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PREFACE

First of all, let's say Thanks to Allah, who has been giving us guidance, happiness, healthy, and mercy, so we can finish this conference proceeding without any obstacles. Praise and salutation upon our prophet Muhammad saw the last messenger, the best figure of this universe; the person who was able to save us from Jahiliyah era.

We would like to extend our thanks to the invited speakers: Prof. Henning Glaser from Thammasat University, Prof. Shimada Yuzuru from Nagoya University, Hilaire Tegnau, Ph.D from Sorbone University, Prof. Topo Santoso From Indonesian University, and Dr. Sri Endah Wahyuningsih, S.H., M.H from Sultan Agung Islamic University.

This was our fourth International conference and call for paper held by Faculty of Law, Sultan Agung Islamic University. This annual conference tries to gain any information and studies done by academician and practitioner in the concerned field to be discussed as guidelines to exchange and talk about views on the most important recent on Legal Construction and Development focusing on The Role of Indigenous and Global Community in Constructing National Law happens in both developed and developing countries and its role in shaping a good future, and to discuss the challenges and practical aspects in integrating competition law enforcement and guidelines to develop legal state in accordance with the diversity of all countries around the world. We hope this conference brings benefit for both participants and our faculty.

We are pleased to have your critique, suggestion and correction in order to make us better. Finally, we do thanks to all who helped this conference. May Allah guide us to always develop useful knowledge for human being.

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Role of Notary in The Making of Deal of Sale and Buy Agreements to Support National Development

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Abstract

National development towards national resilience requires legal services of a notary as a bearer of the legal profession (rechtsbeoefenaar) in the form of deeds, for example the Deed of Land Sale and Purchase Agreement (PPJB), Deed of Releasing Land Rights with Compensation and so on as perfect evidence plena). A Notary legal product is a deed that provides legal protection for the parties. Preparation of PPJB Deeds relating to land moved from Article 15 paragraph (2) of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning the Position of Notary Public (UUJN), however as such a Notary must pay attention to formal and material aspects.
Keywords: Notary, Deed, National Development and Resilience.

A. INTRODUCTION

Policies in the land sector must be sourced from the spirit of Article 33 of the 1945 State Constitution, which states that "Earth, water and natural resources contained therein are controlled by the State and are used for the greatest prosperity / welfare of the people". This norm is then outlined explicitly in Law no. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and other laws and regulations, especially those relating to land.¹

Before someone gets a land title certificate which is an act of state administrative law by the Land Agency (BPN),² then this right is of course preceded by a civil incident. Kartini Mulyadi and Gunawan Widjaja stated that civil events aimed at transferring land ownership rights can occur solely when a certain legal event occurs in a person, for example marriage or

death, or because of a legal event that is jointly desired by parties who intend to transfer Rights Owned over land with the party who intends to accept the transfer of land ownership rights, for example because of buying and selling, grants, or exchange.³ The latter, of course, requires an agreement which is usually set out in a deed made before a notary.⁴ Herlien Budiono underlined that the use of a deed by some people is intended as evidence made by or before a notary. For this purpose, it is not uncommon for people to ask a notary for help in making the deed.⁵ The role of a notary can be in making deeds, especially with regard to land, which is very central and strategic, for example the binding of the sale and purchase deed, the sale and purchase deed, the deed of relinquishing rights and so on.

Moving on from legal issues regarding the role of the Notary in national development and national resilience, especially in relation to the making of sale and purchase deeds.

¹Nia Kurniati, 2012, *Laporan Akhir Tim Pengkajian Hukum Tentang Pengelolaan Tanah Negara Bagi Kesejahteraan Rakyat*, Pusat Penelitian dan Pengembangan Sistem Hukum Nasional Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, p. 1.

² Urip Santosa, 2010, *Pendaftaran dan Peralihan Hak atas Tanah*, Kencana Prenada Media Group, Jakarta, p. 49.

³Kartini Muljadi dan Gunawan Widjaja, 2012, *Seri Hukum Harta Kekayaan: Hak-Hak atas Tanah*, Kencana Prenada Media Group, p. 77-78.

⁴Subekti, 2002, *Hukum Perjanjian*, PT. Intermedia, Jakarta, p. 1.

⁵ Herlien Budiono, 2014, *Dasar Teknik Pembuatan Akta Notaris*, Citra Aditya Bakti, Bandung, p. 1.

B. Discussion

The function and role of a notary is to help the smoothness and certainty of the law, not only in the rapid pace of investment and national development which requires legal products, namely deeds made and before a notary as stated by Ira Koesoemawati and Yunirman Rijan. Therefore, many people rely heavily on the services provided by the notary to really have a reliable weight in this case document authenticity.⁶In the language of Sudikno Mertokusumo, legal certainty (Rechtssicherheit) is protection for justice seekers (yustisiabel) against arbitrary action, which means that a person will be able to obtain something expected in certain circumstances. People expect legal certainty to create order. This is the task of the law to create legal certainty with its final destination, namely public order.⁷

The notary has a role in making the PPJB deed. The Deed of the Sale and Purchase Agreement of Land Rights (PPJB) of Land Rights (“aktaPPJB”). Legal relationship (rechtsbetrekking) to bind the engagement of the parties / parties in the form of a PPJB deed which can be used as perfect evidence when one of the parties fails to promise (default) through a lawsuit in court. In other words, the PPJB Deed provides legal protection for the parties. The PPJB deed relating to land moved from Article 15 UUJN paragraph (2) UUJN, however, it must pay attention to formal and material aspects. An interpretation appears related to the notary's authority to make land deeds, namely:⁸first, the Notary has taken all the authority of the PPAT into the authority of the Notary or has increased the authority of the Notary; second, the Land Sector is the authority of the Notary; and third, there is still no takeover from the

PPAT or the return of authority to the Notary, both PPAT and Notary Public have their own authority. .

It is clearly illustrated above that there are differences in interpretation so that the norm of Article 15 paragraph (2) is an obscure norm. In HLA Hart's language, vagueness is called "open texture", which is an aspect of law that often indicates that any explanation of legal concepts in terms of statutory regulations can be misleading (misleading).⁹In other words, open textures lead to multiple interpretations. In order to solve this, according to Habib Adjie's opinion, a systematic interpretation can be used.¹⁰

Subekti defines the Sale and Purchase of Land Rights is an agreement between the seller and the buyer before the sale and purchase is carried out because of the reasons that must be fulfilled for the sale and purchase.¹¹The PPJB Deed of Land Rights, namely the Deed made before a Notary Public, is not under PPAT's authority as a form of preliminary agreement agreed upon between the seller and the buyer in a land sale and purchase transaction containing an agreement regarding whether the land title certificate has not been registered in the name of the seller and is still in process the name is reversed, and the price of the object of sale and purchase has not yet been paid or the certificate is still being processed, which will then be stated in the Land Sale and Purchase Deed (AJB) drawn up before the PPAT.

The PPJB Deed contains the Object of the Sale and Purchase Binding, the Obligations of the Seller and the Buyer, and the contents can refer to the contents of the PPJB can refer to the provisions of the Decree of the Minister of State for Public Housing No. 09 / KTPS / M / 1995 concerning Guidelines for House Buying and Selling Binding. Notaries are not allowed to make a Power of Attorney to Sell in the PPJB Deed because it contradicts some jurisprudence of

⁶ Ira Koesoemawati dan Yunirman Rijan, 2009, *Ke Notaris*, Raih Asa Sukses, Jakarta, p. 23.

⁷Sudikno Mertokusumo dan A. Plito, 1993, *Bab-Bab Tentang Penemuan Hukum*, Citra Aditya Bakti, Bandung, p. 1-2.

⁸Habib Adjie, 2009, *Hukum Notaris Tafsir Tematik Terhadap UU No. 30 Tahun 2004 Tentang Jabatan Notaris*, Refika Aditama, Bandung, p. 84.

⁹HLA Hart, 1994, *Concept of Law*, Second Edition, Oxford, Clarendon Press, p. 123.

¹⁰Habib Adjie, *Loc.cit*, p. 84.

¹¹Subekti, *Op.cit*, p. 75.

the Supreme Court and the Instruction of the Minister of Home Affairs Number 14 of 1982 concerning the Prohibition of Using Absolute Power to Transfer Rights to Land. The PPJB deed is one of the means to access justice and national welfare because the making of the PPJB deed can touch the realm of public law, considering that sometimes it does not only involve individual communities as parties but also involves individuals and the government. National development will be realized if the legal objectives are achieved. The aim of the law is none other than the creation of peace.

There are obstacles in the making of the PPJB Deed including the status of the land, namely, among others, the status of customary land, State land and land letter C so that it violates the object of the agreement as stipulated in Article 1320 of the Civil Code. Furthermore, actions that are not allowed as referred to in Article 85 of the UUJN. Notary has its own working area in 1 (one) proportion and has a domicile in 1 (one) city or regency in the province as stipulated in Article 18 paragraph (1) UUJN related to Article 19 paragraph (2) UUJN which confirms that Notaries are not authorized to regularly carry out positions outside his / her position. Then the principle of relative competence applies, namely *rationeloci* (place) where the notary is entitled to make deeds in accordance with the legal domicile of the Notary. If the *rationeloci* (place) are violated, the Notary may be subject to sanctions as stipulated in Article 1868 and Article 1869 of the Civil Code. The duties and authorities of a notary are in the circle of the legal system which consists of a legal structure, legal substance and legal culture. In carrying out their profession, a Notary under the legal structure of a Notary is within the scope of the Notary Organization, namely the Indonesian Notary Association (INI). Supervision of Notaries is carried out by the Ministry of Law and Human Rights (Kemenkumham) which is delegated to the Regional Supervisory Council (MPD), the Regional Supervisory Council (MPW) and the Central Supervisory Council (MPP). In addition, it also involves various kinds of

institutions such as the Police, the Attorney General's Office, the Land Agency, Courts and institutions both government and private. Handling of legal substance for Notaries is guided by statutory regulations such as UUJN, KUHPerdata, KUHD, and so on. Legal culture is the values that are deposited in the Notary Code of Ethics as signs in carrying out the Notary profession. It is certain that the structure, substance and culture of law greatly affect the position of a notary in carrying out his profession.

Notaries have an important role in national development towards national resilience, however in practice the PPJB Deed produced before a Notary is null and void due to violating several articles of the UUJN, including: Article 16 paragraph (1) letter l, Article 16 paragraph (1) letter k, Article 44, Article 48, Article 49, Article 50, and Article 51. In practice, a Notary is often used as a Co-Defendant because the substance of the Notary deed is detrimental to one or all parties (the party / client). The legal consequence is that the Notary who produced the deed can be sued by the injured party as the Defendant. Position of Co-Defendant is placed for the sole purpose of completing a claim which must be submitted. In the *petitum*, it is only requested to submit and obey the decision. The notary position as co-defendant because it is considered that the Notary has committed a legal act as regulated in Article 1365 of the Civil Code. This action is detrimental to the wrong party, which can be found in several court decisions Medan High Court Decision number 88 / PDT / 2011 / PT-MDN jo Medan District Court Decision number 297 / Pdt.G / 2009 / PN.Mdn which punished the Notary to pay compensation loss for actions against the law that cause harm to the parties. In addition to facing civil charges, notaries are also charged with punishment with criminal articles such as Article 242 of the Criminal Code, Article 263 paragraph (1) KUHP, Article 372 paragraph (1) KUHP, Article 64 *halmana* can be found in several court decisions Medan High Court Judgment number 88 / PDT / 2011 / PT-MDN in conjunction with Medan District Court

Decision number 297 / Pdt.G / 2009 / PN.Mdn which punished Notaries to pay compensation for illegal acts committed against the law. cause harm to the parties. In addition to facing civil charges, notaries are also charged with punishment with criminal articles such as Article 242 of the Criminal Code, Article 263 paragraph (1) KUHP, Article 372 paragraph (1) KUHP, Article 64 halmana can be found in several court decisions Medan High Court Judgment number 88 / PDT / 2011 / PT-MDN in conjunction with Medan District Court Decision number 297 / Pdt.G / 2009 / PN.Mdn which punished Notaries to pay compensation for illegal acts committed against the law. cause harm to the parties. In addition to facing civil charges, notaries are also charged with punishment with criminal articles such as Article 242 of the Criminal Code, Article 263 paragraph (1) KUHP, Article 372 paragraph (1) KUHP, Article 64 Law Number 21 of 2008 concerning Sharia Banking, Article 264 paragraph (1) KUHP, Article 5 paragraph (1) Law Number 8 Year 2010 concerning the Prevention and Eradication of Money Laundering (TPPU). In order to avoid civil and criminal charges, it is necessary to uphold the signs, namely the laws and regulations, but the most important thing is to carry out the oath / promise of office. In national development towards national resilience, the Notary can play a role in making deeds for land that have not been certified in the form of a Notary Deed

concerning Transfer of Rights to Land. The deed, among others, is entitled Relinquishment of Rights with Compensation. The role of the notary public without prejudice to the function of the PPAT in making land deeds is due to justification. This reason, among others, is based on Article 1 jo. Article 7 Regulation of Notary Position, Article 2 paragraph (2) and paragraph (3) UUPA and Article 1457 of the Civil Code. The content of each of these articles explains that the notary can make a deed of transfer of land rights in accordance with the applicable provisions.

C. Closing

The role of the Notary is very central in national development towards national resilience, although it is rarely realized by the public considering that their duties and responsibilities are only to make authentic deeds. In fact, business traffic and the land sector really need the services of a notary. Agreements in the land sector such as the PPJB Deed, the Deed of Transfer of Rights to Land Compensation are legal products of a notary. Notaries must remain careful when receiving evidence provided by the parties so that the deed does not contain legal flaws. Therefore, in carrying out their profession, Notaries do not only depart from their legal structure, but understand the legal substance and adhere to the legal culture, namely the Notary Code of Ethics.

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