



## Implementation of Oversight by the National Land Agency Against Officials Making Land Deed Who Commits Violations in Padang City based on Ministerial Regulation Number 2 Year 2018

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### **Abstract**

In state life, everyone has the same rights before the law. Even so, it does not mean that everyone is free to do anything, everything has a rule of law which if violated will be subject to sanctions in accordance with the rules that govern. In other words, the law must be upheld in order to create a harmonious life. Enforcement of the law is no exception for Land Deed Making Officials, Land Deed Making Officials can also be subject to sanctions if they violate the rule of law. Therefore, in carrying out their duties, the Land Drafting Officer must obtain supervision so that he does not violate his position. With the Ministerial Regulation Number 2 of 2018 concerning Development and Supervision of Land Deed Making Officials, Land Deed Making Officials must be guided by these rules, so that they can carry out their duties properly. However, when the Land Deed Making Official violates the rules, it is possible to impose sanctions on the Land Deed Making Official, such as a respectful dismissal, an honorable dismissal, a temporary dismissal, or even with a written warning. The method used in this study is the Empirical Method which is analyzed qualitatively. To strengthen the research results, interviews were conducted with relevant parties at the research location. Based on the results of the study it was concluded that the Head of the Regional Office of the National Land Agency / Head of the Land Office has the authority to conduct guidance and supervision of Land Deed Making Officials, where the Head of the Regional Office of the National Land Agency / Head of the Land Office establishes the Supervisory Board and Guidance of Land Drafting Officials to help convey and explain the policies stipulated by the Minister regarding the implementation of his duties as Land Deed Making Officials. Then despite the enactment of Permen Number 2 of 2018, but the law enforcement is not as expected. Land Deed Making Officials who are facing legal problems seem to struggle alone without supervision from the Board of Trustees and Supervisors of Land Deed Making Officials. Even Land Deed Making Officials who have already been convicted did not get sanctions from the National Land Agency or Board of Trustees and Supervisory Land Deed Making Officials. In other words, there is no supervision over the Acting Author of the Land Deed. Furthermore, there are obstacles in carrying out guidance and supervision of Land Deed Making Officials by the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials such as: There are no technical guidelines (technical guidelines) / implementation instructions (operational guidelines) even there is no Standard Operating Procedure (SOP) clear and strict regarding the supervision of the Land Deed Making Official. then the imbalance between the number of the Board of Trustees and Supervisors of Land Drafting Officials and the number of Land Deed Making

Officials itself causes the process of supervision by the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials. there are obstacles in carrying out guidance and supervision of Land Deed Making Officials by the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials such as: There are no technical guidelines (technical guidelines) / implementation instructions (operational guidelines) even there is no clear Standard Operating Procedure (SOP) and firmly regarding supervision of the Land Deed Making Official. then the imbalance between the number of the Board of Trustees and Supervisors of Land Drafting Officials and the number of Land Deed Making Officials itself causes the process of supervision by the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials. there are obstacles in carrying out guidance and supervision of Land Deed Making Officials by the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials such as: There are no technical guidelines (technical guidelines) / implementation instructions (operational guidelines) even there is no clear Standard Operating Procedure (SOP) and firmly regarding supervision of the Land Deed Making Official. then the imbalance between the number of the Board of Trustees and Supervisors of Land Drafting Officials and the number of Land Deed Making Officials itself causes the process of supervision by the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials.

**Keywords:** *Oversight; National Land Agency; Customer of Land Deed Making Official*

## **Introduction**

The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution) in Article 1 paragraph (3) emphasizes, "Indonesia is a state of law". This formula implies that the law holds the highest command in the administration of the state (rule of law, and not of man), this is called the power exercised by law, there is recognition of the principle of the rule of law and the constitution, the adoption of a system of separation and division of power according to the constitutional system stipulated in the 1945 Constitution, there are guarantees of human rights in the 1945 Constitution,<sup>1</sup> In a state of law, the law is the highest authority, every government and society in a country must uphold the law in its state of life.

Then Article 28 D paragraph (1) also states that, "everyone has the right to recognition, guarantees, protection and legal certainty". This legal certainty is in line with the principles of the Indonesian state as a rule of law. The rule of law provides a guarantee of protection for every citizen of its community. Protection here is not only for those who earn a lot (rich) but also those who earn little (poor). The characteristics of the rule of law are:<sup>2</sup>

1. Recognition and protection of human rights that contain equality in the political, legal, social, economic and cultural fields;
2. Justice that is free from an influence of power or other impartial power;
3. Legality in the sense of law in all its forms.

Legal protection is not only the right for every civil society, but also for people who hold professional positions in this case one of them is a Notary and Land Deed Making Official (hereinafter referred to as Land Deed Making Official). Land Deed Making Officials as general officials who are

<sup>1</sup>Jimly Asshiddiqie, *KR Ideas in the Constitution and Its Implementation in Indonesia*, Rajawali Press, Jakarta, 1994, page. 306.

<sup>2</sup>Bambang Sunggono and Aries Harianto, *Legal Aid and Human Rights*, Mandar Maju, Bandung, 2009, page. 4.

given authority by the government in assisting the implementation of government duties towards the transfer of land rights, also have the same right to obtain protection from the state.

Since the first promulgation of the Basic Agrarian Law in 1960 a Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning the Land Deed Makers Regulation was issued, as a complement to the Government Regulation on Land Registration.<sup>3</sup> Then with the development of the era and the increasing role of Land Deed Officials in order to fulfill services to the community on land registration, the government made changes to the Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning Regulation of Position of Land Deed Maker, namely Government Regulation of the Republic of Indonesia Number 24 Year 2016 concerning Amendment to Government Regulation Number 37 of 1998 concerning Regulation of Position of Official for Making Land Deed (hereinafter referred to as Government Regulation Number 24 of 2016 concerning Official for Making Land Deed).

Land Deed Making Officials based on Article 1 number 1 Government Regulation Number 24 Year 2016 Regarding Land Deed Making Officials are:

*"Land Deed Makers, hereinafter referred to as Land Deed Makers, are public officials who are authorized to make authentic deeds concerning certain legal actions regarding land rights or Ownership Rights in Flats."*

At the beginning of his birth the Land Deed Making Official was not categorized as a general official, but only the Land Deed Making Official. Land Deed Making Officials are categorized or named as initial public officials based on Article 1 paragraph (4) of Law Number 4 of 1996 concerning Mortgage Rights and Land Related Items (hereinafter referred to as UUHT).<sup>4</sup> where the Acting Authority for Land Deed is:

*"The public official who is authorized to make a deed of transferring rights over the land, the deed of imposition of land rights, and the deed of granting power of attorney imposes Mortgage Rights in accordance with applicable laws and regulations."*

Land Deed Making Officials are given authority by the government based on Article 2 Government Regulation Number 24 Year 2016 Regarding Land Deed Making Officials, namely:

- (1) *The Land Drafting Officer has the main duty to carry out part of the land registration activity by making the deed as proof of certain legal actions regarding land rights or ownership rights of the Flats, which will be used as the basis for registering changes in land registration data resulting from the act. that law.*
- (2) *The legal acts referred to in paragraph (1) are as follows:*
  - a. *Buy and sell;*
  - b. *Exchange;*
  - c. *Grant;*
  - d. *Entering into the company (inbrenng);*
  - e. *Sharing of joint rights;*
  - f. *Granting of Building Use Rights / Use Rights on Ownership Rights;*

<sup>3</sup>AP Parlindungan, Land Registration in Indonesia, based on Government Regulation 24 of 1997, supplemented by Regulation on the Position of Land Deed Maker (Government Regulation 37 of 1998), Mandar Maju, Bandung, 1999, page. 168.

<sup>4</sup>Habib Adjie, Meropong Khazanah Notary and Acting Officer for Indonesian Land Deed (Collection of articles on Notary and Acting Land Deed Maker), Citra Aditya Bakti, Bandung, 2009, page. 253.

- g. Granting Mortgage Rights;*
- h. Granting power of attorney imposes Mortgage Rights.*

In exercising its authority over a legal act, it is not uncommon for an Acting Officer to make a Land Deed dealing with legal issues. Like one of them in buying and selling land and houses. One party and even the other party disputed the sale and purchase made in the presence of the Official Land Deed Maker. This is because the party feels disadvantaged because they do not obtain their rights from the sale of the land and house, so that if a dispute even reaches the court the Land Deed Making Official is deemed to have participated as a defendant. Other problems can occur due to negligence or ignorance of the Actor of Making Land Deed itself, such as the signing of the deed which is done outside the working area. When there is a dispute between the parties even to the court,

In order to avoid legal problems such as those mentioned above, there must be a clear and in-depth study regarding how the Guidance and Supervision is carried out as well as the form of legal protection for Land Drafting Officials based on the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 2 2018 concerning the Development and Supervision of Land Deed Making Officials.

## ***Result and Discussion***

### **1. Arrangement of authority of the National Land Agency in supervising Land Deed Making Officials in Padang City.**

Related to the examination in the framework of fostering Land Deed Making Officials based on Permen no. 2 of 2018, that all forms and mechanisms and procedures for inspection have been regulated in the regulation. The Minister mentioned in Permen no. 2 of 2018 this is the Ministry of Agrarian Affairs and the head of the National Land Agency which has a different authority in terms of providing guidance to the Official Land Deed Maker

The Ministry of Agrarian Affairs along with the Head of the Regional Office of the National Land Agency / Head of the Land Office has its own authority related to the issue of fostering the Land Deed Making Officer. The Minister has the authority to determine policies and provide direction for the official duties of the Land Deed Maker Officer, and to ensure that the services of the Land Deed Maker Officer are in accordance with applicable regulations. The Minister is also authorized to ensure that Land Drafting Officials carry out their duties in accordance with the Code of Ethics. Whereas the Head of the Regional Office of the National Land Agency / Head of the Land Office, has the authority to submit it by means of socializing the policy that has been issued by the Minister to the Land Drafting Officer.

Supervision of Land Deed Forming Officials was previously carried out by inspection by the Head of the Office of the National Land Agency as the Trustee who only provides guidance to Land Deed Makers. But, now supervision has begun to be carried out on Land Deed Making Officials. Due to the absence of rules governing such supervision, a Regulation No. 2 of 2018 was issued concerning the guidance and supervision of Land Deed Making Officials. However, in the Ministerial Regulation there is no regulation regarding the supervision system and implementation guidelines (operational guidelines) or technical guidelines (technical guidelines) for supervision of Land Deed Making Officials, so there is no examination carried out on Land Deed Making Officials, the inspection that has been carried out is only a step coaching. Therefore,<sup>5</sup>

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<sup>5</sup>Interview with the Supervisory Board of Padang City Land Acting Maker, Dr. Beatrix Beni, SH., M.Pd., M.Kn, 6 February 2020

Prior to the enactment of Permen No.2 Year 2018, Land Deed Making Officials only received guidance from the Ministry of Agrarian Affairs, but did not get legal protection. In fact, the community cannot submit complaints regarding the mistakes made by Land Deed Makers in terms of administration. But now the position of Land Deed Makers Officer has been paired with a Notary Position and there is a supervisory institution that can function as a forum for receiving complaints from the public, so that when committing acts that are not in accordance with the legal rules, the Land Deed Makers Officer can be summoned and when it has been found guilty, The official Land Deed Maker may be sanctioned or even disrespectfully dismissed.<sup>6</sup>

## **2. Law enforcement carried out by the National Land Agency for violations committed by the Official Land Deed Maker in the City of Padang**

Before the issuance of Permen No. 2 of 2018 concerning the formation and supervision of Land Deed Making Officials, there was no legal protection for the position of the Land Deed Making Official, after the issuance of the Regulation, it was arranged how to protect the Land Deed Making Official because the Land Deed Making Official is a *Nobile Ovicium* (position honorable), for example when the Land Deed Makers are called by the police and the attorney as a suspect or witness, none of the vessels has a protective function for the Land Deed Makers, even the Land Deed Makers can be directly examined or summoned without having to go through any procedure and the Actor of Land Deed Making cannot report and obtain advice / advice from the container / organization / institution that houses it, in this case the Acting Maker of Land Deed and / or National Land Agency.

This is very much different from a Notary, when the Notary will be summoned by the police or the prosecutor's office, the Notary can report to an institution in his organization that is the Regional Notary Honorary Council, the Regional Notary Honorary Council may decide to give permission and / or reject the request from the investigator to call the Notary to be a witness.

Therefore, since the enactment of Permen No. 2 of 2018, the Ministry of Agrarian Affairs along with the Supervisory Board and Guidance of Land Deed Making Officials can provide legal protection by providing legal assistance to Land Deed Making Officials who face legal problems. As explained in Article 50 paragraphs one (1) to five (5) of the National Land Agency Candy Number 2 of 2018.

Based on the results of the author's interview with one of the Supervisory Board of Land Deed Making Officials, that the legal assistance contained in Article 50 Permen Number 2 Year 2018 that should have been obtained by the Land Deed Making Officials did not run properly. Land Deed Making Officials who are facing legal problems seem to struggle alone without legal assistance from the supervisor of Land Deed Making Officials. Thus, the supervision of the Land Deed Formation Officer seems to have no meaning at all. Nonetheless, the Ministerial Regulation provides an opportunity for the regulatory body to provide assistance and assistance to the problematic Land Actor. But in reality, so far the supervisory agency of the Land Deed Making Authorities did not carry out their duties as they should.

As an example of a case faced by a Land Deed Makers Officer in Padang City, an ESP Land Deed Makers Officer (name disguised at the request of the Supervisory Board) was called by the police for questioning. The National Land Agency does not deign to defend and provide legal assistance to the Land Deed Making Officer, so that the Organization of Land Deed Making Officials will intervene to provide legal assistance.

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<sup>6</sup>Interview with the Supervisory Board of Padang City Land Acting Maker, Dr. Beatrix Beni, SH., M.Pd., M.Kn, 6 February 2020

This is very contrary to the theory of legal protection, which is the purpose of this theory is providing protection for Human Rights (HAM) which is harmed by others and the protection is given to the community so that they can enjoy all the rights provided by law. In addition, legal protection also aims to protect and / or provide assistance to sufferers whose rights are deprived or impaired. Like the community, even a Land Deed Making Officer who is facing legal issues has the right to be protected and protected. Land Deed Making Officials are entitled to obtain legal protection in the form of legal assistance. Therefore, it should also be that the Ministry of Agrarian Affairs and the National Land Agency provide legal protection to the Land Deed Making Officials.

### **3. Constraints - Obstacles in Implementing Supervision of Land Deed Making Officials by the Ministry of Agrarian Affairs and Spatial Planning of the National Land Agency in the City of Padang.**

From the results of the interview with the resource person, there are various obstacles in carrying out supervision of the Land Deed Making Official, including the absence of technical guidelines (technical guidelines) or operational guidelines (implementation instructions) of the supervision of the Land Deed Making Official. In addition, the absence of Standard Operating Procedures (SOPs), strict and clear rules from the regulations of the Head of Office, Head of Regional Office, even from the regulation of the Minister of Agrarian regarding legal protection of Land Deed Making Officials, is another obstacle that results in not supervising the Making Official Land Deed, So that the Board of Trustees of the Official Land Deed Maker does not understand what to do in the supervision.<sup>7</sup>

The absence of guidelines / guidance for guidance and supervision has prevented the Board of Trustees and Supervisors of Land Drafting Authorities from carrying out their duties as stipulated in Permen no. 2 of 2018. Therefore, Land Deed Making Officials who are experiencing legal problems do not feel the existence of the Board of Trustees and Supervisors of Land Deed Making Officials. The existence of the Board of Trustees and Supervisors of Land Drafting Officials seems to have no meaning at all. Land Deed Making Officials who are facing legal problems are only fighting alone without any assistance from the Board of Trustees and Supervisors of Land Deed Making Officials.

Furthermore, according to Dito, another obstacle that resulted in not supervising Land Drafting Officials by the Ministry of Agrarian Affairs, the National Land Agency and the Land Deed Making Supervisory Board is that there are too many Land Deed Making Officials in Padang City, while the number of monitoring teams is limited. This, of course, severely impedes the process of monitoring the Land Deed Making Officer.<sup>8</sup> To note, that the Supervisory Board of Land Deed Making Officials in Padang City is 7 (seven) people, consisting of 4 (four) representatives from the National Land Agency and 3 (three) representatives from Land Deed Making Officials, while the number of Deed Making Officials Land in the city of Padang there are approximately 150 (one hundred and fifty) people.<sup>9</sup>

From this comparison, it can be seen that there is an imbalance between the number of the Supervisory Board and the number of Land Deed Making Officials. Under these conditions, of course it is very difficult for the Supervisory Board to carry out its duties to oversee the Land Deed Making Officials in carrying out their positions. So many of the Land Deed Making Officials face legal problems, such as being co-defendants in civil cases, or being called by investigators as witnesses in criminal cases, but none of the Supervisory Councils provide legal assistance such as assistance to the Land Deed Making Officer.

<sup>7</sup>Interview with one of the Padang City Land Acts Supervisory Board, Dr. Beatrix Beni, SH., M.Pd., M.Kn, 6 February 2020

<sup>8</sup> Author's interview with the Head of Land Legal Relations Section (member of the Supervisory Board of Land Deed Acting Officials), Dito Syaferli, SH., M.Kn, March 16, 2020

<sup>9</sup> Author's interview with the Head of IT West Sumatra Region, Muhammad Ishaq, SH., M.Kn, 6 February 2020

This is certainly really very regrettable. To note, as is the case with a Notary, the Actor of Making Land Deed is a noble position (*ovicium nobile*). When there is a criminalization of a Notary, the police cannot directly call the Notary to be questioned, but must notify the Notary Honorary Council first. This means that the position of Notary gets legal protection from his organization. However, this does not apply to Land Deed Makers, the police can directly summon Land Deed Makers without protection from the organization,<sup>10</sup>

This condition is very contrary to the principle of justice, which has already happened arbitrariness of an institution towards individuals. Land Deed Making Officials who are noble positions as well as Notaries do not receive the same treatment as the Notary.

### **Conclusion**

Based on the results of the research that has been carried out, the following conclusions can be drawn:

1. Arrangement of authority of the National Land Agency (BPN) on the implementation of Supervision of Land Deed Making Officials in Padang City, where the Head of the Regional Office of the National Land Agency / Head of the Land Office establishes the Supervisory Board and Guidance of Land Drafting Officials to help convey and explain the policies stipulated by the Minister regarding the implementation of his assignment as an Acting Officer for Land Deed. The next step is to carry out supervision by conducting an inspection to the Office of the Land Deed Maker Officer. The Head of the Regional Office of the National Land Agency / Head of the Land Affairs Office has the authority in this matter, which is assisted by the Board of Trustees and the Supervisory Official of the Land Deed Maker. However, in the Ministerial Regulation there is no stipulation regarding the supervision system and implementation guidelines (operational guidelines) or technical instructions (technical guidelines) for supervision of Land Deed Making Officials, which results in the Board of Trustees and Supervisors Acting Land Drafting Authorities not knowing what steps should be taken in the Supervision, so that in the end there was no examination carried out on the Land Deed Making Official.
2. Law Enforcement by the National Land Agency (BPN) against Land Drafting Officials who have committed violations already exists regulated in Permen Number 2 of 2018 concerning Development and Supervision of Land Deed Making Officials. Law enforcement can be carried out if there are complaints and allegations of violations committed by the Land Deed Makers Officer. The complaint can come from the community, either an individual or a legal entity or from the Actor of the Land Deed Maker for alleged violations in carrying out the position of the Actor of the Land Deed Maker, such as not carrying out obligations and violating the prohibition provisions stipulated in legislation, as well as violating the code ethics of Ipejabat Land Deed Maker. Nevertheless, whether guilty or not, a Land Deed Making Officer is entitled to obtain legal protection from the National Land Agency. However, this protection was not as expected. Land Deed Making Officials who are facing legal problems seem to struggle alone without legal assistance from the Board of Trustees and Supervisors of Land Deed Making Officials. Thus, the supervision of the Land Deed Formation Officer seems to have no meaning at all.
3. Obstacles in carrying out the guidance and supervision of Land Deed Making Officials by the Head of the National Land Agency and the Board of Trustees and Supervisors of Land Deed Making Officials, namely:

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<sup>10</sup> Author's interview with the Head of IT West Sumatra Region, Muhammad Ishaq, SH., M.Kn, 6 February 2020

- a. The absence of technical instructions / implementation instructions even clear and decisive Standard Operating Procedures regarding the guidance and supervision of Land Deed Making Officials.
- b. The imbalance between the number of the Board of Trustees and the Supervisory Official for Land Deed Making and the number of Land Deed Making Officials itself.

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