

The Authority Differences of Notary and PPAT in Making of Land Deed Certificate

Tocko Haryanto^{*)} and Amin Purnawan^{**)}

^{*)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: tockohar.lnd08@gmail.com

^{**)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, E-mail: amin.p@unissula.ac.id

Abstract. *The purpose of this study is to analyze and explain the Authority of Notaries and PPATs in Making Land Deeds Based on Act No. 2 of 2014 concerning Notary Positions and Government Regulation Number 24 of 2016 concerning Regulations of PPAT Positions. To analyze and explain the legal position of the rights and obligations of a notary based on Act No. 2 of 2014 concerning the Position of a Notary and the legal position of the rights and obligations of a PPAT based on Government Regulation Number 24 of 2016 concerning the Regulation of the Position of a PPAT. The method used by the researcher is normative and The specifications in this study is descriptive. The sources and types of data in this study are secondary data obtained from literature studies related to the theory of authority and legal certainty. Based on the results of the study that the difference between the authority of a notary and a PPAT in making a land deed is the authority of a notary in making the land deed, namely the land deed that is outside the authority of the PPAT as stated in Article 2 paragraph (2) of PP Number 37 of 1998. The authority of the official making the land deed is still limited by various kinds of legislation. Legal Position Rights and Obligations of Notaries and Legal Positions Rights and Obligations of PPAT is the urgency of the right to deny a Notary lies in the obligation of the Notary to carry out the mandate of the UUJN. The position of the Land Deed Maker Official is as an authentic deed maker official, besides that PPAT (Land Deed Making Officer) is also referred to as a secret custodian of the deed (regarding the contents) that has been made in order to maintain the interests of the parties in the deed.*

Keywords: Authority; Notary, PPAT; Land Deed.

1. Introduction

The importance of the position of a notary in guaranteeing legal certainty and protection for every act carried out by every citizen has also been stated by

Markus¹which states that in order to create a protection and legal certainty as well as in terms of order, there must be activities in the administration of law or so-called (law administrating) which are expected to achieve proper and orderly goals. This is needed in order to avoid all forms of actions that can lead to an unfavorable legal relationship and can harm the legal subject itself and the community, so the presence of a notary can provide legal certainty in the form of an authentic deed.

The definition of a notary itself is stated in Article 1 of Act No. 2 of 2014 amendments to Act No. 30 of 2004 concerning the Position of a Notary (hereinafter referred to as the Law on Notary Positions), it is determined that a Notary is a public position whose authority is given by law to carry out his position to make authentic deeds and carry out other authorities as referred to in the Law on Notary Positions. In principle, the notary's authority is a general authority, meaning that this authority includes the making of all types of deeds except those that are excluded from being made by a notary.²In carrying out its authority, a Notary is regulated in Article 15 of the Law on Notary Positions, a Notary has the responsibility in carrying out his position. In the authority granted by the state to a notary, in the exercise of his authority, a notary is regulated by the current applicable law.

In addition to the Notary, there are also officials or professions authorized to make authentic deeds, namely the Land Deed Making Officer (hereinafter referred to as PPAT). The deed made by PPAT can be used as evidence that can guarantee legal certainty. PPAT is a profession that is very closely related to Notaries, so that the authority of Notaries and PPATs sometimes creates ambiguity of meaning or legal ambiguity (vague norm). Moreover, one of the powers of a Notary and PPAT is to make a deed related to land.

Notary and PPAT are professions or positions that are closely related to the making of authentic deeds and both professions have authorities related to each other. So in fact, someone who works as a Notary also serves as PPAT. This is not prohibited and allowed by laws and regulations. It is stated in Article 19 number 1 of the Law on Notary Positions, namely the place of domicile of the Notary as a PPAT is obliged to follow the domicile of the Notary. In carrying out his position, what is not allowed is a Notary concurrently holding a PPAT position outside his/her area of office

Both professions are authorized to make deeds related to land, which can be used as the basis for land registration at the Land Office. Land registration at the

¹Habib Adjie. 2008. *Hukum Notaris Indonesia*, Rafika aditama, Bandung, p. 110

²Hartanti Sulihandari, Nisya Rifiani. 2013. *Prinsip-prinsip Dasar Profesi Notaris*, Dunia Cerdas. Jakarta, p. 92

Land Office is divided into two, namely land registration for the first time and maintenance of land registration data.³

The authority in paragraph (1), especially in paragraph (2) letter (f), is that a Notary has the authority to make a deed related to land. Related to the authority to make a deed related to land, there is a confusion of meaning or also called Vague Norm. Paragraph (1) in the explanation of the law states that Article 15 paragraph 2 letter (f) is stated quite clearly meaning that there should be no difference of interpretation related to the provisions of the paragraph so that immediately all matters relating to land, a notary is authorized to make a deed. ⁴

In the matter of the authority to make a deed related to land, it must be understood first about the problem of land and land rights. The definition of land in a juridical sense is the surface of the earth Article 4 paragraph (1), while land rights are rights to a certain part of the earth's surface, which are limited, two-dimensional with length and width are called land rights.

Based on the problems above, the objectives of this study are as follows:

- a. To analyze and explain the Authority of Notaries and PPATs in Making Land Deeds Based on Act No. 2 of 2014 concerning Notary Positions and Government Regulation Number 24 of 2016 concerning Regulations of PPAT Positions.
- b. To analyze and explain the legal position of the rights and obligations of a notary based on Act No. 2 of 2014 concerning the Position of a Notary and the legal position of the rights and obligations of a PPAT based on Government Regulation Number 24 of 2016 concerning the Regulation of the Position of a PPAT.

2. Research Methods

The approach method that the author uses in the preparation of writing this legal research is normative legal research, this research is descriptive namely research that aims to describe the state of things in a certain area and at a certain time. The sources and types of data in this study are secondary data obtained from literature studies related to the theory of authority and legal certainty.

³ Wibowo Tunardy, “Pelaksanaan Pendaftaran Tanah”, www.jurnalhukum.com, Accessed on 5 December 2020 at 10.29 WIB

⁴The existence of land is so important and very much needed by everyone, in the provisions of the Basic Agrarian Law, namely Act No. 5 of 1960, in article 1 paragraph (1) which essentially states that land (earth), water and space are Indonesia's natural resources.

3. Result and Discussion

3.1. Differences in the Authority of Notaries and PPATs in Making Land Deeds Based on Act No. 2 of 2014 concerning Notary Positions and Government Regulation Number 24 of 2016 concerning Regulations of PPAT Positions

The notary has the right to be responsible if there is a problem regarding the deed he has made. Accountability can be in the form of criminal, civil, code of ethics and administrative responsibility.⁵

While the legal basis of PPAT refers to Government Regulation Number 24 of 2016 concerning Regulations of PPAT Positions which regulates the terms of appointment, prohibitions for PPAT, and the scope of PPAT's authority in carrying out their profession. To be appointed as PPAT, a person is also required to have a law degree and a notary degree or have passed the PPAT special education program organized by the Ministry of Agrarian Affairs.

The second difference that distinguishes the notary profession and PPAT is in the code of ethics. In addition to having to comply with laws and regulations, both notaries and PPATs must also comply with their respective codes of ethics. A notary who is appointed must take a notary oath which contains that the notary must maintain his attitude, behavior, and will carry out his obligations according to the professional code of ethics, honor, dignity, and responsibilities as a notary.

In addition to the general authorities mentioned above, the following are some other powers of the profession of a notary:

- a. Validate the signature and determine the certainty of the date of the letter under the hand by registering it in a special book;
- b. Book letters under the hand by registering in a special book;
- c. Make copies of the original underhand letters in the form of copies containing descriptions as written and described in the letter concerned;
- d. Validating the compatibility of the photocopy with the original letter;
- e. Provide legal counseling in connection with the making of the deed; or
- f. Make a deed of auction minutes.

In line with the notary's office area, based on Article 12 paragraph (1) of Government Regulation Number 24 of 2016 concerning PPAT Position Regulations, PPAT also has a working area in one province. This means that PPAT domiciled in Bekasi can take care of land in Bandung because it is still in the same province.

⁵ Rizki Nurmayanti, Akhmad Khisni, *Peran Dan Tanggung Jawab Notaris Dalam Pelaksanaan Pembuatan Akta Koperasi*, Vol. 4 No. 4 Desember 2017, Jurnal Akta Unissula

Article 15 paragraph (2) UUJN clearly gives a notary authority. The authority of this notary has been described regarding what activities a notary can do. The various powers granted to a notary have been carried out by a notary since the establishment of a notary in Indonesia. The problems that arise are when UUJN is promulgated by the government. The promulgation of this UUJN has given rise to problems in interpreting a material in the UUJN. Article 15 paragraph (2) letter f UUJN has become a problem since the UUJN was issued.⁶ Article 15 paragraph (2) of the UUJN which gives a notary the authority to make a land deed has created anxiety among notaries and PPAT. This anxiety is related to what has been regulated in PP Number 37 of 1998 that PPAT has the authority to make authentic deeds related to land.

The Land Deed made by the Notary is a legal deed and has binding legal force as an authentic deed, because the Notary land deed fulfills the elements as an authentic deed, and the Notary himself, according to the Notary Position Law, is authorized to make it. However, judging from the product of the Land Deed Making Officer in the form of a Land Deed Official deed, the Land Deed Making Officer is a General Official who is authorized to establish a legal act of land rights between the parties into a deed. Notaries who do not double as Land Deed Making Officials do not have the competence to make land rights transfer agreements. The land deed made by a Notary also cannot be used as a basis for land registration at the BPN, because it is seen from the considerations of the UUJN, the Notary is not a working partner of BPN in land affairs. This is different from what is stated in PP No. 37 of 1998 concerning PPAT which confirms that PPAT is a working partner of BPN in the land sector.

Differences in the Authority of Notaries and PPATs in Making Land Deeds Based on Act No. 2 of 2014 concerning Notary Positions and Government Regulations Number 24 of 2016 concerning Regulations of Positions PPAT is the authority of a notary in making such land deeds, namely land deeds that are outside the authority of PPAT as stated mentioned in Article 2 paragraph (2) of Government Regulation Number 37 of 1998. The authority of the Land Deed Making Official is still limited by various kinds of laws and regulations, in the legislation requiring the Land Deed Maker Official to use and fill out the land certificate form/blank at when going to make authentic deeds regarding land rights or property rights over flat units.

⁶ <http://denbagusrasjid.wordpress.com>, accessed March 1, 2021, at 22:20 WIB

3.2. Legal Position of Notary Rights and Obligations Based on Act No. 2 of 2014 concerning Notary Positions and Legal Position of PPAT's Rights and Obligations Based on Government Regulation Number 24 of 2016 concerning PPAT Position Regulations

Notary is a position of trust and therefore someone is willing to entrust something to him as a trustee. The notary is obliged to keep all that is notified to him as a notary even if some are not included in the deed. The rights and obligations of refusal are not merely rights, but are more of an office obligation. The important thing to remember is the connection between the rights and obligations of the dissenters and the community, that the basis is that a notary is an office of trust. In this case the party or parties require the services of a notary with a belief that he will receive advice and services or assistance from a notary without worrying that it will be detrimental to himself.⁷

Related to the right to deny, that the right to deny was born on the basis of the obligation to keep the contents of the deed made by a notary private with the parties and the parties present in the making of the deed. The legal relationship between a notary begins when the appearer comes to the notary so that his actions or actions are formulated into an authentic deed in accordance with the authority of the notary and then the notary makes a deed at the request or wish of the appearers, then in terms of providing a basis for the notary and the appearers there has been a legal relationship. The legal relationship between the appearers and the notary can be included or qualified in a contractual legal relationship. Therefore, it must ensure that the deed made is in accordance with the rules that have been determined, so that the interests concerned are protected by the deed. With this legal relationship, it is necessary to determine the position of the legal relationship which is the beginning of the notary's liability.⁸

There are 3 (three) kinds of positions of Notaries in using the right of denial, namely:⁹

- a. As a witness
- b. As an expert witness
- c. As a defendant

⁷ Putri AR, 2011, *Perlindungan Hukum Terhadap Notaris Sebagai Pejabat Publik*, Pustaka Ilmu, Jakarta, p.85.

⁸Pieter E Latumenten, 2014, *Prosedur Hukum Pengambilan Minuta Akta dan Pemanggilan Notaris Berdasarkan UUJN No. 30 Tahun 2004*, Eressco, Bandung, p.27.

⁹Marwan Hadi, 2010, *Peranan Notaris Dalam Pembentukan Kepastian Hukum di Indonesia*, Salemba Empat, Jakarta, p. 53

The obligation to deny is a very important instrument given by the Notary Position Act to Notaries, but in practice this obligation is not carried out by many Notaries, even most Notaries when examined by the Regional Supervisory Council, Regional Supervisory Council, or Supervisory Council. The Center or during examination by investigators or in court prefers to open their mouths to tell and disclose all matters relating to the deed made by or before a Notary. Thus, the Notary's position as a trusted position has been injured by the Notaries themselves.

The logical consequence of this is that a Notary who does not carry out his obligations can be threatened with sanctions in Article 322 Paragraph (1) of the Criminal Code (KUHP) that "Whoever deliberately discloses a secret that must be kept because of his position or search, whether he is now or the former, shall be punished by a maximum imprisonment of nine months or a maximum fine of nine thousand rupiahs.

It should be emphasized that the position of a Notary is a position of trust. According to Pitlo, a believer has no right to just use his right of denial, because this obligation to keep it secret has a strong public legal basis (een publiekrechtelijke inslag). This means that a trusted official such as a notary should not just use his right of denial without paying attention to other interests.¹⁰

Based on the laws and regulations that have been mentioned above, the author asserts that with the provisions that regulate exceptionally regarding the loss of the obligation to keep something secret due to a certain position which is specifically regulated by law, the right of denial can only be used as long as there are no provisions of the legislation. -The law that regulates exceptions excludes the obligation of a Notary to renege. The right of denial cannot be implemented against criminal acts committed by Notaries or Notaries who are indirectly involved in cases that have the potential to harm higher interests, namely the public interest. Regarding the provisions that specifically regulate the exception to the right of denial.

The conflict of interest between the obligation to keep the secret of the position and the obligation to give testimony are two things that need to be considered in depth. The provisions of contradictory laws and regulations between UUJN and other laws and regulations are clearly stated unless the law provides otherwise. Thus, even though the Notary has an obligation to renege as mandated by the UUJN, if there is a higher public interest, namely by exception or exception, the right to deny can be set aside. However, if it is found that there is a contradiction

¹⁰Jusuf Patrick, 2016, *Hak-Hak Istimewa Notaris Dalam UU Jabatan Notaris No. 30 Tahun 2004*, Mitra Ilmu, Jakarta, p. 41.

between one statutory regulation and another, which clearly and clearly both have interests of the same degree, then a material review of the contradictory law is required.¹¹

The legal basis for the profession of Land Deed Making Officials currently in effect refers to Government Regulation No. 24 of 2016 concerning Land Deed Making Officials. Previously, the issue of Land Deed Officials was regulated in the Regulation of the Minister of Agrarian Affairs (PMA) Number 10 of 1961 concerning the Appointment of Officials as referred to in Article 19 of PP Number 10 of 1961 concerning Land Registration and their rights and obligations.¹²

Based on Government Regulation No. 24 of 2016 concerning Land Deed Making Officials, there are 3 (three) kinds of Land Deed Making Officials, namely:

- a. Land Titles Registrar
- b. Temporary Land Deed Officer.
- c. Special Land Deed Maker Officer.¹³

The authentic deed essentially contains the formal truth in accordance with what the parties have notified the PPAT. However, the PPAT has an obligation to ensure that what is contained in the PPAT Deed is truly understood and in accordance with the wishes of the parties, namely by reading it out so that the contents of the PPAT Deed become clear, as well as providing access to information, including access to applicable laws and regulations related to the parties who signed the deed.¹⁴

Obligations of Land Deed Officials in addition to the main duties which read as follows:¹⁵

- a. Organize a list of deeds made
- b. Keep the original of the deeds made.

¹¹ Syahrul Effendie, 2010, *Notaris Dan Hukum Pidana*, Lentera, Surabaya, p.12

¹² Mustofa, 2014, *Tuntunan Pembuatan Akta-Akta PPAT*, Karya Media, Yogyakarta, p. 1.

¹³ Irawan Soerodjo, 2003, *Kepastian Hukum Hak Atas Tanah Di Indonesia*, Arkola Press, Surabaya, p.186.

¹⁴ Ratih Mega Puspa Sari, Sidik Purnama, Gunarto, *Peranan PPAT Dalam Pensertifikatan Tanah Akibat Jual Beli*, Vol 5 No 1 March 2018, Jurnal Akta Unissula

¹⁵ Effendi Perangin-angin, 1994, *Hukum Agraria Di Indonesia*, Raja Grafindo Persada, Jakarta, p. 6-7

The Land Deed Making Official has the right and at the same time the legal obligation to keep the contents of the deed made before him secret including the protocols. This right is called the right to deny PPAT or the right not to speak which is regulated in Article 11 paragraph (1) Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Land Deed Maker Official (PPAT) in conjunction with Article 11 paragraph (1) PMNA/KA.BPN Number 4 of 1999 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998. Therefore, the following is an excerpt of the PPAT oath that requires confidentiality:

"That I, will keep the contents of the deeds drawn up before me and the protocols that are my responsibility confidential, which by their nature or based on laws and regulations must be kept secret."

The obligation to keep a deed secret is a proof of the professionalism of a land deed official to provide services that are not solely motivated by profit, but also devotion to fellow human beings. Being responsible also means having the courage to bear all the risks that arise as a result of the service.¹⁶

Legal Position of Notary Rights and Obligations Based on Act No. 2 of 2014 concerning Notary Positions and Legal Position of PPAT Rights and Obligations Based on Government Regulation Number 24 of 2016 concerning PPAT Position Regulations, the urgency of the Notary's right to deny lies in the Notary's obligation to carry out the mandate of the UUJN. But on the other hand, if there are laws and regulations that can override the right to deny, then the right to refuse is invalid. The author is of the opinion that what is stated in the law that regulates exceptions or exceptions to the right to deny is because there is a higher legal interest, so in this case the right to deny can only be used as long as there are no provisions of laws and regulations that can invalidate the right to deny.

4. Closing

1) Differences in the Authority of Notaries and PPATs in Making Land Deeds Based on Act No. 2 of 2014 concerning Notary Positions and Government Regulations Number 26 of 2016 concerning Regulations of Positions PPAT is the authority of a notary in making the land deed, namely the land deed that is outside the authority of the PPAT as stated mentioned in Article 2 paragraph (2) of Government Regulation Number 37 of 1998. The authority of the Land Deed Making Official is still limited by various kinds of laws and regulations, in the legislation requiring the Land Deed Maker Official to use and fill out the land certificate form/blank at when making authentic deeds regarding land rights or

¹⁶ Abdulkadir Muhammad, 1997, *Etika Profesi Hukum*, Citra Aditya Bakti, Bandung, p.60

property rights over flat units. 2) Legal Position of Notary Rights and Obligations Based on Act No. 2 of 2014 concerning Notary Positions and Legal Position of PPAT Rights and Obligations Based on Government Regulation Number 24 of 2016 concerning PPAT Position Regulations, the urgency of the Notary's right to deny lies in the Notary's obligation to carry out the mandate of the UUJN. The position of the Land Deed Maker Official is as an authentic deed maker official, besides that PPAT (Land Deed Making Officer) is also referred to as a secret custodian of the deed (regarding the contents) that has been made for the sake of maintaining the interests of the parties in the deed, maintaining the confidentiality of the contents. The deed is a form of being ordered by the oath/promise of the Land Deed Making Official, because the contents of the deed are only known by the parties in a deed that has been made by the PPAT (Land Deed Making Officer).

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