratively, the heirs of the testator must register the inheritance with the district/city land office to be able to transfer the name of the right holder from the name of the testator to the name of the heir. Such registration is mandatory to provide legal protection for the heirs and realize the orderly administration of land registration so that the available data is up-to-date.(Christiana Sri Murni, 2020)

In connection with the process of transferring the name of the inherited land, Notary as a public official also plays a role in making authentic deeds required by interested parties. In the event that there is more than one heir and the heirs want to transfer the name of the inherited land to one of the heirs only, a deed of inheritance division is required. (Peraturan Pemerintah Nomor 24 Tahun 1997, n.d.) The deed of inheritance division can be in the form of an underhand deed signed by all heirs witnessed by 2 (two) witnesses or a notarial deed. (Peraturan Menteri Negara Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Tentang Perubahan Ketiga Atas Peratuan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah, LN Tahun 2021 Nomor 953, Permen ATR/KaBPN No. 16 Tahun 2021, LN Tahun 2021 Nomor 953, Selanjutnya Disebut Permen ATR/KaBPN Pendaftaran Tanah, n.d.)

Still related to matters concerning land or land rights, there are public officials other than Notaries who have special authority to make evidence in the form of authentic deeds regarding certain legal acts concerning land rights and Property Rights Over Flat Units, namely Land Deed Officials also known as PPAT (Government Regulation on the Regulation of the Position of Land Deed Official Number 37 of 1998) which is regulated in Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning the Regulation of the Position of Land Deed Official which has been partially amended by Government Regulation of the Republic of Indonesia Number 24 of 2016 ("PP PJPPAT"). The PP PJPPAT stipulates that the main duties of a PPAT are: "carry out some of the activities of land registration by making deeds as evidence that certain legal acts have been carried out regarding land rights or HMSRS, which are used as the basis for registering changes in land registration data caused by the legal acts." (Government Regulation on the Regulation of the Position of Land Deed Official 37 of 1998, n.d.) One of the legal acts referred to is the making of a deed of division of joint rights or APHB. There are still many parties who equate APW with APHB, even

though they are two different deeds. With this background, this paper will discuss the authority of Notaries to make deeds related to land and its relation to the authority of PPAT, as well as the comparison between the deed of inheritance division and the deed of division of joint rights.

RESEARCH METHOD

Research is a scientific activity related to analysis and construction, which is carried out methodologically, systematically, and consistently. (Soerjono Soekanto, 2021) The type of research used in this research is juridical-normative research, namely research that refers to legal norms contained in applicable laws and regulations. The type of data used in this research is secondary data in the form of primary legal materials in the form of applicable laws and regulations and secondary legal materials in the form of books and journals related to this research.

RESULTS AND DISCUSSION

Notary's Authority to Make Deeds in the Land Sector

In state administrative law, the terms "authority" and "authority" are known. Authority is the right possessed by Government Agencies and/or Officials or other state administrators to make decisions and/or take actions in the administration of government, (Undang-Undang Jabatan Notaris 30 Tahun 2014, n.d.) While authority is the power of the Agency and / or government officials or other organizers to act in the realm of public law. (Notary Position Law, n.d.) In essence, authority is the power given, as well as a limitation of power by law to officials or state bodies to be able to carry out government actions (bestuur handelingen) and / or other actions, such as legal actions (rechthandelingen) and real actions (feitelijk handelingen) in accordance with procedures as regulated in applicable law, with the aim of causing certain legal consequences for a legal subject.(Habib Adjie & Rusdianto Sesung, 2020a) Furthermore, Habib Adjie and Rusdianto Sesung in their book explain that there are 3 (three) elements of authority, namely:

1. Legal Basis, which means that every authority has a legal basis as the basis for the birth of the authority.
2. Legal Conformity, which means that every official or state body is obliged to submit itself to existing procedures.
3. Influence, which means that the authority aims to cause certain legal consequences. (Habib Adjie & Rusdianto Sesung, 2020b)

When viewed from its source, there are attribution authority and delegation authority. According to Philipus M. Hadjon, the term attribution comes from the Latin language of "*ad tribuere"* which means "to give to." (Philipus M. Hadjon et.al, 2010) This means that the authority of attribution is an authority that is given to certain officials or bodies by the constitution or law. An example of the authority of attribution is the authority of a Notary in making authentic deeds, because the Notary's authority is given to the Notary through the UUJN. Because its source is from the constitution or law, the laws and regulations under it cannot deviate or reduce the authority. (Habib Adjie & Rusdianto Sesung, n.d.-a) Furthermore, Philipus M. Hadjon states that the term delegation comes from the Latin "delegare" which means "to delegate." In essence, delegation authority is the delegation of authority from higher to lower officials/bodies through legislation (in the form of PP, Perpres, or Perda) which results in the transfer of responsibility and liability for the authority to the recipient of the delegation. Click or tap here to enter text. (Habib Adjie & Rusdianto Sesung, n.d.-b) One example of delegated authority is the authority of PPAT to make authentic deeds, because the authority comes from PP PJPPAT.

In the UUJN, Notary is defined as: "A public official who is authorized to make authentic deeds and has other authorities as referred to in this law." (Law No. 30/2004 on the Position of Notary, Article 1 Point 1 From this definition, there are 2 (two) types of authority from a Notary, namely the authority of the Notary to make authentic deeds and other authorities. Furthermore, the authority of a Notary is regulated in Article 15 of the UUJN which reads:

"Pasal 15

(1) "Notaries are authorized to make authentic deeds concerning all deeds, agreements, and stipulations required by laws and regulations and/or desired by the parties concerned to be stated in an authentic deed, guarantee the certainty of the date of making the deed, keep the deed, provide a grosse, copy, and quotation of the deed, all insofar as the making of the deed is not assigned to another official or other person stipulated by law.
(2) In addition to the authority as referred to in paragraph (1), Notary shall also have the following powers:
    a. Certify the signature and establish the certainty of the date of the letter under hand by registering it in a special book;

b. Record the letter under the hand by registering in a special book;
c. Make a copy of the original letter under the hand in the form of a copy containing the description as written and described in the letter concerned;
d. Attesting the suitability of the photocopy with the original letter;
e. Providing legal counseling in connection with the making of deeds;
f. Making deeds relating to land; or
g. Make a deed of minutes of auction.

(3) In addition to the authorities as referred to in paragraph (1) and paragraph (2), Notary has other authorities stipulated in laws and regulations."

In the regulation, it is stipulated that one of the authorities of Notary is to make deeds related to land. In this regard, according to Sjaifurrachman, the formulation of Article 15 paragraph (2) letter f of the UUJN can lead to multiple interpretations. In a broad sense, the provisions of the article can be interpreted that Notaries are authorized to make deeds with land as the object, both of which are included in the authority of PPAT as stipulated in the PP PJPPAT, while in a narrow sense, Notaries are authorized to make deeds with land as the object, apart from the authorities possessed by PPAT. (Sjaifurrachman, 2011) Although based on the provisions of Article 17 of the UUJN Notaries can concurrently serve as PPATs as long as their domicile is the same as the Notary's domicile, Notaries cannot automatically serve as PPATs. To be appointed as a PPAT, a Notary must attend education and training, and pass an examination organized by the BPN. (Romanda Arif Kurnia & Umar Ma'ruf, 2018)

According to Habib Adjie and Rusdianto Sesung, the authority of Notary to make land deeds as mandated in Article 15 paragraph (2) of the UUJN cannot be fully implemented because there are other officials who are given the authority to make authentic deeds in the land sector, namely PPAT which is still within the scope of the National Land Agency. As long as the authority is still vested in other parties, the Notary is not authorized to exercise such authority. (Habib Adjie & Rusdianto Sesung, n.d.-c)

In the PP PJPPAT, a PPAT is defined as a public official who is authorized to make authentic deeds regarding certain legal acts concerning land rights or HMSRS. (Government Regulation on the Regulation on the Position of Land Deed Officials, 1998) The main task of a PPAT is to make a deed as evidence that a certain legal act has been carried out regarding land rights or HMSRS which will later be used as the basis for registering changes in land registration data. (Peraturan Pemerintah Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, n.d.) Certain legal acts referred to are regulated limitatively in PP PJPPAT, namely:

a) Buying and selling
b) Exchange
c) Grant
d) Entry into a company (inbreng)
e) Division of joint rights
f) Granting of Building Rights Title / Right of Use on Hak Milik land
g) Granting of Mortgage Rights
h) Granting power of attorney to impose Mortgage Rights.(*Peraturan Pemerintah Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah, Pasal 2 Ayat (2)*, n.d.)

From these provisions, it becomes a question whether the provisions in the PP PJPPAT contradict the Law on Land Management, because the Law on Land Management stipulates that Notaries are authorized to make deeds in the land sector, while the PP PJPPAT stipulates that PPATs are authorized to make deeds regarding land rights. This provision may indicate an overlapping authority between Notary and PPAT regarding the making of deeds related to land.

However, based on the Decision of the Indonesian Constitutional Court No. 5/PUU-XII/2014, Notaries and PPATs have their respective authorities in accordance with the applicable laws and regulations that have expressly regulated the appointment requirements and authorities of Notaries and PPATs. In this regard, the provisions contained in Article 15 paragraph (2) of UUJN which stipulate that Notaries are authorized to make deeds in the land sector are general in nature, while the provisions in Article 2 of PP PJPPAT are more specific. The scope of the substance of the PPAT's main task in relation to National Land Law is to carry out part of the land registration activities, which is the main task of the National Land Agency (BPN) delegated to PPAT, while the main task of the Notary as a public official is to make authentic deeds. (Rizki Kurniawan & Siti Nurcholifah, 2021) Therefore, it can be said that Article 15 paragraph (2) letter f of the UUJN does not erase the existence and role of PPAT to carry out its duties and authority to make deeds in the land sector. (I Wayan Eka Darma Putra, Prija Djatmika, & Nurini Aprilianda, 2018)

It can be concluded that as long as the authority to make an authentic deed is given to PPAT, the Notary is not authorized to make the deed. Or in other words, Notaries are authorized to make authentic deeds in the land sector other than deeds of sale and purchase, exchange, grants, entry into a company, division of joint rights, granting of building use rights / rights of use on freehold land, granting of mortgage rights, and granting power of attorney to impose mortgage rights. Therefore, it can also be concluded that the authority of a Notary in making a deed of inheritance division as mandated in Article 42 paragraph (4) of the Government Regulation on Land Registration jo. Article 111 Permen ATR/KaBPN Land Registration does not conflict with any laws and regulations and can be used as the basis for registering the transfer of land rights due to inheritance.

Deed of Division of Inheritance with Deed of Division of Joint Rights

There are 2 (two) requirements that must be met to transfer land rights due to inheritance, namely material requirements and formal requirements. The material condition that must be met is that the heirs meet the requirements as holders of land rights which are the object of inheritance, while the formal condition that must be met is to bring the necessary documents as evidence, namely with a certificate of death of inheritance and a certificate as an heir. (Putri Intan Ayuningutami & Fatma Ulfatun Najicha, 2021)

In the event that there are more than one heir and the heirs wish to transfer the name of the land title certificate to one particular heir only, a deed is required as the basis for the transfer. This is regulated in Article 111(4) and (5) of Regulation of the Ministry of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 16 of 2023 on the Third Amendment to Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 on Provisions for the Implementation of Government Regulation No. 24 of 1997 on Land Registration, which reads as follows.

"(4) If the heirs are more than 1 (one) person and there has been no division of inheritance, then the registration of the transfer of rights is carried out to the heirs as joint ownership, and further division of rights can be carried out in accordance with the provisions of laws and regulations..

(5) If the heirs are more than 1 (one) person and at the time of registration of the transfer of rights is accompanied by a deed of division of inheritance which contains information that land rights or Property Rights over certain Flat Units fall to 1 (one) recipient of inheritance, then the recording of the transfer of rights shall be made to the recipient of the inheritance concerned based on the deed of division of inheritance."(Permen ATR/KaBPN Pendaftaran Tanah, Ps. 111 Ayat (2), n.d.)

From these provisions, it can be concluded that there are 2 (two) different conditions that require 2 (two) different authentic deeds as the basis, namely the Deed of Division of Inheritance (APW) and the Deed of Division of Joint Rights (APHB).

The similarity between APW and APHB is that they are both authentic deeds used as the basis for transferring rights to inherited land in the event that there are more than one heir and they wish to transfer rights to inherited land to one of the heirs. However, there are significant differences between the two deeds. In terms of the official who makes it, the APW is a notarial deed made by a Notary, while the APHB is a PPAT deed made by a PPAT. Because APW is a notarial deed, the provisions regarding the formal or structure of the deed are subject to UUJN, while the formal provisions regarding APHB are subject to the deed template as contained in Appendix V of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the Land Agency of the Republic of Indonesia Number 8 of 2018.

Furthermore, when viewed in terms of substance, there are also differences between the two. In APW, the land that is the object of the action is still registered under the name of the heir, to be later reversed into the name of one of the heirs only. On the other hand, in APHB, the land to be reversed has been registered in the name of all heirs, to then be reversed into the name of one heir.

CONCLUSION

The authority of a notary to make authentic deeds is included in the attribution authority granted directly through the UUJN. In UUJN, one of the authorities of Notary is to make deeds related to land. However, there are other officials who are authorized to make deeds in the land sector to be used as the basis of land registration, namely PPAT whose authority is regulated in PP PJPPAT. Although there seems to be an overlap between the authority of Notary and PPAT in making deeds related to land, both have different authorities. The authority of PPAT to make land-related deeds is limited to deeds of sale and purchase, exchange, grants, inbreng, division of joint rights, granting of building use rights / use rights on freehold land, granting of mortgage rights, and granting power of attorney to impose mortgage rights. Apart from these deeds, the authority to make authentic deeds lies with the

Notary. In another statement, as long as the authority to make an authentic deed lies with the PPAT, the Notary is not authorized to make the deed.

Although there are parties who equate APW and APHB because they are both used in the event that there are more than one heir and they want to transfer the name of the inherited land to one of the heirs only, they are 2 (two) different deeds. The difference can be seen in terms of the deed-making official, the formal or writing structure of the deed, and the substance of the two deeds which are also different.

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