



Authority and Position of Notary Deed in the Land Sector

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Abstract

The notary public officials are authorized to make an authentic deed, besides other prescribed by statute the authority. At the time of the enactment UUJN No. 30 Tahun 2004, a debate emerged related to the authority notaries in making the deed associated with land. It is in the trigger because of other dignitaries in this PPAT who also has the authority in making the deed associated with land. In the process of land registration as mentioned in PP No. 24 Tahun 1997, that which, aids the head of the land office is PPAT. This study aims to find out about to look at what the meaning of the deed which as pertaining to land that has been granted to a notary in UUJN. The main approach method used in this research is the normative juridical approach that is research that emphasizes the legal aspects, by studying the materials of primary law and secondary law which will be used as guidance in understanding and analyzing the problems discussed, while as supporting the main approach Empirical juridical approach is used. Research suggests that the significance of related to land certificate which is the authority of the notary is wide it could make a notarial deed with regard to land as long as it does not constitute the PPAT.

Keywords: Authority; Notary; Land Deed

A. Background

The Republic of Indonesia is a constitutional state based on Pancasila, and it is fitting that all citizens have a role in upholding the law in which the law is the guarantor of certainty, upholding the rights of the community or guarantor of justice¹. That in order to achieve this goal, every servant and legal officer is required to have a determination to uphold the law, justice and truth as an expression of his sense of responsibility and devotion to God Almighty, the Nation and the State.

As we know land is an important thing in the life of the Indonesian people. Some Indonesian people are people whose lives are derived from farming, or it can be said that some people in Indonesia

¹ Moh. Mahfud MD, *Politik Hukum di Indonesia*, Rajawali Pers, Jakarta, 2009, p. 9.

earn a living as farmers. As a community that is mostly farmers, the existence of land is a must. The importance of land is often the subject of disputes, especially in the case of land ownership rights. Moreover, coupled with high population growth makes the need for land or land becomes high so as to make land prices become high.

To maintain the utilization of the wealth of agrarian resources or natural resources that are so large the government is carrying out development in the field of law. One of them is the enactment of legislation concerning land known as Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria (UUPA) on September 24, 1960. The birth of UUPA was one of the settlements of land law dualism, so land law in Indonesia is national. The birth of the UUPA was due to the agrarian law in force in Indonesia which has a dualistic nature, with the application of customary law in addition to agrarian law based on western law². In obtaining land rights, the UUPA guarantees that people in Indonesia can obtain land rights. Land as one of the important things in Indonesia has various uses. The use of the land is as a place to live, as a place to work and also find livelihoods by gardening or farming. Land is very important in Indonesia, this is due to the large population, while the land supply is running low. The selling price of land soared due to the development in the area around the land is located, making it increasingly difficult for people to get land.

The development of education in our country has caused people to begin to realize that written evidence is an important means of proof in legal traffic. Certainty, order and legal protection demand that legal traffic in people's lives requires legal evidence in the form of authentic deeds, so that people get legal certainty on their military certificates.

Regarding authentic deeds regulated in article 165 HIR and Article 286 Rbg, which reads:

"An authentic deed is a deed made by or before an official authorized for that, constitutes complete evidence between the parties of their heirs and those who have the right thereof about what is contained therein and even as mere notification, but the latter it is only notified that it is directly related to the matter on the deed. "

Meanwhile, the definition of an authentic deed according to Sudikno Mertokusumo, that is, a deed made by an official authorized for this by the authorities, according to the stipulations, both with and without assistance from the stakeholders, especially those containing the information of an official explaining what he did and seen before him³.

Making an authentic deed in Indonesia is not only done by a notary public. This is because there are still several professions in Indonesia that are entitled to make authentic deeds. The granting of authority to make an authentic deed is provided by statutory regulations. Making an authentic deed made other than by a notary can be seen in Article 15 paragraph (1) in the final sentence saying "insofar as the making of the deeds is not also assigned or excluded to other officials or others stipulated by law". Article 15 paragraph (1) intends to say that not all authentic deeds are made by a notary public. As for other officials besides the Notary Public who can make authentic deeds include the Camat, the Official Land Deed Maker (PPAT), the Office of Religious Affairs, and the Ambassador.

Notary Public is an authorized official to make an authentic deed as long as the making of certain authentic deed is not specific to other public officials. The making of an authentic deed is not only required by legislation in order to create legal certainty, order and legal protection, but also because it is

² Considerations Menimbang letter c Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.

³ Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, 1988, p. 123.

desired by the parties concerned to ensure the rights and obligations of the parties for the sake of legal certainty and protection for the parties concerned as well as for the community as a whole overall. A deed drawn up by a notary is an authentic deed, if it fulfills the requirements of a deed contained in Article 38 of the UUJN⁴.

As an official authorized to make an authentic deed, a notary has been given the authority in the Law of Notary Position (UUJN). The notary authority is regulated in Article 15 paragraph (1) UUJN and Article 15 paragraph (2) UUJN describes various authentic deeds that can be made by a notary public. The authorities include⁵:

- a. Authorize the signature and set the certainty of the date of the letter under the hand by registering in a special book.
- b. Book the letters under the hand by registering in a book.
- c. Make copies of original letters under the form of copies containing the description as written and described in the relevant letter
- d. To validate the compatibility of the photocopy with the original letter
- e. Provide legal counseling in connection with the making of the deed
- f. Make a deed relating to land
- g. Make an auction treatise deed.

The authority given to a notary has been clearly stated in Article 15 paragraph (2) of the UUJN. However, from some of the authorities given to the notary mentioned above, there is also the authority of the Land Deed Making Officer (PPAT).

⁴ which has fulfilled the form and nature of the deed:

1. Each notary deed consists of:
 - a. the beginning of the deed or the head of the deed
 - b. deed body
 - c. the end or closing of the deed.
2. The beginning of the deed or the head of the deed contains:
 - a. title of the deed
 - b. deed number
 - c. hour, day, date, month and year
 - d. full name and domicile of the Notary.
3. The deed body contains:
 - a. full name, place and date of birth, nationality, occupation, position, position, residence of the parties facing and / or people they represent
 - b. information regarding the position of the depositor
 - c. the contents of the deed which is the will and desire of the parties concerned
 - d. full name, place and date of birth, and occupation, position, position and place of residence of each identifying witness.
4. End or closing of the deed contains:
 - a. a description of the reading of the deed as referred to in Article 16 paragraph (1) letter I or Article 16 paragraph (7)
 - b. a description of the signing and place of signing or translation of the deed if any
 - c. full name, place and date of birth, occupation, position, position and place of residence of each witness of the deed
 - d. a description of the absence of changes that occur in the making of the deed or a description of the changes that can be either an addition, deletion, or replacement.
5. Substitute Notary Deed, Special Substitute Notary, and Temporary Notary Official, in addition to the provisions as referred to in paragraph (2), paragraph (3) and paragraph (4), also contain the number and date of appointment, and the official who appoints it.

⁵ Article 15 Paragraph (2) Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris.

The PPAT is mandated by the existing laws and regulations to make an authentic deed relating to land. Provisions regarding the current PPAT position are regulated in Government Regulation No. 37/1998 concerning Regulation of Position of Acting Officer for Land Deed (PP No. 37/1998). The promulgation of PP Number 37 of 1998 is based on the mandate of the UUPA that mandates the government to carry out land registration. The mandate of the UUPA in carrying out land registration was then implemented with the issuance of Government Regulation Number 24 of 1997 concerning Land Registration. With the promulgation of PP No. 24 of 1997 concerning Land Registration, it stipulates that the PPAT is given the authority to produce evidence regarding certain legal actions regarding land rights and ownership rights for Flats. Article 1 number 1 PP Number 37 of 1998 states that PPAT is a public official who is given the authority to make authentic deeds concerning certain legal actions regarding land rights or Ownership Rights in Flats. Article 1 number 1 PP Number 37 of 1998 has granted authority to PPAT to make an authentic deed. The authority granted by the Government to PPAT in PP Number 37 of 1998 is to make deeds related to land.

Based on the description above, then the question will arise whether the notary deeds relating to land can provide legal certainty. Therefore, the authors are interested in reviewing the authority of a notary with the title "Notary Authority and Position of Notary Deed in the Field of Land".

B. Problem Formulation

Based on the background description above, it is necessary to formulate a problem in order to facilitate further discussion. The problems that will be raised are as follows:

What is the form of authority and position of notary deed in the land sector?

C. Discussion

Authority and Position of Notary Deed in the Field of Land

The definition of authority according to the big Indonesian dictionary (KBBI) is the power to make decisions to govern and delegate responsibility to others. Speaking of authority is indeed interesting, because naturally humans as social beings have the desire to recognize the slightest extension in a community, and one of the factors that support the existence of these extensions is having authority. In the sense of free authority is the right of an individual to take an action with certain limits and recognized by other individuals in a certain group, While talking about sources of authority, there are 3 (three) sources of authority, namely⁶:

1. Attribution authority, namely the granting of authority to a particular state agency or institution / official either by forming a constitution or forming a law. For example: Attribution of presidential and parliamentary powers to form laws.
2. Delegation Authority Namely the transfer or delegation of authority from the administrative body / agency of another State with the consequences of the responsibility of turning to the recipient of the delegation. For example: Implementation of DPRD approval regarding the approval of the candidates for deputy regional head.

⁶ <http://www.negarahukum.com/hukum/pengertian-kewenangan.html>, accessed on Tuesday 10 February 2018, at 11:00 a.m.

3. Mandate authority, namely delegation of authority and responsibility is still held by the mandate grantor. For example: Responsibility for member decisions by the minister is mandated by his subordinates.

Notary is a legal expert working in the field of private law, for example signing contracts, land ownership, trade transactions, and others. In Indonesia there is an Indonesian Notary Association organization which is regulated in Ministerial Decree Number M.01 / MH.04.12.2003 Article 1 point 13.

Notary profession in a society is considered a respectable profession because it is a profession that upholds noble values such as justice, truth and legal certainty. Notaries are required to be able to work with moral, intellectual and professional integrity as part of their activities. This profession has a very important role in society, especially in the activities of creating the law, implementing the law, overseeing its implementation and in the event of a violation, it can make remedies or enforcement.

Notary is a public official who is authorized to make an authentic deed regarding all deeds, agreements and provisions required by legislation and / or desired by the interested parties to be stated in an authentic deed, guaranteeing the certainty of the date of making the deed, keeping the grosse deed, copies and quotations deeds, all of them as long as the making of the deeds are not also assigned or excluded to other officials or other people determined by the Act⁷. Understanding authentic deed can be found in Article 1868 of the Civil Code which states:

"Authentic deed is a deed in the form determined by the Law made by or in front of the employee in charge / public employee for that place where the deed he made"

A deed can be said to be authentic if it meets the following requirements:

- a. The deed drawn up by or the deed drawn before the public official is designated by the Law.
- b. The form of the deed is determined by the law and how to make the deed according to the provisions stipulated in the Law.
- c. Placed where the authorized official made the deed.

However, the notary authority listed in UUJN-P has caused different perceptions, especially in Article 15 paragraph (2) letter f. The authority of a Notary Public in the field relating to land as referred to in Article 15 Paragraph (2) UUJN-P and PP number 24 of 2016 concerning Amendments to PP Number 37 of 1998 concerning the Position Regulation of PPAT, there is a conflict of authority between the Notary and the PPAT. On the other hand, the Notary and PPAT organizations do not provide an *"official statement"* that binds the Notaries and PPAT or anyone, but tends to leave it, giving rise to various interpretations regarding the provisions of Article 15 paragraph (2) letter f of the UUJN-P, even officials of the Department Law and Human Rights of the Republic of Indonesia is unable to provide an

⁷ Article 15 Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris

explanation and settlement and the higher-ups suggest that if problems arise from that authority, they are welcome to be resolved in court only⁸.

Based on Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position (UUJN-P) it is stated that Notaries as Public Officials obtain attribution authority, because such authority was created and justified by UUJN-P itself. So the authority obtained by a notary does not come from other institutions, for example from the Ministry of Law and Human Rights.

The same thing happened with the authority obtained by PPAT, which is based on Article 95 of the Regulation of the Minister of Agrarian Affairs / Head of the National Land Agency number 3 of 1997, Article 2 paragraph (2) of Government Regulation Number 37 of 1998 concerning PPAT. The authority of PPAT is not obtained from the National Land Agency or Head of the National Land Agency Office, although Article 6 paragraph (2) of Government Regulation Number 24 of 1997 states that in carrying out Land Registration the Head of the Land Office is assisted by other PPAT officials assigned to carry out tasks certain.

Based on the regulations mentioned above, the authority of PPAT is not obtained from the Head of the Land Office, but the authority of PPAT is obtained based on the applicable law. Likewise, the authority of a Notary Public to produce Minutes of Auction, the legal ruling which created it, did not originate from the Ministry of Finance. This means that the authority came not from other institutions, but based on the statutory regulations.

In line with the authority to make a deed relating to land, this also cannot be separated from the problem of land registration. The issue of land registration is regulated in Article 19 of the Basic Agrarian Law (UUPA) Number 5 of 1960, in Article 19 it is stated:

- (1) To guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated in the Government Regulation.
- (2) The registration referred to in paragraph 1 of this article includes:
 - a. Measurement, mapping and bookkeeping;
 - b. Registration of land rights and transfer of rights
 - c. Granting proof of rights, which applies as strong verification tool.

Authentic deed as the strongest and most complete evidence has an important role, because through this authentic deed the rights and obligations are clearly determined, guarantee legal certainty and are also expected to avoid disputes. In Article 9 PP No. 24 of 1997, mentioned about the object of land registration which includes land management rights, mortgage rights, waqf land, ownership rights for apartment units, plots of land that are owned with ownership rights, business use rights, building rights and use rights, land Country.

Related to the object of land registration, a deed is needed in obtaining the rights to the land, namely the deeds relating to land. In the general Indonesian dictionary the meaning of the word "*related*" is interrelated; concerned (one with another); everything related (to).⁹ If you look at Law Number: 30 of 2004, in conjunction with Law Number: 2 of 2014, regarding the position of Notary, especially in Article

⁸ Habib Adjie, *Beda Karakter Yuridis Antara Notaris dan PPAT serta Akta Notaris PPAT*, <https://groups.google.com/forum/m/#!topic/notuna2003/nlKhWk5-aV4>, accessed January 20, 2019, 10:00 AM

15 paragraph (2) letter f, then the notary here has the right to make the deeds. relating to land to land rights such as sale and purchase, exchange, grants, sharing of common rights and so on relating to land.

But in reality the notary is not permitted to make a land deed if it has not passed the examination conducted by the Department of Justice regarding the exam to be appointed as the Acting Officer for Land Deed (PPAT) .10

The authority of the Notary in the field of land is not taking authority originally from an old institution or official but based on a new legal regulation namely Law Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position Article 15 Paragraph (2) letter f .

The main issue of the notary authority given by the UUJN-P has received a lot of criticism from the Land Deed Making Official (PPAT) who thinks that the issuance of UUJN-P especially Article 15 paragraph (2) letter f will limit the PPAT's space in making the deed related to land.

Another thing that might arise is that the Notary and the PPAT are still under different umbrellas, but both of them have the authority to make a deed relating to land. Who should oversee if something goes wrong with the Ministry of Law and Human Rights or the National Land Agency

The legal basis used by the Land Drafting Officer (PPAT) is PP number 24 of 2016 concerning Amendment to PP Number 37 of 1998 concerning PPAT Position and Government Regulation Number 24 of 1997 as the Actor of the Basic Agrarian Law Number 5 of 1990 (UUPA). Plus the Regulation of the Minister of Agrarian / Head of BPN Number 4 of 1999, concerning the provisions of Implementing Government Regulation Number 37/1997 concerning PPAT Regulations. These regulations are a strong legal basis for the authority of PPAT.

Whereas the Law of Notary Position Number 2 of 2014 concerning Amendment to Law Number 30 of 2004 concerning Notary Position, known as UUJN-P, automatically regulates the notary PPAT authority, namely the authority to make a deed regarding land. Article that regulates this matter is Article 15 paragraph (2) letter f "*Notary has the authority to make a deed related to land*".

The sound of Article 15 paragraph (2) letter f implicitly states that the Notary at the same time as an Acting Officer for Land Deed (PPAT) without having to go through tests and selection as regulated in Government Regulation Number 24 of 2016.

It is important that the writer reiterates that to make a deed related to the Land must first be appointed as a Notary or Land Deed Making Officer, because as a basis for a transfer of land rights, the deed made must be an authentic deed, or made based on the legal provisions of this matter of course, it can only be done by an official who has the authority. The official authorized to make the deed relating to the Land is the Notary according to Article 15 paragraph (2) letter f UUJN-P and also the PPAT according to PP Number 24 of 2016.

So it can be said that the difference between the authority of the Notary and the PPAT in making the land deed that is from the nature of the deed itself, both of them remain authentic only that the Land Deed made by the Notary cannot be used as the basis for the transfer of land rights because for the transfer of land rights the act must be made by the Official Land Deed Maker.

However, if based on the paradigm mindset of Laws in Indonesia, with other Act Number 2 of 2014 concerning Amendments to Law number 30 of 2004 concerning Position of Notary (hereinafter referred to as UUJN-P), of course PP number 24 of 2016 concerning Amendments to PP Number 37 of 1998 concerning Regulation of Position of PPAT is null and void due to the principle of higher legal rules which excludes lower legal regulations. Moreover, if you look at the sound of Article 15 paragraph (1) UUJN-P which reads:

"The notary has the authority to make an authentic deed regarding all deeds, agreements, and stipulations required by the Acts of Invitation and / or that is desired by the parties concerned to be stated in an authentic deed, guaranteeing the certainty of the date of making the Deed, keeping the Deed, all of them during the making of the Deed. not also assigned or excluded to other officials or other people determined by the Act ".

The sound of Article 15 paragraph (1) above is very clear that the Law gives authority to the Notary to make an authentic deed including a land certificate as long as the assignment is not assigned or excluded to other officials or other people determined by the Act. This means that the authority of a Notary Public in making a land deed granted by Law Number 2 of Year 2014 concerning the Amendment of Laws Number 30 of 2004 concerning Notary Position is absolute. While the authority of PPAT in making land deeds is given by Government Regulation Number 37 of 1998 concerning PPAT which should be subject to the Law above, namely Law Number 2 of 2014 concerning Amendment to Law number 30 of 2004 concerning Notary Position.

Notary is an official authorized to make an authentic deed. This authority was given by the Civil Code as stipulated in Article 1868. As for strengthening the provisions contained in Article 1868 of the Civil Code, UUJN-P was enacted as one of the legal products governing Notary. One of the things regulated in UUJN-P is regarding the authority of a Notary Public.

Article 15 paragraph (1) UUJN-P states that the Notary has the authority to make an authentic deed regarding all acts, agreements and provisions required by legislation and / or as desired by the parties concerned to be stated in the authentic deed, guaranteeing the certainty of the date of making deed, keep the deed, give the grosse, copy and quote the deed, all of it as long as the making of the deeds is not also assigned or excluded to other officials or others stipulated by the Law.

The authority contained in Article 15 UUJN-P is not only limited to making authentic deeds, but also given other authorities as listed in Article 15 paragraph (2) UUJN-P, namely:

- a. authorize the signature and set the certainty of the date of the letter under the hand by registering in a special book
- b. record the letters under the hand by registering in a special book
- c. make copies of original underhanded documents in the form of copies containing descriptions as written and described in the relevant letter
- d. validate photocopying matches with the experts
- e. provide legal counseling with respect to the making of a certificate
- f. make a deed relating to land
- g. make a deed of auction treatise.

The authority given to the Notary is the authority of attribution, this is because the authority is given by UUJN-P. The authority in a notary comes not from other government institutions, but the authority based on and given by the law. Therefore the authority possessed by a Notary Public is the authority of Attribution.

One of the authorities granted by the Law is the authority to make deeds relating to land. This authority is stated in Article 15 paragraph (2) letter f of the UUJN-P. Legally, this authority has been given by the Law, but in its implementation other than the SKMHT Notary Public has not been able to make a deed relating to land in full.

At this time making a deed related to land made by a notary is still limited. The limitation of authority possessed by a Notary in making a deed concerning land is because there is another official who is given the authority in making a deed about land namely PPAT. Therefore, it is necessary to have an interpretation of the word Land in Article 15 Paragraph (2) letter f of the UUJN-P, so that there is clarity as to whether the Notary can make a deed which is also included in the PPAT authority or not.

The PPAT is given authority by PP Number 24 of 2016. The authority granted to this PPAT can also be said to be attributed, this is because the granting of its authority is directly granted by legislation. The authority of a Notary has indeed been restricted in Article 15 paragraph (1) of the UUJN-P. This restriction applies if there are other officials who are given the authority to make an authentic deed regulated in another Act.

Therefore, if there is an official who can make an authentic deed and is mentioned in the Act, the Notary must give the authority to make the deed to the official specified in the Act. Therefore, as long as the authority in forming such authentic deed is not regulated by other Laws, the Notary is authorized to make the deed.

The authority of PPAT in making authentic deed has been regulated in PP Number 37 of 1998. The authority of PPAT in making authentic deed is also limited by Article 2 paragraph (2) PP Number 37 of 1998. This restriction is intended so that the authority granted to PPAT does not conflict with the authority of officials others can make authentic deeds such as Notaries. The classification of authentic deed making in the context of land registration carried out by the PPAT is clearly regulated in Article 2 paragraph (2) PP No. 37 of 1998. Therefore as a guideline in making authentic deed of the land registration process, the PPAT in making authentic deed may not out of these guidelines. PPAT as an official authorized to make an authentic deed is an attribution authority, this is because the authority of the PPAT is given by the legislation in force in Indonesia.

Article 15 paragraph (2) UUJN-P states "*Notary is authorized to also make deeds related to land*". The provisions do not explain the deed relating to land which is the authority of the Notary. Likewise in the explanation of the provisions, it does not explain the intended meaning of the deeds relating to land.

As explained earlier, the deeds relating to the land are of many types. While those from the deed concerning land are the authority of the PPAT. In a number of provisions, it is regulated regarding the authority of PPAT in terms of making the deed of transferring land rights and Ownership Rights of the Flats, the deed of imposition of mortgage, and the power of attorney imposes the mortgage right. All authority of the PPAT is related to the deeds regarding land. PPAT is another official who has the authority to make a deed related to land, so it is necessary to examine the limitations of the authority of the Notary in terms of making a deed relating to land of course the Land Office will not accept because according to the Land Office the land deed is only a PPAT deed.

The authority of a Notary to make a deed relating to land is governed by the provisions of Article 15 Paragraph (2) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position. Whereas the authority to make deeds related to land, namely the deed of transferring land rights and deed of granting mortgages which are only the authority of PPAT, is regulated in Government Regulation Number 37 of 1998. Thus, these provisions have been conflicted with one another.

Judging from the legal theories and legal principles that are still recognized in force in Indonesia, in connection with the conflicting norms, namely the Law with government regulations, to solve the use of the theory and principles of "*Lex Superior Derogat Legi Inferiori*". When using Stufenbau Theory or the Principle of "*Lex Superior Derogat Legi Inferiori*", surely the hierarchy of laws and regulations prevailing in Indonesia is first known.

Regarding the hierarchy of laws and regulations in force in Indonesia, it can be seen from the provisions of Law Number 10 of 2004 concerning the Formation of Laws and Regulations. Article 7 Paragraph (1) of Law Number 12 of 2011 concerning Formation of Laws and Regulations mentions:

"The types and hierarchy of legislation are as follows:

- (1) The 1945 Constitution of the Republic of Indonesia;*
- (2) MPR Decree;*
- (3) Law / Perpu;*
- (4) Presidential Regulation;*
- (5) Provincial Regulations*
- (6) Regency / City Regional Regulations*

Based on the provisions of Article 7 Paragraph (1) of Law number 12 of 2011, the position of the Act is higher than government regulations. Thus, if there is a conflict between the norms with the Government Regulations, according to the principle of "*Lex Superior Derogat Legion Inferiori*", then the Government Regulation is disabled.

Based on the study as described in the paragraph above, then Article 15 paragraph (2) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position should be carried out accordingly. The notary is authorized to make deeds relating to land. Right now, however, the deeds relating to land referred to are deeds other than the 8 deeds which are the authority of PPAT, for example Leasing Deed, Deed of Agreement on Land Purchase Agreement and so forth. Before the promulgation of UUJN-P, the authority to make the deeds of transferring land rights, ownership rights to the unit of flats, and the deed of granting mortgages was only the authority of PPAT.

The provisions of Article 15 paragraph (2) letter f of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 state that the Notary is authorized to make a deed relating to land. These provisions mean that the Notary is authorized to make the deeds which have so far been the authority of the PPAT. The notary is authorized to make the deed of transferring rights to the land, the deed of imposition of the mortgage rights and the power of attorney imposes the deed rights. The deeds are the basis for the registration of land rights.

As it is known that making a land deed is the authority of the Land Deed Making Officer (PPAT), but with specificity on certain deeds. This is as can be seen in Article 1 Paragraph (4) of Law Number 4 of 1996, that referred to as PPAT is a Public Official who is authorized to make the deed of transferring land rights, the deed of land rights, and the deed of granting power of attorney imposes rights Dependents according to the applicable laws and regulations. Furthermore, it is clarified in Article 1 number 24 of Government Regulation Number 24 of 1997 concerning Land Registration that the PPAT is a public official who is authorized to make certain land deeds.

These certain land deeds can then be known in Government Regulation Number 37 of 1998. The provisions of this Government Regulation do not mention what specific deeds are the authority of PPAT but rather specific legal actions regarding Land Rights or Ownership Rights of the Flats the manufacturing authority is given to PPAT⁹. Certain legal actions are specified in Article 2 Paragraph (2), which includes legal actions regarding¹⁰:

1. buying and selling
2. Exchange Rates
3. grant
4. income into the company (*inbreng*)
5. sharing rights together
6. granting Building Use Rights / Use Rights on Ownership Rights
7. granting the Right of Coverage
8. granting of power of attorney imposes a Right of Liability.

Based on this, then if it is associated with Article 15 Paragraph (1) UUJN-P, the conclusion that can be drawn is that the Notary can make a deed relating to land as long as other than the deeds which are the authority of the PPAT, except for the land deed for which the authority is the authority PPAT and Notary (Letter / Deed of Power of Attorney Imposing Mortgage Rights).

Weaknesses in this Law are giving authority but not providing elaboration or implementing regulations related to article 15 paragraph (2) letter f of this UUJN-P so that it causes multiple interpretations because there is no explanation so this rule becomes blurred, this is what causes notaries to be difficult to exercise this authority due to the lack of clarity as to what the notary can make.

In addition, what is often questioned here is the position of UUJN-P as a Law granting Notary authority and the position of Government Regulation (PP) Number 37 of 1998 as a government regulation granting PPAT authority, the position of the Act is certainly higher than PP, and certainly applies the *Lex Superiori principle derogate Legi Inferiori*. In this case it should be noted that the granting of authority to make certain land deeds by PPAT is not regulated by PP number 37 of 1998, the PP only specifies or clarifies the provisions of other laws and regulations, one of which is Law Number 4 of 1996, it can be seen in consideration of the PP.

Therefore this legal principle cannot be applied in this case. This matter is also proven by the recognition of UUJN-P the existence of the Actor of Land Deed, namely Article 17 letter g¹¹. Examples of deeds relating to land that can be made by a Notary are usually the Deed of Sales Authority.

⁹ Article 1 Paragraph (1) Government Regulation Number 37 of 1998, referred to as PPAT, is a Public Official who is authorized to make authentic deeds concerning certain legal actions regarding land rights or Ownership Rights in Flats, which will be the basis for registration changes in land registration data resulting from the legal action.

¹⁰ In addition to the deeds concerning these legal acts, another land certificate that has been given the authority to PPAT to make it is an Agreement on Ownership of Residential Houses or Occupancy by Foreigners domiciled in Indonesia, based on Article 3 Paragraph (22) Government Regulation Number 41 of 1996 concerning Residential or Residential Ownership by Foreigners domiciled in Indonesia.

¹¹ In that Article it is stated that Notaries are prohibited from holding concurrent positions as Land Deed Makers Officials outside the area of Notary position.

Based on the provisions contained in Article 15 paragraph (2) letter f of the UUJN-P, legally the formal Notary is authorized to make a land deed. Notary authority in making the land deed has strong legal force because the authority is based on the Law. The notary in making this land deed does indeed conflict with the authority of the PPAT as the official appointed to make the land deed. Although the acquisition of authority from a Notary based on the Law, and PPAT is only regulated through a Government Regulation, but in reality, the Notary is not allowed to make a land deed if it has not passed the test to be appointed as the Acting Officer for Land Deed (PPAT). Therefore, the authority possessed by a Notary before being appointed as PPAT is limited to making a Credit Agreement that is guaranteed by the Debtor which guarantees the land deed as collateral for the recipient of the credit facility from the Bank.

So the land deed made by a notary, especially in the case of land registration, remains authentic, only because there is no explanation and further rules, the notary can only make a deed relating to land other than the authority of PPAT.

Based on what was said by H.D. Van Wijk / Willem Konijnenbelt defines three ways to obtain authority, so the Notary is given authority by the Law to carry out his profession as a state official who can make an authentic deed. The granting of this authority is included in the granting of attribution. The notary has obtained the authority given in Article 15 UUJN-P.

Land Deed made by a Notary Public 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, if the Notary continues to make a land deed, even though it still includes an authentic deed, it will still be rejected by the BPN because it is seen from the product of the Land Deed Making Official in the form of a Land Deed Making Official, the Land Deed Making Official is a Public Official who is authorized to conquer an act. land rights law between the parties to the deed. Notaries who are not concurrently acting Land Deed Makers do not have the competence to make land transfer agreements. Land deeds made by a Notary also cannot be used as a basis for land registration at the Land Office, because as seen from the considerations of UUJN-P, the Notary Public is not a working partner from the Land Office in matters of land affairs. This is different from the one in the consideration of PP No. 37 of 1998 concerning PPAT which stressed that PPAT is a working partner of BPN in the field of land.

Conclusions

Based on the results of the discussion and discussion described above, the author can draw several conclusions, as follows:

Notary as official authorized to make authentic deed has been regulated in the legislation. The authority of this Notary has been regulated in Article 15 paragraph (2). The authority of a notary in making an authentic deed is an attribution authority, where such authority is given by law. Notary can make a deed related to the land deed, and the authority mentioned in Article 15 paragraph (2) letter f. However, in its authority is an authority in a broad sense. In Article 15 paragraph (1) it is stated that the notary is authorized to make the deed as long as the deed is not assigned to another official, in which case the other official authorized to make the land deed is the Land Drafting Officer (PPAT). Notarial deed cannot be used as the basis for a transfer of land rights in this case land registration at the Office of the National Land Agency, because the requirements for the transfer at the BPN Office are the deed made by PPAT.

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