

The Evidential Power of Notarial Deeds in Land Disputes between Certificate Owners and Land Cultivators

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Abstract. *This study aims to analyze the evidentiary power of notarial deeds in land disputes between certificate owners and land cultivators. Notarial deeds are authentic evidence that legally have perfect evidentiary power, especially when they form the basis for the transfer of registered land rights. However, in practice, there are often clashes between the strength of administrative evidence and physical control by the cultivator. This study uses normative and empirical legal methods with a qualitative approach. Data were obtained through literature studies, document studies, and analysis of court decisions. The results of the study indicate that although notarial deeds and certificates provide a strong legal standing for the owner, the judge's considerations also include aspects of physical control, good faith, and other supporting evidence. Legal protection for certificate owners can be optimally realized if accompanied by real control and active legal action in defending rights. Therefore, the presence of notarial deeds needs to be understood not only as administrative documents, but also as part of the evidentiary system that must be supported by facts in the field.*

Keywords: *Certificates; Cultivators; Land; Protection.*

1. Introduction

Land as one of the high-value assets plays an important role in the social, economic, and legal life of Indonesian society. Land ownership and control are often a source of complex disputes, especially in the context of conflicts between the legitimate land certificate owner and parties who have cultivated the land for a certain period of time. In the midst of this problem, the existence of a notarial deed is a strategic legal instrument to prove the rights and interests of the parties. A notarial deed, which has the status of an authentic deed based on the provisions of Article 1868 of the Civil Code (KUHPPerdata), has full evidentiary power over the contents contained therein as long as it cannot be proven otherwise. However, in practice, the evidentiary power of a notarial deed in land disputes is often tested, especially when faced with the reality of physical control of the land by the cultivator who feels that he has rights to the land based on reasons of management or control for years.

The problem becomes even more complex with the principle of trust in land certificates in the land registration system in Indonesia. Land certificates issued by the National Land Agency (BPN) are considered strong, valid, and legally binding evidence of ownership. However, in some cases, land cultivators who feel aggrieved often file

lawsuits on the grounds of real control and the principle of justice, even though they do not have a certificate for the disputed land. This is where the question arises regarding the extent to which notarial deeds relating to land transactions or agreements are able to prove the rights and legal standing of the parties in the dispute.

In the context of land law in Indonesia, notarial deeds have a very important position as authentic evidence. Based on Article 1868 of the Civil Code (KUHPerdata), an authentic deed is a deed made in a form determined by law by or before a public official authorized to do so, in this case a notary. Notarial deeds are considered to have perfect evidentiary power regarding the contents described, as long as it cannot be proven otherwise. In addition, Law No. 2 of 2014 concerning the Position of Notary (UUJN) emphasizes the function of notaries as public officials authorized to make authentic deeds in the civil field, including in land transactions. However, in the practice of land disputes, the position of notarial deeds is often tested, especially when it comes into contact with claims of land cultivators who rely on evidence of physical control for years.

There is a significant gap in research regarding the evidentiary power of notarial deeds in land disputes. So far, most legal studies have discussed more about the formal validity of notarial deeds, but not many have specifically analyzed how the courts consider the deed in conflicts between certificate owners and land cultivators who do not have a certificate. This phenomenon is important to study because in many cases, the fact of field control often gets separate considerations from judges, even though it conflicts with administrative evidence. This gap is a relevant space to be explored further, especially to see how notarial deeds function not only normatively, but also practically in proving land disputes.

The approaches used in this study are the normative legal and empirical legal approaches. The normative legal approach is used to examine laws and regulations related to the power of notarial deeds, agrarian law, and the principles of evidence law in Indonesia. Meanwhile, the empirical legal approach is needed to understand how practices in the field work, by analyzing relevant court decisions and interviewing parties who have been involved in this kind of land dispute. This combined approach is expected to provide a more complete picture of the position and function of notarial deeds in the reality of dispute resolution.

The phenomenon of disputes between land certificate owners and land cultivators is becoming increasingly common along with the increasing economic value of land, especially in developing areas and urban areas. In some cases, certificate owners feel disadvantaged because the land that they legally own cannot be physically controlled due to the control of another party. Meanwhile, land cultivators often claim rights based on the principle of good faith or the length of control, even though they do not have proof of a certificate. In this situation, a notarial deed relating to the transfer of rights or agreements on land becomes an important means of proof. However, the effectiveness of the deed in strengthening the legal position of the certificate owner often depends on how the judge views the legal relationship between the parties and other facts that emerge in court. This phenomenon is what drives the importance of conducting more in-depth research into the evidentiary power of notarial deeds in land disputes.

This research is important to examine the extent of the evidentiary power of notarial deeds in the context of land disputes, especially in situations where there is a difference between formal rights based on certificates and factual control by other parties. In addition, this research also aims to understand how the court assesses and considers notarial deeds as evidence among other evidence presented in court. Thus, it is hoped that this research can contribute to the development of legal practice, especially in resolving land disputes in Indonesia, as well as providing a more comprehensive understanding of legal protection for legitimate land owners.

2. Research Methods

This study uses a legal research method with a normative and empirical legal approach. The normative legal approach is carried out by reviewing and analyzing relevant laws and regulations, such as the Civil Code, Law No. 5 of 1960 concerning Agrarian Principles, and the Notary Law. In addition, this approach also uses an analysis of legal doctrine and jurisprudence related to the evidentiary power of notarial deeds in land disputes. Meanwhile, the empirical legal approach is carried out by examining real practices in the field through case studies of court decisions containing disputes between certificate owners and land cultivators. Data collection techniques used include literature studies to obtain secondary data, as well as document studies of notarial deeds, land certificates, and court files. The collected data is then analyzed qualitatively to describe how the power of notarial deeds is considered in resolving land disputes, so as to provide a comprehensive picture of the role of notarial deeds in proving land rights.

3. Results and Discussion

3.1. The Evidentiary Power of A Notarial Deed in A Land Dispute Between The Certificate Owner & The Land Cultivator

A notarial deed is an authentic evidence that has perfect evidentiary force according to Indonesian civil law. In land disputes between certificate owners and land cultivators, a notarial deed is one of the most important evidentiary instruments. Based on Article 1868 of the Civil Code (KUHPerdota), an authentic deed is a deed made in a form determined by law by or before an authorized public official. A notarial deed, in this case, legally proves that a certain legal event or act has been carried out or agreed upon by the parties. In the context of land disputes, for example a sale and purchase, gift, or land lease agreement, a notarial deed serves to prove that the transaction is valid and meets formal requirements. If this notarial deed relates to the transfer or binding of rights to land that has been certified, then the deed becomes strong evidence that binds the parties and third parties as long as there is no proof of legal defects or fraud.

However, in the practice of resolving land disputes, the power of a notarial deed is often tested when faced with physical control of the land by the cultivator. Land cultivators, even though they do not have certificates or notarial deeds, often rely on the principle of years of land ownership which can give rise to certain rights based on customary law or the principle of justice. In assessing this case, the court does not only focus on administrative evidence such as deeds or certificates, but also considers empirical facts, such as who has actually controlled and managed the land for a long time. Therefore, although notarial deeds have strong formal evidentiary power, their position can shift if there is other evidence showing that the control or use of the land has been going on in good faith for years without interruption.

In addition, in disputes like this, the principle of the judge's caution is the main key. The judge will see whether the notarial deed was made based on a valid legal act, without any defects of will such as fraud, coercion, or error. If the notarial deed is proven to have been made legally and the agreement in it does not conflict with the law, then its evidentiary power is still fully recognized. On the other hand, if the notarial deed is only a formality without any real control, or it is proven that the party in the deed never really controlled or managed the land, then the deed may not be strong enough to win the case.

In a dispute between the owner of a certificate equipped with a notarial deed and the land cultivator, another important factor is other supporting evidence such as witnesses, statements, or proof of payment of land tax (PBB). Certificates and notarial deeds provide strong legal standing, but if the cultivator can prove factual control that meets certain legal requirements, such as the expiration of acquisitive (ownership due to long-standing control) or good faith, then the legal position of the certificate owner can be disturbed. Therefore, the evidentiary power of a notarial deed in a land dispute is not absolute, but relative, depending on the combination of formal evidence and empirical facts presented in court. In other words, a notarial deed is the main evidence, but still needs to be supported by other evidence to defend the rights to the disputed land.

In land disputes between certificate owners and land cultivators, there are several factors that influence the judge's consideration of the strength of a notarial deed. First, the judge will look at the formal validity of the deed, namely whether the deed was made in accordance with legal provisions, by an authorized official, and meets the requirements for making an authentic deed as stipulated in the Civil Code and the Notary Law. Second, the judge considers the material substance of the deed, namely the contents of the deed must describe a valid legal act, not contrary to law, morality, and public order. Third, the judge will also pay attention to the fact of physical control of the land. If the cultivator can prove that they have controlled, cultivated, or utilized the land continuously for a long period of time in good faith, then this control can be a strong consideration that balances administrative evidence in the form of a notarial deed. Fourth, the good faith of the parties is an important factor; whether the certificate owner or the party in the deed acted in good faith when obtaining rights to the land. Fifth, the judge will consider other supporting evidence, such as witness statements, proof of tax payments (PBB), statements, and other documents that strengthen the legal standing of one of the parties. Sixth, the potential for legal defects in the making of the deed, such as elements of fraud, coercion, or engineering, is also a serious concern for the judge in assessing the validity and weight of the notarial deed.

Finally, the judge will refer to the principle of justice and legal principles that exist in society, so that in some cases, even though the notarial deed is formally valid, the judge can consider the real conditions in the field in order to provide a fair decision. Thus, the judge's consideration of the notarial deed in land disputes is not only based on formal legal aspects, but also takes into account social facts and the principle of substantive justice.

3.2 Legal Protection for Land Certificate Owners Whose Rights are Disputed by Cultivators based on Physical Control of The Land

Legal protection for land certificate owners whose rights are disputed by cultivators based on physical control of the land is regulated in various laws and regulations in

Indonesia, with the aim of providing certainty, order, and protection of land rights. Land certificates issued by the National Land Agency (BPN) have legal force as strong evidence regarding physical and legal data of the land, as regulated in Article 19 paragraph (2) letter c of Law No. 5 of 1960 concerning Agrarian Principles (UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration. This means that land certificate owners obtain formal legal protection for their ownership rights, so that in land disputes, the certificate becomes the main proof of ownership recognized by the state. In disputes with land cultivators, the existence of a certificate and notarial deed that underlies the transfer of rights becomes a strong basis for the owner to defend his rights before the law.

However, in judicial practice, legal protection for certificate owners is not solely absolute. Judges also consider the facts of physical control in the field. Therefore, to strengthen legal protection, certificate owners are advised to actively maintain, control, and utilize their land. Real physical control, such as installing an ownership sign, fencing the land, cultivating the land, or paying land and building tax (PBB) regularly in their own name, is important additional evidence to prove control and maintain rights. Without active control, the certificate is still valid, but its strength can be questioned if another party can prove control of the land in good faith for a long period of time, which in civil law can potentially give rise to certain rights based on the principle of expiration (acquisitive prescription).

In addition to active control measures, legal protection is also strengthened through dispute resolution mechanisms, both through the courts and alternative dispute resolution institutions such as mediation. If the dispute goes to court, the certificate owner has the right to file a lawsuit with the District Court to confirm ownership and request the vacancy of the land by the cultivator. On the other hand, the court is also required to provide fair legal protection to the party with the strongest evidence, namely the land certificate holder, as long as the certificate was obtained legally and does not conflict with the law.

In certain situations, if the cultivator's control has been going on for a very long time and meets certain requirements, such as control in good faith for more than 20 years without interference from the owner, then the cultivator can apply for rights through the sporadic land registration mechanism or even claim rights through the principle of expiration. Therefore, legal protection for certificate owners requires active efforts to defend their rights, including taking legal steps as soon as possible when they become aware of control by another party. In conclusion, legal protection for land certificate owners is normatively strong, but must be followed by real control and active legal action so that land rights remain recognized and are not displaced by claims from the cultivator.

In an effort to strengthen legal protection, land certificate owners can also use additional recording or registration mechanisms, such as making a statement of physical control over the land or updating administrative data at the local land office. In addition, if the land is controlled by another party, the owner must immediately take legal action, such as sending a written warning or warning, as evidence that he still has the intention to maintain the ownership rights. On the other hand, the provisions of Article 32 paragraph (2) of Government Regulation Number 24 of 1997 provide a time limit of 5 (five) years for parties who feel disadvantaged by the issuance of a certificate to sue. This means that after the expiration of this period without any lawsuit or objection, the existence of the certificate becomes stronger in the eyes of the law. However, in practice, if there is

an element of irregularity in the issuance of the certificate, such as manipulation or procedural errors, the certificate can be canceled through a court decision. Therefore, legal protection does not only depend on the existence of the certificate, but also on the validity of the rights acquisition process itself. Landowners who obtain certificates with the correct procedures, supported by authentic deed evidence from a notary, and carry out physical and administrative control properly, will be in a very strong legal position if a dispute occurs. Thus, in the land law system in Indonesia, legal protection for certificate owners is a combination of land administration power, physical control, active legal action, and the principle of justice maintained through the judicial system.

4. Conclusion

Based on the description above, it can be concluded that a notarial deed has strong evidentiary power in land disputes, especially if supported by a valid land title certificate. However, this power is not absolute because it can be influenced by the fact of physical control of the land, the good faith of the parties, and other supporting evidence. Legal protection for certificate owners remains strong normatively, but must be accompanied by real control and active legal action so that their rights are not displaced by claims from cultivators who base their rights solely on physical control.

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