

Legal Force of Deed under Hand on Land Ownership Rights

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Abstract— To obtain a force of law, an agreement is generally made in writing by legal subjects. The agreement is contained in a form called deed. The deed is either made in the form of an authentic deed or deed under the hand. Indonesians are aware of the importance of a letter (document) associated with a particular event and recorded it in a letter (document) and signed by interested persons witnessed by two witnesses. The letter (document) is an important evidentiary tool in legal traffic, both in the material and formal sense. Generally, people often consider the deed under the hand is only a trivial thing but if there is a problem then they think it is important. This study will examine how the legal power of a deed is underhand in a process of proof of ownership over land rights. The research method used in answering the existing legal problems is by using the method of legal juridical normative research conducted through the literature study.

Keywords— deed under hand, proof, land rights

I. INTRODUCTION

In carrying out a legal act, the parties generally realize it in the form of a written agreement or commonly referred to as Deed. As from the legal perspective, the Deed is writing that explains a legal action, which can be used as a means of proving the said legal action. A.Pitlo also said the same thing, that the deed as a signed letter, was made to be used as evidence, and was used by people, for the purposes for whom the letter was made. Then according to Sudikno Mertokusumo, a deed is a signed letter, containing events, which form the basis of a right or engagement, which was made intentionally from the beginning for proof [1].

The deed can be made in the presence of the public servants or the official making the land deed itself or not before the official, who was made deliberately for the purpose of proof. The most important element related to proof is the signature [2].

In general, the deed consists of two forms, namely the deed under the hand and the authentic deed. Authentic Deed is a deed made based on statutory regulations by or in front of an authorized public official. A deed under the hand is a letter or writing made by the parties without the intervention of a public official and the legislation does not require it [3].

The people of Indonesia often consider the deed under the hand to be a trivial matter, but if there is a problem then they

assume it is important. In addition, the public also does not want to be bothered to arrange or make an authentic deed made by or before a notary because they feel it is difficult and time-consuming and requires a large fee. Therefore, the community more often makes the deed under the hand than the authentic deed. The tendency of the community to make a deed under the hand as evidence in a legal event proves the lack of public knowledge about the strength of proof of a deed under the hand as evidence in civil cases in the future. Acts under the hand can actually be used as evidence, but the strength of proof of the deed under the hand is different from the Authentic deed.

Land ownership (the basis of rights) based on a deed under the hand often turns out to cause legal problems among the parties concerned. One of them is the emergence of two parties claiming to be the owners of the registered land. It is not uncommon in projects carried out by the Land Office, 1 (one) plot of land is controlled by two different people with different rights but signed by the same Head of Village / Village Head so that the publishing process is hampered.

II. RESEARCH METHODS

The research method used to analyze issues related to the legal power of the deed under the hand of ownership rights over land is the normative legal research method. Based on the location and position of normative jurisprudence as part of the overall science order, Soetandyo Wingnyosebroto called this legal research as a doctrinal method in positive law studies [4]. Terry Hutchinson clarifies the notion of doctrinal law as follows, "Doctrinal Research-Research which provides a systematic exposition of the rules governing a particular legal category, analyzes the relationship between rules, explains areas of difficulty and, perhaps, predicts future development" [5].

In the method of normative legal research or doctrinal legal research, what is examined is legal materials to prove whether the form of normalization as outlined in a positive legal provision in legal practice is appropriate or reflects the legal principles that want to achieve justice?

III. RESULTS AND DISCUSSION

A. Concept of Ownership of Land Rights

Proprietary rights or also called *eigendom* according to the Civil Code are regulated in book II about Benda, where these property rights are aimed at the mastery of an object. What is meant by objects according to Article 499 of the Civil Code is each item and each right, which can be controlled by ownership rights.

As for what is meant by property rights according to the Civil Code is formulated in Article 570. "Ownership is the right to have free enjoyment of property and to dispose thereof absolutely, provided that an individual does not violate the laws of the public ordinances stipulated by those who have been granted authority to do so, in the course of using such assets, and provided that an individual does not interfere with other individuals rights; the aforementioned shall be without prejudice to expropriation in the public interest subject to the individual's right to appropriate compensation, pursuant to the legal regulations".

The method of obtaining ownership rights according to the Civil Code is regulated in Article 584 which states;

"Ownership of assets cannot be acquired in any manner other than by appropriation, attachment, prescription, legal or testamentary succession, and by assignment or delivery pursuant to a transfer of legal title, originating from the individual who was entitled to dispose of the property."

From the provisions above, there are several ways to obtain property rights, namely

1. Ownership or claiming (Toeigening),
2. Sticking or withdrawing or following (Natrekking),
3. Overtime or expiration (verjaring)
4. Inheritance,
5. Submission (levering).

B. Study of Legal Studies on Proof of Ownership of Land through Deed under the hand

As it is known that in the concept of civil law, the right to ownership of land is a legal relationship to ownership, which is essentially recognized, respected, and must not be contested by anyone. The right of ownership is the source of life and life for the owner, therefore people who have legal rights must get protection by the state. Property rights are a right that has the highest level of ownership relationship compared to other ownership rights.

The relationship between land and its owner gives rise to rights and obligations as well as authority over the land that is claimed, widely said by Lisa Whitehouse "property is basic to the social welfare, people seek it, nations war it, and no one can do without it". Property rights are attached to the owner as long as they do not relinquish their rights (transfer of rights). Likewise, if we look at John Locke's teachings on property rights, it says that: Ownership of property is a natural right and that the purpose of Government is to protect and preserve natural property rights. Property rights are human rights that must be respected and must for the state to protect, preserve and maintain the ownership rights of its citizens. These tenets and theories of ownership rights are subsequently included in

the Constitution which constitutes human rights that receive legal protection, stated in articles 28 H and 28 G, Amendments to the 1945 Constitution of the Republic of Indonesia (UUDNRI). Implementation of guarantees of the legal protection of ownership rights relating to the land (agrarian) by the State is further elaborated into the UUPA.

The essence of Article 19 of the UUPA states that as a form of guarantee of legal certainty over land ownership for a person, land registration must be carried out. Therefore, for the implementation of land registration as intended in Article 15 paragraph (1) of the Basic Agrarian Law (UUPA), the Government issues Government Regulation Number 10 of 1961 concerning Land Registration (hereinafter referred to as Government Regulation Number 10 of 1961).

Government Regulation Number 10 of 1961 opened a new history in agrarian law. Because for the first time Indonesia has an institution that specifically regulates the implementation of land registration. However, more or less 36 years after the enactment of Government Regulation No. 10/1961, it turns out that the government's efforts to provide legal certainty on land have not been optimal, so the government feels the need to perfect and replace it with a new regulation so that the existence of Government Regulation No. 10/1961 has been revised or carried out a review of very basic issues.

The strength of proof of a certificate cannot be separated on the basis of the right to issue the certificate. In Government Regulation No. 24 of 1997 concerning Land Registration, one of the legal grounds permitted besides an authentic deed is a letter under the hand. It is permissible for underhanded letters as the basis for the rights in issuing certificates when this is mostly done for the first time registration of land (for land that has not been registered).

In reality, it is not uncommon for the right to form a letter under the hand to cause problems later on. One of them is the emergence of two parties claiming to be the owners of the registered land. It is not uncommon in projects carried out by the land office, 1 (one) plot of land controlled by two different people with different rights but signed by the same Head of Village / Village Head so that the publishing process is hampered. From the description above it can be seen that the underhanded letter is the basis for the rights in the issuance of the certificate especially the certificate of ownership cannot be separated from various problems.

Land registration essentially aims to provide the certainty of rights to landowners. The issuance of the certificate is a giver of security to the landowner of his rights to the land. To provide legal certainty to holders of land rights, the land certificate serves as a strong proof. Land certificates are proof of validity as a strong proof of physical data and juridical data contained therein as long as the data are based on the data contained in the relevant land certificate and land book.

In Article 60 PP No. 24 of 1997 there are several written pieces of evidence that can be used for registration of old rights and are complete documents for the purpose of land registration is grosse deed eigendom rights, proof of ownership

issued under the regulation on swapraja concerned, certificate of ownership issued based on Minister Regulation No. 9 of 1959, the decision on the granting of ownership rights from the competent authority before or since the enactment of the UUPA, Land Tax Forms prior to the enactment of PP No. 10 of 1961, the deed of transfer of rights made under the hand bearing testimony by the Head of Customary / Village Head / Village made before PP No. 24 of 1997 followed by the basis of transferred rights, deed of transfer of rights made by PPAT, deed of waqf pledge, minutes of auction made by the Bidding Officer, a letter of appointment or acquisition of land areas taken by the government, a certificate of land history made by the Tax Service Office Land and Buildings accompanied by the rights transferred.

From some old evidence that can be used to register land for the first time based on PP No. 24 of 1997 the authors view that 2 pieces of evidence need attention, namely:

1. Evidence of Testimony

Proof with witnesses in the land law is used as proof of ownership of a piece of land in the form of written evidence referred to above is incomplete or non-existent, then proof of rights can be carried out with the relevant statement and credible information from at least 2 (two) witnesses from the environment local people who do not have family relations with those concerned to the second degree both in kinship upward and sideways.

The purpose of land registration is essentially to provide a guarantee of legal certainty which leads to the legal protection of the holders of land rights. Thus, land certificates are very important evidence for legal subjects on land, so it is very naive if PP No. 24 of 1997 requires witness evidence in the process of land issuance because according to the author witness evidence has a very lightweight and is vulnerable to the risk of error. If an event has happened for a long time then it is not uncommon that what happened cannot be remembered as a whole.

To give testimony to events that have long been not easy. Generally, at the time of the incident arrest, the witness does not direct his actions to become a witness at a later date so that his observations at the time of the incident may be inaccurate. Catching an event and then processing it and finally speaking it as testimony is a process that can obscure the truth later on.

2. Proof of under the Hand

In legal theory, there are two types of deeds known as an authentic deed and underhanded deed. Authentic deeds are regulated in Article 165 HIR, Article 1868 BW and Article 285 Rbg. Authentic deeds based on the articles in some of these regulations have the strength of perfect evidence for both parties, their heirs and those who get the rights from them. Underhand evidence is not regulated in HIR but regulated in S 1867 No. 29 for Java and Madura and Articles 286 to Article 305 Rbg. The deed under the hand is recognized in the Civil Code. In Article 1320 the conditions for validity of the agreement have been determined. Judging from the 4 legal requirements referred to, it can be interpreted that a deed not

made by and before the PPAT is still valid as long as the parties have agreed and fulfilled the elements in Article 1320 of the Civil Code.

There are 2 functions of a deed, namely a formal function that determines the full (not valid) and the function of a deed as evidence later.

The power of proof between an authentic deed and a deed under the hand is different. Judging from the strength of proof that was born in which an authentic deed was signed by an authorized official, the burden of proof was left to those who questioned the authenticity. As for the deed under the hand, then the deed is very closely related to the signature. If the signature is recognized, the deed under the hand has the strength of proof. The strength possessed by the signature is not a strong birth proof because there is a possibility to be denied.

The strength of formal proof on the authentic deed has legal certainty because it is the official who explains the truth of what the official sees, hears and does, while for the deed under the hand the recognition of the signatory becomes the formal proof force.

In connection with the validity of the letter under the hand, the researcher reviewed two things:

1. In general, in Indonesia, several jurisprudences assert that transactions that are not carried out in front of competent officials are illegal transactions so that the parties do not need legal protection. The intended jurisprudence includes, among others, the Republic of Indonesia Supreme Court Decree Number 598 K / Sip / 1971 dated December 18, 1971, the Republic of Indonesia Supreme Court Decree Number 601.K / Sip / 1972 dated March 14, 1973, Republic of Indonesia Supreme Court Decree Number 393 K / Sip / 1973 dated July 11, 1973.

2. Specifically in the rules regarding land registration

In Article 95 of the Regulation of the Minister of Agrarian Affairs No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration are:

- a. The land deed made by PPAT to be used as the basis for registration of changes in land registration data is:
 - 1) Deed of Sale and Purchase
 - 2) Exchange Deed
 - 3) Grant Deed
 - 4) Deed of Entry into the Company.
 - 5) Deed of Sharing Common Rights.
 - 6) Deed of Granting Mortgage Right
 - 7) Deed of Granting Building Use Rights for Ownership Rights.
 - 8) Deed of Granting U Rights on Owned Land.
- b. In addition, the deeds referred to in paragraph 1 of the PPAT also make the power of attorney impose mortgage rights which are the deed of power of attorney used in making the deed of granting mortgage rights.

The above provisions are different from the provisions in Article 24 Government Regulation No. 24 of 1997. From the

rules in the Regulation of the Minister of State, it can be seen that there is a need to carry out all legal actions concerning land which must be made by and in the presence of the official land deed maker. This provision is binding and contains legal consequences that a transaction with an object in the form of land is carried out under the hand, is threatened to be invalidated because it is contrary to regulations that require that each transaction be made by and in the presence of a Land Deed Making Officer.

In law, the higher principle rules overrule the lower. If based on the principle, permission to use a deed under the hand to be used as a basis for the rights in the issuance of a certificate can be justified. However, the synchronization between PP No. 24 of 1997 with the Decree of the Minister of Agrarian Affairs has implications for uncertainty for the community. Multi-interpretation can occur with the difference between the two.

Dis-synchronization between the two regulations also has implications for the performance of the Land Agency to realize the orderly land affairs in Indonesia. Confusion in interpreting can raise doubts as to the authority of the Land Agency as an agency authorized to make arrangements for existing land. This is a deviation from efforts to realize the legal objectives and at the same time is a trigger for damage to the existing legal system.

The realization of legal interest in land registration is inseparable from the lack of factors in the substance of the land rules, the disconnection of existing regulations. Normatively, legal certainty requires the availability of legislation that is operationally capable of supporting its implementation. Empirically, the existence of these regulations is implemented consistently and consistently by supporting human resources.

IV. CONCLUSION

The deed under the hand is a legal certificate of ownership and is recognized before the law. The process of making a deed under the hand is easier and does not require a large cost when compared to making an authentic deed. However, it is often found various problems related to the ownership of a deed

under the hand, especially in terms of ownership of land. Therefore, avoiding legal issues, the process of registering a deed under the hand becomes an important matter.

The legal power of this deed under the hand in a process of proving ownership of land rights lies in the completeness of legal documents, witnesses and deed registration registers under the hand in the land office.

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