



Drawing Up a Notary Deed on Building Use Rights Land on Freehold Land for Hotel Development

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Abstract

Building use rights can be granted on private land with the official's deed, not a notary's, which will be registered at the land office. The public views a notary as an official, a location to acquire reliable legal advice, and a place to make critical legal papers, such as a hotel building deed of agreement. This study examines the authority of a notary to make a notarial deed on private land with building use rights for hotel construction and how it grants building use rights. This study uses normative legal research with primary, secondary, and tertiary legal sources. This study employed statutory methodology. Literature studies collect legal facts. A notary must follow the law while putting the parties' preferences or actions into an authentic deed. Second, a notary deed grants hotel construction building use rights on property rights. A notary deed granting building use rights on private land for hotel construction is cheerful because it requires formal proof of ownership of the land and buildings in the form of a certificate.

Keywords: *Notary Deed; Building Rights; Notary Public*

Introduction

The land area will always remain the same, so thought emerged to build vertically (upward), such as in tourism accommodation, mainly hotels. Tourism accommodation development needs to be developed because this sector can increase the country's foreign exchange earnings, generate fast economic growth in providing employment, increase income and living standards, and stimulate other production factors (Urbanus & Febianti, 2017).

Land, as one of the essential things in Indonesia, has various uses. Land use is for homes, offices, buildings, hotels, apartments, supermarkets, hospitals, and urban parks (Ramadhan & Ngadino, 2019). One of the objects of hotel development is built on land with Building Use Rights over Property Rights. A right granted to construct or own a building on land that is not self-owned within a specified period and with a particular area is called a building use right, regarding the arrangement regarding the term of Building Use Rights as stipulated in Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights, which is a maximum of 30 years with an extension of 20 years and is allowed to be renewed (Harsono, 2007).

The granting of building use rights over freehold land, as referred to, is said that building use rights occur regarding private land because of an authentic agreement between the owner of the land in question and the party who will obtain the building use rights, which intends to give rise to these rights

(Lubis, 2007). The provisions above indicate that building use rights can be granted on land with ownership rights. The granting of building use rights on land ownership rights is made with the Deed of the Official Making the Land Deed, not with the Deed drawn up before a Notary, where later the Deed of the Official Making the Land Deed will be registered at the land office. However, the granting of building use rights over freehold land can be facilitated by a notarial deed in the form of a preliminary agreement deed for granting building use rights over freehold land. A notary can do an authentic deed based on a law (Arief et al., 2019). Since the birth of the proving law, the notary institution is now used as an institution that can issue an authentic deed. This study aims to analyze the position of a notary in making a notarial deed with land objects with building use rights on private land for hotel development and to explain the existence of a notarial deed made before a notary in granting building use rights on private land for hotel construction.

Some of the scientific works that have previously written the same scientific work include the scientific work written by Anak Agung Made Wahyu Purwanta, I Nyoman Sumardika, Ni Gusti Ketut Sri Astuti, in 2020, which discusses the Authority of Notaries in Making Notary Deeds Concerning Building Use Rights Land on Freehold Land, then research by Fajrina Aprilianti, Yani Pujiwati, Betty Rubiati, in 2019, which discussed the Role of Notaries in Releasing Land Rights in the Land Consolidation Process to Optimize Land Functions in Link with Land Regulations. The last one is research by Denico Doly, in 2011, regarding the Authority of Notaries in Doing Deeds related to Land.

In this study, there is an update when compared to some previous studies; in this study, the author emphasizes the position of a notary in doing a notarial deed with the object of land use rights to build and the existence of a notarial deed in granting building use rights over land ownership rights for hotel development.

Research Methods

This normative legal research focuses on a literature review using primary legal materials, namely Government Regulation No. 40 of 1996, concerning Cultivation Rights, Building Use Rights, and Land Use Rights. This research has specifications in the form of analytical descriptive, then also secondary legal material which discusses the position of a notary in making authentic deeds and the existence of deeds made by a notary. The purpose of secondary legal materials is to explain primary legal materials, including books and related papers.

Results and Discussion

1. Authority Theory

From the perspective of public law, the state is an organization of positions. According to Logemann, in the form of social reality, the state is an organization with various functions. The function is a detailed work environment about the whole. These functions are called positions. The state is an office organization. In running a government, everything must be carried out based on the applicable laws and regulations. Indonesia adheres to the legality principle, known in criminal law, which says "nullum delictum sine praevia lege poenali," which means that no legal action can be punished without regulations. Meanwhile, in state administrative law, the principle of legality is also used, which means "dat het bestuur van de wet is onderworpen," which means that the government is subject to the law.

The principle of legality that belongs to state administrative law says that the government, in doing everything, must comply with the law. The government can only carry out legal actions if it has legality or is based on laws that embody people's aspirations. Soerjono Soekanto outlines the difference between power and authority. Soerjono Soekanto said that every ability to influence other parties could be called power. At the same time, authority is the power in a person or group of people with support or recognition from the community. Authority or authority is a term commonly used in public law. Nevertheless, there is a difference between the two.

Authority is called "formal power, " which derives from powers conferred by law or the legislature from executive or administrative powers. Therefore, it is the power of a certain group of people or power over a certain unanimous field of government or government affairs. Meanwhile, authority is only about a certain part of the authority. Authority is the right to give orders and the power to demand obedience. Based on the source, authority is divided into two, namely, personal authority and official authority. Personal authority comes from intelligence, experience, values or norms, and the ability to lead. While the official authority is the authority received from the authority above it.

Based on the rule of law principle, namely the origin of legality adhered to in Indonesia, the government's authority comes from statutory regulations. In theory, the authority obtained by the government from laws and regulations is obtained in three ways: attribution, delegation, and mandate. H.D. Van Wijk/Willem Konijnenbelt defines these three ways: Attribution is the granting of government authority by legislators to government organs; Delegation is the delegation of government authority from one government organ to another government organ; and Mandate occurs when an organ of government permits its authority to be exercised by another organ on its behalf.

2. Notary Office

The position of a notary is a functionary in society as an official who can be relied upon by the community. A notary is usually considered an official from whom one can get reliable advice. Everything written and determined (constant) is true; the Notary is a powerful document maker in the legal process. The position of a Notary in Indonesia is regulated in the Law on the Position of a Notary as one of the products of national law. This Notary Office Act implements Article 1868 of the Civil Code, which states that an authentic deed is drawn up in a form determined by law by or before a public official authorized for that at the place where the deed was done. Article 1868 of this Civil Code appointed a public official to form an authentic deed, and what meant this authorized public official was one of them, namely a Notary.

Article 1 point 1 of the Notary Office Law states that a Notary is a public official authorized to make authentic deeds and other authorities as referred to in this law. The Notary Office Law is a refinement of laws left behind by the colonial era and the unification of most of the laws governing materialism which are no longer by legal developments and the needs of society. The notary profession in Indonesia is one of the profession that is quite old. This can be seen from the history of notary law in Indonesia which began in the 17th century with the existence of "Oost Ind. Compagnie."

The community needs the existence of a Notary; this is because the community needs someone whose statements are reliable and trustworthy, whose signature and seal (stamp) can provide solid guarantees and evidence, an impartial expert, and an adviser who is flawless, who keeps his mouth shut and made a pact that could protect him in the days to come. If an advocate defends someone's rights when a difficulty arises, a Notary must try to prevent difficulties from occurring. In the 1860 Notary Position Regulations (Reglement op het Notarisambt in Indonesia), it is emphasized that the work of a Notary is an official job (ambtelijke verrichtingen) and the only public official authorized to do authentic deeds, as long as no regulations are giving similar authority to other officials. The Notary Office Regulations of 1860 stated that a notary is the only public official authorized to make authentic deeds unless other officials are determined by law.

3. Position of Notary in Doing Notarial Deeds with Land Objects with Building Utilization Rights

A notary is someone who has been elected or the result of the choice of the State to take an oath, carry out something in a document, make a person's signature valid, and carry out an official and predetermined task or job in their field (Afifah, 2017). Since the birth of the proving law, the notary institution is now used as an institution that can issue an authentic deed. The task of a notary is to bind the relationship of the parties who want to agree as outlined in a deed whose form is written in a

predetermined format, which later the deed will become an authentic deed. A notary is someone who makes a document that will later become a means of proof in a legal process, so this is where the importance lies for a notary because the law is given the authority to make a perfect means of proof, in the sense that what is said in an authentic deed is considered valid as long as there is no evidence to the contrary. Because of the duties of a notary's office, regardless of the duties of a notary, all existing notaries are given the hope that they will always uphold their dignity and status and the next task will be the work of their position and carry out their duties by fulfilling the requirements determined by law.

The Notary's duties are related to making a notarial deed on the Land of Building Use Rights on the Land of Ownership Rights for the construction of hotels (Paramarta et al., 2017). Notaries can provide guarantees or evidence as well as legal protection against circumstances, legal tourism, and legal actions that will be carried out so that the parties involved in it get legal certainty with the intention of helping and serving people in need by giving birth to legal products, namely written evidence or notarial deeds which are authentic. In order to be able to justify an error, a justification report will be made later. The parties also have the right to know about the copy made, and the Notary must submit it (Hably & Djajaputra, 2019). If a notary commits an act not within his authority, it can be said that the Notary has committed an act outside his authority. If a notary commits an act beyond his authority, then a product or deed he has made cannot be legally binding. The deed he has made cannot legally bind the parties, and if some parties or parties are harmed due to the Notary's actions, If it is done outside of their authority, the parties can also file a lawsuit based on the loss to the district court.

The granting of building use rights on property rights for the construction of hotels, that building use rights can be granted on land ownership rights, and the granting of building use rights on land ownership rights is made with the Deed of Officials Making Deeds of Land not with a Notarial certificate, where later the deed of Officials Doing Deeds The land will be registered at the land office. In practice, a deed drawn up with a notary is a relay or an official deed of minutes that contains a description of the Notary, which is witnessed directly by the Notary concerned and the parties and at the request of the parties so that any actions and actions of the parties are stated in a deed. The so-called notarial deed. A deed made by a notary is a party deed; the deed contains stories or descriptions as well as statements from the parties, statements from the parties before the Notary.

4. Existence of Notarial Deed in Granting Building Use Rights on Freehold Land for Hotel Development

In doing a deed, a notary can provide input or advice to the parties, but whether or not the suggestion is accepted is the decision of the parties because what will be stated in a deed is based on the wishes and requests of the parties, not suggestions. Alternatively, input from a notary will be used (Ningsih et al., 2019). If one day the parties dispute the contents of the deed, the Notary will have nothing to do with it because the position of the Notary in the deed is outside the parties and is not an actor in it. The Notary, in this case, can become a defendant or co-defendant if the Notary commits an act outside his authority, for example, falsifying information in an authentic deed. In addition, a notary can also be a defendant or co-defendant. If a deed is related to a deed made by or in front of a notary, then such problems can injure a deed he has made. A notary only does a deed based on the parties' agreement, wishes, and requests.

The land is used for residential homes, offices, buildings, hotels, apartments, supermarkets, hospitals, and urban parks (Ramadhan & Ngadino, 2019). The transfer of land rights or the transfer of rights can be seen through the characteristics and procedures during the transfer process; there are legal elements that become differentiators, most notably related to the formal and material requirements. Also, the procedures, circumstances, and nature will determine the mechanism for determining the subject and object. However, in addition to the requirements mentioned above, some requirements are no less important, having to have proof of land ownership, namely proof of ownership rights in written form or

referred to as formal conditions in the form of a "certificate" as proof of land that has been registered or supporting evidence. Others if the land has yet to be registered or has no certificate. Evidence other than certificates can also be in the form of a deed or decision letter that has given rights to land and building so that it can be used as a legal certainty to prove the legality of the land transfer right by the laws and regulations that are still in force.

Conclusion

The task of the Notary is to formulate the wishes/actions of the parties into an authentic deed. In carrying out their duties, notaries must have unique abilities and education to carry out their duties. Therefore, a notary must remain guided by the applicable regulations to carry out their duties. The existence of a notarial deed in granting building use rights on private land for hotel development. An essential requirement, namely a proof of ownership of the land, as well as the buildings on it, formally or in writing, in the form of a certificate; if there is no certificate, it means that the land has not been registered and other supporting evidence is needed to be able to prove the ownership rights.

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