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## Legal protection to the parties in making authentic deeds carried out by land deed officials

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### Abstract

The application of the Principle of Prudence of a Land Deed Official in carrying out his duties is regulated in Article 39 paragraph (1) of Government Regulation No. 24 of 1997 concerning Registration, and Articles 97 to 102 of the Regulation of the Minister of Agrarian State No. 3 of 1997 concerning the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration. As for the creation of authentic deeds related to the agreement, it must meet as the legal requirements of the agreement contained in Article 1320 of the Civil Code. But in fact there are some disputes in transition of land rights. The purpose of this research is to examine the role of Land Deed Officials related to legal protection provided to the parties. The results of the research found are for those who feel aggrieved. The research method used is normative juridical supported by empirical data. The results of the study found that in the decision of the Banda Aceh District Court Number 09 / PDT. G/2009/PN. BNA and Medan District Court Decision No. 783/Pdt.G/2019/PN.Mdn PPAT did not implement the rules in accordance with Article 39 of Government Regulation No. 24 of 1997 and the problem that occurred was that there were several deeds that were canceled by the court because they were considered detrimental to one of the parties. The results of the study concluded that the legal protection for landowners whose deed was canceled by the court is that the owner can claim compensation to PPAT if the loss occurs due to PPAT negligence, but if the loss occurs due to the bad faith of the seller then the party who feels aggrieved can demand compensation to the seller.

**Keywords:** legal protection, authentic deed, land deed officials

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### Introduction

#### Background

Land is a thing that has a lot of value for people's lives, one of which is economic value. Land is also inseparable from the needs and activities of the community, because in general the land is used by the community as a place to find income and as a place to live. Because the function of the land cannot be separated from people's lives, the community urgently needs legal certainty of the land it owns, so as to achieve the prosperity of the people. Land for the prosperity of the people is regulated in Article 33 paragraph (3) of the 1945 Constitution which is hereinafter called the 1945 Constitution, namely "The earth and the water and natural wealth contained in it are controlled by the state and used for the greatest prosperity of the people". As a fulfillment of the constitution, the government passed Law No. 5 of 1960 concerning the Provisions of Agrarian Principles which is hereinafter referred to as the UUPA as the basis for agrarian legal arrangements.

Legal protection by the state regarding land use, land rights, and the transfer of land rights is regulated in Law No. 5 of 1960 on the Basic Arrangement of Agrarian Principles. Based on the mandate of Law No. 5 of 1960 Article 19 paragraph (1) then the Government of the Republic of Indonesia through the National Land Agency of the Republic of Indonesia carries out Land Registration and is regulated through Government Regulation No. 24 of 1997 concerning Land Registration which is implemented by The Minister of Agrarian State Regulation No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration, with the implementation of land registration, the legal certainty of land rights is more certain. Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding areas of land that already have rights and property rights to flats and certain rights that burden them (Article 1 number 1 of Government Regulation No. 24 of 1997 concerning Land Registration), The basis of land registration law in Indonesia is Law No. 5 of 1960 (UUPA), Articles 19, 23, 32, and 38.

Before registering landowners are required to have proof of ownership of the land, the evidence is regulated in Article 23 and Article 24 of Government Regulation No. 24 of 1997 concerning Land Registration, as for the sound of the two articles, namely:

1. Article 23
  - a. the right to new land is evidenced by:
    1. determination of the granting of rights from the Pajabat who is authorized to grant the rights concerned according to the applicable provisions if the granting of such rights comes from state land or land management rights;
    2. the original act of the Land Deed Making Office which contains the granting of such rights by the holder of property rights to the rights concerned when regarding the right to build and the right to use land of property rights;
  - b. management rights are evidenced by the determination of the granting of management rights by the authorized Pajabat;
  - c. waqf land is evidenced by the waqf pledge deed;
  - d. property rights to the unit of flats are evidenced by the deed of separation;
  - e. the granting of dependent rights is evidenced by the deed of granting dependent rights.
2. Article 24
  1. For the purposes of registration of rights, land rights derived from the conversion of old rights are proven by evidence of the existence of such rights in the form of written evidence, information of the level of truth by the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration, considered sufficient to register rights, rights holders and rights of other parties who burden it.
  2. In the event that there is no longer or is no longer fully available the means of proof as intended in paragraph (1), proof of rights can be carried out based on the fact that the physical mastery of the relevant land area for 20 (twenty) years or more in a row by the applicant registration and his predecessors, provided that:
    - a. such control is carried out in good faith and openly by the person concerned as entitled to the land, and strengthened by the testimony of a trustworthy person;
    - b. Such control both before and during the announcement as intended in Article 26 is not disputed by the indigenous law community or the village / village concerned or other parties.

In the event that the landowner has diverted but the land has not been indicated, it must be proven by the "deed of transfer of land rights made by the Acting Land Deed Maker" this is regulated in the Explanation of Article 24 letter g of the Government Number 24 of 1997 concerning Land Registration. A deed is a letter as a means of proof that is given a signature, which contains events that are the basis of a haka tau engagement that was made from the beginning deliberately for proof. Authentic (*authentiek*) can be interpreted: General, positional, provide perfect proof, meaning that authentic deed has conditions that must be met in order to be a perfect proof tool, because in the authentic deed there are all elements as evidence, namely:

1. Writing;
2. Witness;
3. Disclaimer;
4. Confession;
5. Oath.

Article 1867 of the Civil Code mentions the term Authentic Deed and Article 1868 Kita Civil Law Provides limits on the elements referred to by authentic deeds, namely:

1. The deed must be made by (*door*) or in front of (*ten overstaan*) a General Office;
2. The deed must be made in the form prescribed by law; and
3. The Public Office (General Office) by or in front of whom the deed is made, must have the authority to make the deed.

The authority in making land rights transfer deed is the Land Deed Making Office. The Land Deed Official is one of the oldest legal professions in the world. In Article 1 paragraph (1) of Government Regulation on Amendments to Government Regulation No. 37 of 1998 concerning The Position of Land Deed Officials explained that Land Deed Official is a general official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or property rights to flats.

The main task of Land Deed Official is to carry out some land registration activities by making deed as evidence of certain legal actions regarding land rights or Property Rights to Flats Units, which will be used as a basis for registration of changes in land registration data caused by the legal action (Article 2 paragraph (1) of Government Regulation No. 37 of 1998 concerning Land Deed Making Department Regulation). The legal action referred to in article 2 above is that Land Deed Official is authorized to make a land deed if the land occurs:

- a. buying and selling;
- b. exchange;
- c. grants;
- d. entry into the company (*inbreng*);

- e. sharing of common rights;
- f. granting Building Rights / Right to Use land Property Rights;
- g. granting dependent rights;
- h. the granting of power imposes dependent rights.

In the case of carrying out the main duties, Land Deed Official is given the authority to make authentic deeds regarding all legal acts as intended above, this is regulated in article 3 paragraph (1) of Government Regulation No. 37 of 1998 concerning The Regulation of the Land Deed Making Department which reads "Land Deed Officials, hereinafter called Land Deed Official, are general officials who are authorized to make authentic deeds regarding certain legal actions regarding land rights or Property Rights. Unit of Flats".

Based on Article 3 letter e of the Decree of the Minister of Agrarian Affairs and Spatial Planning of the Head of the National Land Agency Number 112 / KEP-4.1 / IV / 2017 (Code of Ethics of the Association of Land Deed Making Officials) stipulates that Land Deed Official must have professional behavior and participate in national development, especially in the field of law, as well as in Article 3 letters f and g stipulate that Land Deed Official must provide the best service, independent, honest, and impartial. In addition, Land Deed Official as a general official must be sensitive, responsive, have acumen to think and be able to provide proper analysis of every legal phenomenon and social phenomenon that arises, so that with him will foster an attitude of courage in taking appropriate actions.

Land Deed Official as a general official in making authentic deeds should have a precautionary principle in carrying out its duties. The principle of prudence has the goal of inhibiting and preventing from the beginning of the occurrence of an uncertain result of a particular activity carried out by humans. The application of the Principle of Prudence of Land Deed Official in carrying out its duties is regulated in Article 39 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration and Regulation of the Minister of Agrarian State / Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration.

But in fact there were some problems when the deed was issued and it harmed one of the parties. Meanwhile, several land disputes were found that arose even though a deed of transfer of land rights had been made because the parties did not agree with the contents of the deed. Some of these cases are:

#### **1. Decision of banda Aceh District Court Number 09/PDT. G/2009/PN. BNA**

This case occurred in 2008 where the plaintiff owned a piece of land in Sukadamai Village with Property Rights Number Number 2017/2007. However, the land was occupied by the defendant without the permission of the plaintiff, then in 2008 the defendant made a Joint Rights Sharing Act before the Land Deed Official. Based on the APHB, the defendant submitted a certificate application to the Banda Aceh City Land Office, but the application was rejected by bpn because the land area already has a certificate of property rights and the rights holder is not as stated in the APHB. In this case, the actual landowner feels aggrieved due to the issuance of the APHB deed and the parties whose names are listed in the APHB feel aggrieved in terms of materiality. In this case, Land Deed Official is considered negligent because it does not implement Article 39 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, in the pasa regulated before making the Land Deed Official deed must check with the local Land Office regarding the certificate of land rights (for land that has been certified), and if the land has not been certified Land Deed Official must receive a certificate from the local land office stating that the plot of land is not yet certified.

#### **2. Medan District Court Decision No. 783/Pdt.G/2019/PN.Mdn**

This case occurred in 2016 where the plaintiff as the heir felt aggrieved because his estate had been sold based on the Sale and Purchase Act made by Land Deed Official, the transition was only signed (approved) by one of the heirs, in this case Land Deed Official when making the Sale and Purchase Deed did not include all heirs in the deed (only one) or without the approval of other heirs. Because of the carelessness of Land Deed Official other heirs feel aggrieved due to the issuance of the deed of sale and purchase, in this case Land Deed Official does not implement Article 111 paragraph (4) of Government Regulation No. 3 of 1997 concerning provisions for the implementation of Government Regulation No. 24 of 1997 concerning Land Registration, in that article it is stipulated that if the heirs are more than 1 (one) person and there is no division of inheritance then the transfer of rights is carried out to the heirs as joint ownership. In this case Land Deed Official is also considered negligent because it is not Based on the description of the case above, the formulation of the problems discussed in this study is:

1. What is the legal protection of the parties whose deed is annulled by a court ruling?
2. What is the form of legal protection provided by the Land Deed Making Office (Land Deed Official) to the parties in making the deed of transfer of land rights?

Based on the problems already mentioned, the purpose of this thesis research is to find out and analyze legal protections to the parties whose deeds are annulled by court decisions and review Land Deed Official's efforts in protecting the parties against the transfer of land rights.

## Research Methods

Research methods used normatively with empirical approaches (normative-empirical) with the approach methods used are the invitation-guide approach (statue approach), and conceptual approach (conceptual approach). The sources of legal materials in the research are primary legal materials, secondary legal materials, and tertiary legal materials relating to Land Registration and Land Deed Official.

## Results and Discussion

### Legal protection of parties whose deeds are annulled by court rulings

#### 1. Land Deed Making Office Regulations

In law number 5 of 1960 concerning the basic arrangement of agrarian principles is not explicitly regulated about the official land deed maker, but in the law it is regulated on legal acts that require the role of Land Deed Official, while some of these arrangements are:

- a. Article 20 paragraph (2)  
Property Rights may be transferred and transferred to other parties.
- b. Article 25  
Property Rights can be used as debt guarantees by being burdened with Dependent Rights
- c. Article 28 paragraph (3)  
Business Use Rights may be transferred and transferred to other parties.
- d. Article 33  
Business Use Rights can be used as debt guarantees by being burdened with Dependent Rights.

Land Deed Official Regulation is explicitly regulated in Government Regulation No. 24 of 1997 concerning Land Registration. Article 1 number 24, Article 6 paragraph (2), and Article 7 number of Government Regulation No. 24 of 1997 concerning Land Registration stipulate that:

- a. Article 1 number 24  
Land Deed Making Officials, hereinafter called Land Deed Official are general officials who are authorized to make certain land deeds.
- b. Article 6 paragraphs (2)  
In carrying out land registration, the Head of land office is assisted by Land Deed Official and other officials assigned to carry out certain activities according to this Government Regulation and the relevant laws and regulations.
- c. **Article 7**
  1. Land Deed Official as intended in Article 6 paragraph (2) is appointed and dismissed by the Minister.
  2. For villages within remote areas the Minister can appoint a Temporary Land Deed Official.
  3. The regulation of the Land Deed Official position as intended in paragraph (1) is regulated by its own Government Regulation.

In accordance with the provisions of Article 7 paragraph (3) of Government Regulation No. 24 of 1997 concerning Land Registration, it is necessary to regulate the position of Land Deed Official. The regulation of the position of Land Deed Official is regulated in Government Regulation No. 37 of 1998 concerning Regulation of the Position of Land Deed Officials and Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Regulation of The Position of Land Deed Officials.

### Authority of the Land Deed Making Officials in Making Authentic Deeds

Land deed making officials are given the main task of carrying out some land registration activities by making deeds as evidence that certain legal actions have been carried out regarding land rights or property rights to flats units. This is regulated in Article 1 number 1 of Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning The Regulation of the Position of Land Deed Making Officials which reads "*Land Deed Officials, hereinafter referred to as Land Deed Official, are general officials who are authorized to make authentic deeds regarding certain legal actions regarding land rights or Property Rights to Flats Units*".

The legal procedures stipulated in Article 2 paragraph (2) of Government Regulation No. 37 of 1998 concerning The Regulation of the Position of Land Deed Officials are:

- a. Buying and selling;
- b. Exchange exchange;
- c. Grants;
- d. Entry into the company (inbreng);
- e. Sharing of common rights;
- f. Granting the right to build / right to use land property rights;
- g. Granting dependent rights;
- h. The granting of power imposes dependent rights.

The type of deed made by the Land Deed Official is stipulated in Article 95 of the Regulation of the Minister of Agrarian State / Regulation of the Head of the National Land Agency Number 3 of 1997 concerning the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration.

- a. Deed of sale and purchase;
- b. Exchange act;
- c. Grant deed;
- d. Deed of entry into the company;
- e. Deed of sharing of joint rights;
- f. Deed of disclosure of dependent rights;
- g. Deed of granting the right to build on land of property rights;
- h. Deed of granting the right of use of land property rights;
- i. Deed of granting dependent rights.

S. F. Marbun states that authority means the ability to perform a public legal action, or in other words authority is the ability to act given by applicable laws to conduct relationships and legal actions.

### **Legal Protection To The Parties Against Deed Annulled By The Court**

According to Satjipto Rahardjo, legal protection is an effort to protect a person's interests by allocating a power to him to act in the framework of his interests. Harjono argues that *"the protection provided by law is the protection of people's rights which is the result of the transformation of their interests, which further becomes a legal right, so that people's rights can be respected, protected and obeyed"*.

Theoretically, the form of legal protection is divided into two forms:

- a. Protection that is peremptory; and
- b. Restitutive protection.

Preventive legal protection is a legal protection that is preventive in nature. Protection provides an opportunity for the people to raise *objections (inspraak)* to their opinions before a government decision gets a definitive form, so that this legal protection aims to prevent disputes and is very meaningful for government actions based on freedom of action. While repressive legal protection serves to resolve in case of disputes.

Legal protection of parties whose deeds are annulled by the court falls into repressive legal protection. Based on the first case that has been outlined in the background, the aggrieved parties still get legal protection. This is regulated in article 62 of Government Regulation No. 24 of 1997 concerning Land Registration which reads *"LAND DEED OFFICIAL which in carrying out its duties ignores the provisions as intended in Article 38, Article 39 and Article 40 and the provisions and instructions given by the Minister or Appointed Official are subject to administrative actions in the form of written reprimands until dismissal from their position as LAND DEED OFFICIAL, by not reducing the possibility of being sued for damages by parties who suffer losses resulting from the neglect of these provisions"*

In the first case of Land Deed Official as a public official did not heed article 39 paragraph (1) b, Land Deed Official in this case did not make a certificate stating that the land plot has not been certified (Land Deed Official did not check with the land office first). Under article 62, the parties can ask for compensation to the Land Deed Official. In the case of making authentic deeds related to the agreement, the conditions that must be met as stated in Article 1320 of the Civil Code are as follows:

- a. Agreement for those who bind themselves;
- b. Ability to make an alliance;
- c. A certain point;
- d. A legitimate reason.

In the second case as already explained in the background it can be concluded that the seller in this case did not comply with article 1320 letter d of the Civil Code (not in good faith). Good faith in the implementation of contracts using an objective good faith perspective refers to objective norms, The purpose of objective good faith here is that the provisions of good itikat refer to unwritten norms that have become legal norms as a separate legal source. This norm is said to be objective because it is not based on the assumptions of the parties alone but must be in accordance with the general assumption of good faith.

Based on the above explanation, legal protection to buyers is regulated in article 1365 of the Civil Code, namely *"any act that violates the law and brings harm to others, requires the person who caused the loss due to his or her mistake to replace the loss"*. So in this case the buyer has the right to demand losses to the seller according to what he suffered.

### **Form of Legal Protection By The Land Deed Making Official In The Manufacture of Authentic Deeds.**

A deed is a letter as a signed evidence that contains the events on which an engagement is based, which was made from the beginning deliberately for proof. According to Sudikni Mertokusumo *"a deed is a letter of money signed, which contains events that are the basis of a haka tau engagement, which was made from the beginning deliberately for proof"*. While Authentic (*authentiek*) can be interpreted: General, positional, provide perfect proof. In the Indonesian Dictionary of Languages, the definition of the word authentic is trustworthy / legitimate.

This means that authentic deeds have perfect bookkeeping power can also be determined that anyone is upset with the deed, as long as it cannot be proven otherwise based on court decisions that have permanent legal force. If a deed is an authentic deed, then the deed will have 3 (three) functions for the parties who make it, namely (Salim HS, 2006):

- a. As proof that the parties concerned have entered into a certain agreement.
- b. As proof of the parties that what is written in the agreement is the purpose and desire of the parties.
- c. As evidence to the third party that on a certain date unless otherwise specified the parties have entered into an agreement and that the content of the agreement is in accordance with the will of the parties.

The legal protection provided by Land Deed Official before manufacture is preventive legal protection. In order to provide legal protection to the parties, Land Deed Official must be guided by rules and principles before making a deed. Related to the rules and principles of things that must be done by Land Deed Official before making a deed stipulated in Article 39 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration. The things that Land Deed Official should do are:

- a. Conduct a clean check at the land office related to the suitability of the certificate with the lists in the land office;
- b. Receiving a letter of evidence from the village head regarding the control of the plot of land (for plots of land that have not been certified);
- c. Receiving a certificate stating that the plot of land has not been certified from the local Land Office (for land plots that have not been certified);
- d. The creation of the deed must be attended by the parties concerned;
- e. The creation of the deed must be attended by at least 2 witnesses;
- f. Land Deed Official is obliged to read the deed in front of the parties.

In practice there are several Land Deed Official that provide legal protection outside the rules, this is done because in the rules have not fully provided legal protection to the parties. Some of the legal protections provided by Land Deed Official outside these rules are:

- a. Take measurements of land plots first before making a deed, which is carried out by the Local Land Office Measuring Officer. This is done so that the area of land in the deed does not have a difference with the certificate to be issued later.
- b. For land plots that have not been certified, it should be made a certificate first before making a deed of transfer of land rights, this aims to provide legal certainty to the ownership of the land plot.
- c. Making a written agreement to the gambler with the buyer which in the agreement requires the seller to compensate if the buyer loses because the seller does not have good faith in doing the deal.

### Conclusion

Legal protection for landowners whose deed is canceled by the court is that the owner can claim compensation to Land Deed Official if the loss occurs due to Land Deed Official negligence, but if the loss occurs due to the bad faith of the seller then the party who feels aggrieved can sue the seller for damages. The forms of legal protection by Land Deed Official are to do a clean check, check all files provided by the parties (sporadic examples, and certificates of inheritance), make the deed witnessed at least by two people, read the contents of the deed, before making the deed of land plot measured first by the local land office, and make a written agreement.

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