

THE APECTS OF LEGAL CERTAINTY ON ELECTRONIC SALE AND PURCHASE OF DEED

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ABSTRACT

Technology advancements in the current period of globalization impact the notarial community in terms of creating deeds, particularly the creation of sale and purchase deeds. Creating electronic deeds has become prevalent among Land Deed Officials (PPAT) in Indonesia. Several laws and regulations in Indonesia state that this is possible to do so, but in practice, these laws conflict with other laws, making it difficult for Land Deed Officials to implement this because; a certainly given deed must be a valid piece of evidence to ensure the parties involved have legal certainty. The goal of the study was to ascertain the authority of a Land Deed Officials in creating an authentic deed, as well as find out the legal certainty of the aforementioned electronic deed made by a Land Deed Officials. Depending on the rules and regulations that apply in Indonesia, it might be employed or not the idea of an electronic deed. This study's design uses normative legal analysis, a descriptive qualitative methodology. The findings of this study demonstrate that electronic deeds have not complied with the requirements of the Indonesian Civil Code; thus, more precise regulations should be developed to ensure that Land Deed Officials can implement them properly to provide legal certainty

Keywords: Legal Certainty, Sale and Purchase Deeds. Electronic.

INTRODUCTION

The Basic Agrarian Law, also known as the Basic Agrarian Law, was passed in 1960. The subsequent Government Regulation of the Republic of Indonesia Number (No.) 10 of 1961 regulating Land Registration modified the country's land law structure. The Republic of Indonesia's Government Regulation Number (No.) 10 of 1961's 19th article specifies. By the 19th Articles of Government Regulation Number (No.) 10 of 1961 for the Republic of Indonesia, Any agreement that aims to transfer land ownership, award a new right on land, mortgage property, or borrow money using the request of land as collateral must be supported by a deed signed by and before a representative appointed by the minister of rural affairs. The Minister of Agrarian Affairs determines the deed's format. The Land Deed Officials play the position of the expert who drafts the necessary agreement by the regulations above (PPAT). Number (No.) 24 of 1997, Government Regulation of the Republic of Indonesia The rule on the function of the Land Deed Officials (PPAT), which replaces Government Regulation of the Republic of Indonesia Number (No.) 10 of 1961, is then contained in the Concerning Land Registration section, The transfer of ownership of land and apartment units through sale and purchase can only be documented by a deed made by the authorized The Land Deed Officials (PPAT) by the provisions of the laws and regulations in effect, according to the 37th article paragraph (1) of Government Regulation of the Republic of Indonesia Number (No.) 24 of 1997 concerning Land Registration. The Land Deed Officials' (PPAT) primary responsibility is to perform land registration tasks by drafting a deed that will prove that specific legal steps regarding ownership of a plot of land or apartment have been taken. After that, the land registration information will be updated by this deed as a result of certain legal proceedings.

One development in the era of globalization and industrial revolution 4.0 is the declaration that a deed of the Land Deed Officials (PPAT) can be made electronically in the Law of the Republic of Indonesia Number (No.) 11 of 2020 concerning Job Creation in Article 147 junto Article 86 of Government Regulation of the Republic of Indonesia Number (No.) 18 of 2021 concerning Rights of Management, the Ownership of Land Flats Unit, and Land Registration. This violates Article 1868 of the Indonesian Civil Code, which specifies that a legitimate deed must be submitted before an authorized public authority according to the location where the act was generated and physically faced and must be by relevant regulations.

Based on the abovementioned issues, the use of information and technological advancements in the creation of electronic sale and purchase deeds by Land Deed Officials (PPAT) creates legal ambiguity because it contradicts other laws and regulations.

RESEARCH METHOD

This study employs a normative juridical research methodology; this research is legal and was done through library research to determine whether a positive law would apply to a given legal issue. This research also includes dogmatic analysis because it is focused on regulations and legislation. This study's methodology employs a statute approach (Mamudji, 2001:13). This research is descriptive and qualitative and is trying to; describe the process of creating a deed carried out by the Land Deed Officials (PPAT) in an electronic manner and; elaborate on the incompatibility of laws and regulations that are connected with the creation of such deed; analyze it in light of relevant law in light of the applicable statute; and finally, consider and comprehend the relevant laws and regulations about the creation of deeds performed by the Land Deed Officials (PPAT) to conclude the legal certainty of such action (Achmad, 2010).

FINDING AND DISCUSSION

1. Land Deed Officials' (PPAT) Authority

Authority can be defined as the execution of duties; meanwhile, laws and regulations specify the authority grants and restrictions on such given power. These rules and regulations also grant some people the ability to have legal repercussions (Atmosudirjo, 1994:78).

The second article of Government Regulation of the Republic of Indonesia Number (No.) 37 of 1998 Concerning Position Regulations for Land Deed Making Officials outlines land deed officials' primary responsibilities and obligations (PPAT). A land deed official may finish a valid deed, and the act he performed pertains to property title and contains the following:

- (1) PPAT's primary responsibility is to perform specific land registration activities by drafting a deed to demonstrate that specific legal actions connected to Ownership Rights Upon Land or Flat Units have been taken. Using this deed as the basis, the changes to the land registration information caused by these legal processes will then be recorded.
- (2) Below are the legal actions mentioned in paragraph (1):
 - a. sale and purchase,
 - b. exchanges (barter),
 - c. high (gift),
 - d. companies' income (inbred),
 - e. the dividend of joint property,
 - f. the provision of the right to use a structure or land that has ownership rights,
 - g. the provision of approving a mortgage,
 - h. the provision of imposing a mortgage.

Land deed officials must follow the following guidelines by the fourth article of Government Regulation of the Republic of Indonesia Number (No.) 37 of 1998 About the Regulation of the Position of the Land Deed Officials (PPAT):

- (1) The land deed officials can only authorize deeds upon ownership over land and flat unit properties that are located within their working area,
- (2) A deed of exchange, an act of companies' income, Alternatively, other land deed officials whose working areas include one of the cases mentioned above may execute a deed of the dividend of joint property rights regarding ownership of land and apartment unit properties that are not all located within the working area of a land deed official, with the intent that ownership of the properties as mentioned above will be subject to the legal action contained in the given deed.

The land deed officials IV Congress decision, which took place between August 31 and September 1, 2007, is a setting in the Code of Ethics for land deed officials now in force. The Land Deed Officials Professional Code of Ethics Article 1 Paragraph 2 explains in part: "The Land Deed Officials Code of Ethics, hereinafter referred to as the Code of Ethics, is all moral rules determined by the Association based on congressional decisions and/or those determined by and regulated in the laws and regulations governing this matter and which apply to and must be obeyed by each and every member of the Land Deed Officials Association and all persons who substitute their duties." The Honorary Council, which is made up of the Regional Honorary Council and the Central Honorary Council, has the power to oversee and implement the code of ethics for Land Deed Officials. According to Article 69 of the Head of BPN 1/2006 Regulation, the code of conduct for land deed officials was created by the Land Deed Officials Organization or Temporary Land Deed Officials, whichever group is appropriate. Currently, land deed officials are represented by the Association of Land Deed Officials (IPPAT- Ikatan Pejabat Pembuat Akta Tanah). (Badu, 2017:82).

2. The Aspects of Legal Certainty within the Provisions of Electronic Sale and Purchase Deeds

The deed prepared by the property deed authorities will provide the involved parties with legal clarity and protection due to its usage as proof. The deal was overseen in this instance by the Land Deed Official (PPAT), who has the authority to establish an authentic deed within a specific sector and is qualified to enter into a land sale and purchase agreement. Sudikno Mertokusumo challenges the notion that an act is a letter containing facts that form the foundation of an item or a contract and was written to serve as proof immediately. (Mertokusumo, 2009).

A document must include a valid signature that may be used as proof and the fact that it was signed in front of or by an authorized public authority and in compliance with legal criteria. Everyone must agree that the information in the actual deed is accurate since it comes from a public official and is permitted by law. The method of the crime itself suffices to indicate the validity of its contents until it can be shown differently. The presence of a genuine deed has also resulted in legal ramifications for other parties with interest in the act. The original deed, in this case, has perfect evidential weight for the parties, heirs, and anyone who gets rights from it, but it can nevertheless be overruled by contrary evidence. Authentic actions, however, bear the weight of free evidence for third parties, meaning that the panel of judges must make the determination (Muhammad, 2008: 131).

An authentic deed may be created as described in Article 1868 of the Indonesian Civil Code. The Indonesian Civil Code's Article 1868 states that the following requirements must be met to do a legitimate deed: A virtuous act must be signed by or before a public authority and be adequately drafted according to the law. Third, the public official who acted had to possess the necessary power, either at the time of the action or based on their area of duty. Fourth, a written agreement as described within a given deed does not automatically render it genuine; Rather, if it could satisfy the requirements for a formal agreement as stated in Article 1320 of the Indonesian Civil Code, it may later be used as evidence. In addition to the actual submission required by law, the deed signed also addresses this obligation. (Subekti, 2002:79).

The term "genuine deed" has a definition in Indonesian Civil Code Article 1867. Article 1868 of the same code defines the word in the following ways. For example, the deed must be done by or before a public official, it must be done in the manner authorized by law, and the public employees or public officials who formed the deed must have the authority to agree. In light of the preceding, the authentic act produced by the land deed officials satisfies the requirements for being regarded as an original deed under Article 1868 of the Indonesian Civil Code, which is granted to certain officials who are qualified as public officials, such as authentic deeds produced not only by land deed officials but also by other officials who are not public officials. Given those mentioned above, In light of the preceding, the authentic deed produced by the land deed officials satisfies the requirements for being regarded as an original deed under Article 1868 of the Indonesian Civil Code, which is granted to certain officials who are qualified as public officials, such as authentic deeds produced not only by land deed officials but also by other officials who are not public officials—considering the aforementioned (Adjie, 2009).

The primary source of authentic deeds in Indonesia is Article 1868 of the Indonesian Civil Code, which gently encourages legislators to establish legislation governing public officials and the structure of original deeds. This is evident from the definition of an authentic deed in the article, which specifies that one must have been made in compliance with legal requirements by or in the presence of a public official who was adequately allowed to do so in the location where the deed was produced. A prerequisite for the legality of an authentic deed is that it be performed by (door) or in front of (ten overstrain) a public official and that it be done in the way required by law. An employee of the government (a public official) with the necessary power to act performed it for or in front of another person.

According to the Republic of Indonesia Government Regulation Number (No.) 24 of 2016 About the Position Regulations of Land Deed Officers, Land Deed Officials are public officials with the authority to create valid deeds. However, Article 1868 of the Indonesian Civil Code requires the existence of a specific law that regulates the form of authentic acts and the public officials who executed them. However, this word might be broadly interpreted to mean processing the deed according to the legal requirements, which includes drafting, assembling, and producing the act by the legal requirements.

Article 22 of Government Regulation of the Republic of Indonesia Number (No.) 24 of 2016 concerning Position Regulations for Land Deed Officials Amendment to Government Regulations of the Republic of Indonesia Number (No.) 37 of 1998 concerning Position Regulations for Land Deed Officials states that the land deed officials themselves must read the deed before continuing with the signing process, which is completed by all of the parties, witnesses, and land deed authorities sign the act, the land deed authorities shall read or explain the deed's contents to the parties.

Thanks to technological improvements, a land deed authority may now create a property deed online. This is by Article 5 paragraph (4) of Law of Republic of Indonesia Number (No.) 19 of 2016 Concerning Amendments to Law of Republic of Indonesia Number (No.) 11 of 2008 Concerning Electronic Information and Transactions, which states that physical signatures are not necessary for electronic information and documents referred to in paragraph (1). This prohibition does not apply to letters that are required by law to be in writing or to letters and the supporting papers that are needed to be created in the form of a notarial deed or a deed presented by the land deed official. The Republic of Indonesia Law Number (No.) 11 of 2020 Concerning Job Creation also contains a legal foundation in Article 147, which states that documentation of ownership upon a land and flats unit, rights of management, and mortgage rights, including deeds of transfer of ownership upon the land and other documents related to land, maybe in electronic form.

The ability to generate documents online is granted to land deed officials by a clause in Article 86 of Government Regulation of Republic of Indonesia Number (No.) 18 of 2021, which deals with management rights, ownership of land and apartment units, and land registration. A sale and purchase deed may be executed electronically by these provisions; however, they conflict with Article 1868 of the Indonesian Civil Code and with Article 22 of Government Regulation of the Republic of Indonesia Number (No.) 24 of 2016 concerning Amendments to Government Regulation of the Republic of Indonesia Number (No.) 37 of 1998 concerning Regulations on the Position of Land Deed Officials. According to Article 1868 of the Indonesian Civil Code, Because of the meticulous process of verification, "an genuine deed provides the parties who produced it with a flawless proof of what is included within," Although people who are permitted to execute an authentic deed incur a variety of hazards, an original act gives the parties who created it a complete proof of what is written within (Harahap, 2009:273)

The Republic of Indonesia Number (No.) 24 of 2016 Government Regulation, Article 22, Land Deed Officials Position By an amendment to Government Regulation of the Republic of Indonesia Number (No.) 37 of 1998 of Position Regulations for Land Deed Officials, the Deed must first be read by the land deed officials, who must then sign it in front of all parties involved, witnesses, and land deed officials. They are in disagreement with Articles 147 of Law Number (No.) 11 of 2020 Concerning Job Creation and Article 86 of Government Regulation Number (No.) 18 of 2021 Concerning Management Rights, Ownership of Land and Flat Units, and Land Registration, the two provisions mentioned above will result in legal uncertainty. The Land Deed Official is responsible for the Deed made to give the party in question legal certainty since a genuine deed is the best type of proof and may be used as evidence in court. (Rijan, 2009:93).

Several requirements must be satisfied for a deed of sale and purchase to be implemented. Usually, the parties that appear before the land deed officials are the seller and the buyer. The legal document created by the Land Deed Officials (PPAT) is referred to as the Deed of the parties since it contains a party and what is referred to as the parties' agreement. Additionally, the parties tried to visit the Land Deed Officials' office independently. Both parties then present or submit their information to the Land Deed Officials; the material may be presented orally or in writing (Indonesian Civil Code, 2017: 70). Afterward, a Land Deed Official serves the parties who passively come before him and has no authority to change, diminish, or enhance what the presenters have

explained; instead, it is his obligation to mark or record in the Deed whatever the parties present. The Land Deed Official can confirm events in front of him and have the power to decide what is happening. Or determine the information he has obtained to better fit the provisions of a deed. (Ansori, 2009)

To ascertain the authenticity and legal certainty of establishing a sale and buy Deed using PPAT electronically, it is necessary to consider the legal component of the proof. One of the many legal changes Indonesian law has made to enable the generation of electronic deeds is Law of Republic of Indonesia Number (No.) 11 of 2008 respecting Information and Electronic Transactions. Articles 5 and 6 apply here, which have established the requirements or elements for information to be functionally equivalent to information written on paper, i.e., provided that the information contained in the Electronic is accessible, displayed, guaranteed for its integrity, and can be accounted for; thus, can describe its situation as a whole. Article 5 Paragraph 4 of the ITE Law implies that the restrictions on electronic documents do not apply to documents or deeds made by land deed officials (after this referred to as PPAT), which means that an electronic Sale and Purchase Deed by land deed officials is not a legally admissible document under the provisions of the ITE Law. Article 5 Paragraph (4) of the ITE Law states that the definition of electronic information and documents is limited. As a result, the Sale and Purchase Deed created electronically by Land Deed Officials is deemed unable to become legitimate proof and, as a result, fails to uphold the Deed's authenticity. Additionally, Article 1868 of the Indonesian Civil Code stipulates that a deed must be "made by or before public officials who have power for that at the place the deed was made, in the form determined by law," which means that a deed created electronically does not meet the requirements for the perfection of an authentic act.

From the government's point of view, the government often finds conflicts caused by the formation of a notary/PPAT practice and a land certificate maker who is considered imperfect so that it becomes an underhand deed; the implementation of the PPAT deed aims to create a regulatory basis and improve the quality capabilities of a notary/PPAT related to technology systems information.

An act performed by land deed authorities must either occur in their office, be observed by those who work there or be completed in their presence. This is because a valid, authentic deed must adhere to the formal specifications outlined by law, which include that the land deed official's act is done before an authorized official, that the parties be present, that they are known to or introduced to the land deed official, and that there be two witnesses present. The deed is ruled illegal and lacks legal effect if one of the formal prerequisites is not satisfied. In conclusion, the legal certainty of an act created by a PPAT (Land Deed Officials) utilizing computerized technology won't be guaranteed. These opportunities and challenges can be seen from their impact on the formulation of norms and policies that the government must implement to ensure legal certainty and ease of business in Indonesia. Promote and provide perspectives to promote social and ethical dimensions through interdisciplinary, normative, and social approaches to law. This will help develop jurisprudence and build a national legal system. (Putri, Lie, Efendi, & Inrawan, 2014)

The legislation governing the PPAT (Land Deed Officials) authority to create the deed electronically must be harmonized to implement the PPAT (Land Deed Officials) act electronically. This is necessary to ensure that the deed does not conflict with any other regulations and to prevent issues that could lead to legal uncertainty.

CONCLUSIONS

The elemental powers and duties of Land Deed Officials (PPAT) are outlined in Article 2 of Government Regulation of Republic of Indonesia Number (No.) 37 of 1998 concerning Position Regulations for Land Deed Officials (PPAT). The primary responsibility of PPAT is to finish up some land registration works by creating a deed as proof that some legal procedures relating to Ownership of Lands and Flat Units have been resolved. Any modifications to the land registration information brought about by the legal act shall be registered using this Deed as the basis. Sales and purchases, bartering, gifts, company income (inbred), distributions of joint property, granting the right to use a building or parcel of land that has ownership rights, approving mortgages, and imposing mortgages are examples of legal actions that can result in an agreement taking the form of an authentic deed. Article 4 of Government Regulation of the Republic of Indonesia Number (No.) 37 of 1998 on Regulation of the Position of Land Deed Officials outlines the structure of PPAT about its operational area (PPAT). A deed referring to ownership may only relate to property within PPAT's operative region. During the IPPAT IV Congress, which took place from August 31 to September 1, 2007, the structure of the PPAT Professional Code of Ethics was decided upon.

The proof's legal component must be considered to assess the legitimacy and certainty of creating an electronic deed. Proving by functional means, what can be done on paper can also be done in electronic documents so that the authenticity can be equated; the doctrine that supports this is the doctrine of the equivalent functional approach used in the ITE Law. Implementing PPAT activities in electronic deeds using video conferences can be carried out. Its authenticity is guaranteed because its presence is recorded, there is documented evidence, and the signature can be done electronically. Although numerous arrangements in Indonesia's laws and regulations clash with the renewal of the legislation for creating electronic deeds, it is possible to develop electronic acts with the assistance of other ministries and institutions since all digital data will be interconnected.

Indonesia's laws and regulations now include several measures addressing the updating of the legislation permitting the formation of electronic deeds. The authenticity of the Deed made by Land Deed Officials is not satisfactory since the legal Deed produced electronically by those officials is later determined to be inadmissible as evidence. Due to its automatic creation, the submitted Deed does not comply with Article 1868 of the Indonesian Civil Code's standards for a legitimate deed (Wardhani., 2017). In this case, the implementation of the electronic PPAT deed must be agreed upon by all parties, and the policy must be at the national level, not sectoral policies; the aim is to create protection for Notary Land Deed Officers besides that if there are problems that arise due to the electronic PPAT deed, then the government should provide a solution so that its implementation does not cause harm between the two parties.

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