

Position of Land Release Deed Made Before a Notary for Land Acquisition

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Abstract. Land as a natural resource has high economic value as well as socio-political, defense and security value. Therefore, land development policy must be an inseparable part of national development policy. In the development of the implementation of Law Number 5 of 1960 (UUPA), land issues have become increasingly complex. The National Development Planned by the Government requires land in its activities. The government, in accelerating development in accordance with the mandate of the 1945 Constitution, to prosper the Indonesian community who need land, issued Law Number 2 of 2012 and as the national project progressed, government regulation No. 19 of 2021 was issued again. According to this Law, the release of land rights for development is through the National Land Agency. However, in reality, the deed of release of land rights is made before a Notary so that the strength of the proof is perfect. The aim of this research is to know and analyze the role of the Notary in making a Deed of Land Release for Land Acquisition in Asera Subdistrict, Asera District by the Southeast Sulawesi River Regional Office, Know and analyze the position Land Release Deed law. Based on research and discussion, it can be concluded that the role of a Notary in making a Land Disposal Deed is guided by Article 1320 of the Criminal Code regarding the conditions for the validity of an agreement, which is then realized in a Notarial Deed. In procuring land for flood defense embankments, the entire community uses a buying and selling mechanism. Where the form of compensation is in the form of money, the sale and purchase can be carried out before a Notary by making a deed of release of land rights. The status of the Deed, namely the Land Disposal Deed made by a Notary, is the ability of the deed itself to prove its validity as an authentic deed. In this way, the contents of the Notary's deed have certainty as being true and become valid evidence.

Keywords: Acquisition; Deed; Land; Release.

1. Introduction

Land as a natural resource has high economic value as well as socio-political, defense and security value. Therefore, land development policy must be an

inseparable part of national development policy. In the development of the implementation of Law Number 5 of 1960 (UUPA), land issues have become increasingly complex.

The National Development Planned by the Government Requires Land for its activities. The Government, in accelerating development in accordance with the mandate of the 1945 Constitution, to prosper the Indonesian people who need land, issued Law Number 2 of 2012 and as the national project progressed, Government Regulation No. 19 of 2021 was issued again.

Article 18 of Law of the Republic of Indonesia Number 5 of 1960 explains that in order to provide land for various community and state needs, the government can revoke land rights by providing adequate compensation in accordance with the method regulated by law and carried out by releasing land rights.¹

Law of the Republic of Indonesia Number 2 of 2012 concerning the Implementation of Land Acquisition for Development in the Public Interest, Relinquishment of Rights is the activity of terminating legal relations from parties who have rights to the state through the National Land Agency. According to this Law, the release of land rights for development is through the National Land Agency. However, in reality, the deed of releasing land rights is made before a Notary so that its evidentiary power is perfect.

As in Article 131 paragraph (3) of the Minister of Agrarian Regulation Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that the registration of the deletion of land rights caused by the release of land rights by the right holder is carried out by the Head of the Land Office based on an application. from interested parties by attaching a Notarial Deed stating that the relevant holder waives that right. In making a Statement of Relinquishment of Land Rights (SPPHT) it can be made by a Notary. One example is the Deed of Land Disposal for the Procurement of Land for Flood Retention Embankments, Asera Village, Asera District.

This research aims to determine the legal position of the Land Release Deed for Land Acquisition in Asera Village, Asera District by the Southeast Sulawesi River Regional Office.

2. Research Methods

The research methods used in this study are as follows:

¹Article 1 number 2 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

1. Approach Method

The approach method is Normative Research and Empirical Research, namely Normative Juridical Research which examines and is guided by various applicable laws and regulations and Empirical Research which examines the application of land release deeds made before a Notary in his or her position before the law in particular.²

2. Data Types and Sources

The type of data used in this research is secondary data, namely data obtained by conducting a literature study of legal materials and other sources that are relevant to the problem to be studied.

3. Method of collecting data

In an effort to collect data the author used two methods (methods), namely library research and field research.

4. Data Analysis Techniques

The data obtained was then analyzed qualitatively using deductive thinking through syllogism. After all the data has been collected, the data is analyzed qualitatively in a logical and systematic legal argumentation in accordance with the problem formulation that has been formulated.

Data obtained from document studies and field studies, once complete and checked for validity, will be analyzed qualitatively, then compiled systematically.

3. Results and Discussion

3.1. The Role of Notaries in Making Land Release Deeds for Land Acquisition in Asera Village, Asera District

A notary is a public official who has the sole authority to make authentic deeds regarding all deeds, agreements and stipulations which are required by a general regulation or by those whose interests are desired to be expressed in an authentic deed, guarantee the certainty of the date, keep the deed and provide a grosse, copy and In other words, as long as the deed is made by a general rule, it

²Ronny Hanitijo Soemitro. (1988). Legal Research Methods and Jurimetry, Jakarta: Ghalia Indonesia.

is not assigned or excluded to another official or person.³

In general, a Notary is a public official who has duties and authority regarding making authentic deeds. This profession is held by people who have graduated from legal education and have a license from the government to carry out legal actions, including being an official witness for the signing of important documents.

Relinquishment of land rights is carried out with an authentic deed made before a Notary. Implementation of land procurement for flood defense embankments in Kel. Asera District. Asera uses a small-scale land procurement mechanism, namely by having a price agreement between the party who needs the land, namely the River Region IV Hall of Kendari City, Southeast Sulawesi, and the community whose plot of land is included in determining the location for the land acquisition.

Relinquishment of rights can also occur during the implementation of land acquisition and can be made by a Notary as the party who also has the right to make a deed of release of land rights. The legal consequences arising from the relinquishment of rights in land acquisition are the status of rights to community land, which turns into state land.

The legal basis for Notaries in land acquisition transactions for the location of the flood defense embankment in Asera Village, Asera District, North Konawe Regency by the Southeast Sulawesi River Regional Office is Law Number 5 of 1960 concerning Agrarian Principles (UUPA), which is based on Article 33 paragraph (3) 1945 Constitution "Earth, water and natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people", this article aims to achieve social justice for the entire community in relation to the acquisition and utilization of natural resources, especially land.

Relinquishment of land rights is carried out on a letter or deed made before a Notary stating that the relevant rights holder has relinquished his or her land rights and this deed is generally known as the Deed of Relinquishment of Rights. As we know, relinquishing land rights is an activity to terminate the legal relationship between the party who has the right to the state through the Land Agency. And one of the deeds related to defense is the deed of release of land rights. The role of a Notary is stated to be very important in making a deed of release of land rights, especially a deed of Statement of Release of Rights/Exemption of Land Rights.

³ Habib Adjie. (2008). "Indonesian Notary Law, Thematic Interpretation of Law no. 30 of 2004 concerning Notary Positions". Bandung: Refika Aditama

In the procurement of land for flood defense embankments, Ex. Asera District. Asera uses small-scale land acquisition and uses the services of a Notary to make a Deed of Relinquishment of Rights. Where, a Deed of Relinquishment of Rights can be made by a Notary anywhere, regardless of the angle at which the land rights object is located, as long as it refers to the UUJN.

Regarding the role of the Notary in terms of releasing land acquisition rights, both for private and government interests, in this case, land procurement for the government in the form of a flood defense embankment, can be carried out by means of sale and purchase, exchange, grant or compensation which has been guided by Article 1320 of the Criminal Code concerning the conditions for the validity of an agreement, which is then realized in a Notarial deed.

3.2. Legal Position of Land Release Deed for Land Acquisition, Asera Village, Asera District

The definition of relinquishment of one's own rights is the relinquishment of the legal relationship between a parcel of private land and its owner, which is carried out through deliberation which is then accompanied by the provision of appropriate compensation. The process of releasing rights is proven by a deed of releasing rights/a statement of releasing rights. Things that need to be considered after the process of releasing/relinquishing rights is carried out. Prospective rights holders are required to submit an application to the State.

A Notarial Deed as an authentic deed has 3 (three) evidentiary powers, namely as follows:⁴

a. Strength of External Proof: The external ability of a Notary's deed is the ability of the deed itself to prove its validity as an authentic deed. If seen from the outside (its birth) as an authentic deed and in accordance with the legal rules that have been determined regarding the requirements for an authentic deed, then the deed is valid as an authentic deed, until proven otherwise, meaning until someone proves that the deed is not an authentic deed in appearance. In this case, the burden of proof is on the party who denies the authenticity of the Notary's deed. The parameters for determining a Notarial deed as an authentic deed are the signature of the Notary concerned, both on the minutes and the copy as well as the beginning of the deed (starting from the title) to the end of the deed.

b. The formal evidentiary power of a notarial deed must provide certainty that

⁴Felix Christian Adriano, (2015). "Judicial Analysis of the Decreasing Strength of Proof of Notarial Deeds according to UUJN No. 2 of 2014 concerning Notary Positions", in Law Journal, Vol. 9 of 2015, p. 7 – 8.url

the events and facts mentioned in the deed were actually carried out by the notary or explained by the parties appearing at the time stated in the deed in accordance with the procedures specified in the preparation of the deed. Formally, to prove the truth and certainty regarding the day, date, month, year, time of appearance, and the parties appearing, the initials and signatures of the parties/appearances, witnesses and Notaries, as well as proving what was seen, witnessed, heard by a Notary (in the official's deed/minute), and record the statements or statements of the parties/appearers (in the party's deed).

c. Strength of Material Evidence Certainty regarding the material of a deed is very important, that what is stated in the deed is valid evidence for the parties who made the deed or those who received the rights and is valid for the public, unless there is proof.

In this way, the contents of the Notarial deed have the certainty of being true, becoming valid evidence for/between the parties and their heirs and recipients of their rights. The third strength of an authentic deed made before or by a Notary is the perfection of the position of a Notarial deed as evidence in evidentiary law, especially in civil procedural law and has binding force for the parties involved in the deed.

4. Conclusion

The role of the Notary in making the Deed of Land Release for the Procurement of Land for Flood Retaining Embankments, Asera Village, Asera District by the Kendari River IV Regional Office, Southeast Sulawesi, is guided by Article 1320 of the Criminal Code regarding the conditions for the validity of an agreement, which is then realized in a Notarial deed. In this case, the notary, before making a deed of transfer of land rights, must first know the legal issues being faced, namely the parties involved. In procuring land for flood defense embankments, the entire community uses a buying and selling mechanism. Where the form of compensation is in the form of money, the sale and purchase can be carried out before a Notary by making a deed of release of land rights. The role of a Notary is needed in land acquisition for the implementation of development in the public interest. The legal status of the Deed of Land Disposal for the Procurement of Land for Flood Retaining Embankments, Asera Village, Asera District by the Kendari River IV Regional Office, Southeast Sulawesi, namely the Deed of Land Disposal made by a Notary, is the ability of the deed itself to prove its validity as an authentic deed. In this way, the contents of the Notary's deed have certainty as being true and become valid evidence.

5. References

Article 1 number 2 of Law Number 2 of 2012 concerning Land Acquisition for Development in the Public Interest.

Felix Christian Adriano, (2015). "Judicial Analysis of the Decreasing Strength of Proof of Notarial Deeds according to UUJN No. 2 of 2014 concerning Notary Positions", in Law Journal, Vol. 9 of 2015, p. 7 – 8.url <https://www.neliti.com/id/publications/14095/analysis-yuridis-atas-turunnya-powered-pemcepatan-akta-notaris-menrut-uujn-no> Accessed August 15, 2023 at 20:05.

Habib Adjie. (2008). "Indonesian Notary Law, Thematic Interpretation of Law no. 30 of 2004 concerning the Position of Notary". Bandung: Refika Aditama.

Ronny Hanitijo Soemitro. (1988). Legal Research Methods and Jurimetry, Jakarta: Ghalia Indonesia.