



Deed of the Official Making of Electronic Land Deeds in Relation to the Law of Proof

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Abstract. The development of information technology provides many benefits and conveniences for every activity of human life. One of them is in land registration activities. Along with the development of time and increasing technological advances, land registration activities can bring new problems, especially in legal aspects, namely an Act of Land Deed Making Officers made electronically, which affects the power of proof of a deed made electronically. This research aims to find out how the legal power of the Deed of Land Deed Officer is made electronically. This type of research is normative juridical research that examines library materials on regulations and literature related to the object of the problem studied. The result of this study is that the PPAT deed made electronically has perfect proof power as long as it is made based on applicable laws and regulations.

Keywords: Deed of the Office of the Land Deed Maker · Electronics · Power of Proof

1 Introduction

The development and advancement of information technology has resulted in a wave of high-speed information characterized by the use of interconnected network technology or the internet. The development of information technology has a tremendous impact on aspects of people's lives such as economic, social, cultural, and legal. The development of information technology triggers the emergence of behavioral changes caused by changes in the systems and lifestyles of traditional societies in the modern direction characterized by the use of electronic means/media. The changes are seen in the shift in the way people interact using smartphones, advertising and buying and selling using e-commerce, buying and selling transactions using internet banking or mobile banking, and so on.

The rapid advancement of technology today has affected various business sectors, especially in the fields of trade, banking, and business. It affects every individual in doing a legal act. Legal action is no longer based on concrete actions, contan and commune, but is done in cyberspace in a non-contan and individual nature. Therefore, it does not rule out the possibility of current legal acts such as buying and selling, exchanging, or borrowing switching using technology by means or electronic devices.

The rapid use of electronic devices as a need for the community in transacting will also affect the legal system that applies in Indonesia. The development of information

technology gave birth to new rules in Indonesia, namely the enacting of the Law of the Republic of Indonesia Number 11 of 2008 on Information and Electronic Transactions [2]. In addition, the impact of technological developments has an effect on the rule of law regarding the legal actions of land rights one example is the creation of a deed of The Land Deed Making Officer (hereinafter referred to as the PPAT deed) that can be done electronically as mentioned in Article 86 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flats Unit, and Land Registration that the Deed of Land Deed Making Officer (PPAT) can be made electronically.

Legal problems that are often faced are when related to the delivery of information, communication, and/or transactions electronically, especially in terms of evidence and matters related to legal actions carried out through electronic systems. Legal actions such as the transfer of land rights poured into the electronic PPAT deed will affect the civil proof system, namely the power of proof of PPAT deeds made electronically.

The PPAT Deed is a deed made by PPAT as evidence of the implementation of certain legal acts regarding land rights or property rights to flat units as stipulated in Article 1 number 4 of Government Regulation of the Republic of Indonesia Number 24 of 2016 on Changes to Government Regulation No. 37 of 1998 concerning The Regulation of The Office of Land Deed Making Officials.

The PPAT Deed is made by the official authorized for it, in this case the Land Deed Making Officer so that it has an authentic nature. Under Article 1868 of the Civil Code (KuhPerdata), an authentic deed is a deed which in the form prescribed by law, is made by or before the powerful public servants for it in the place where the deed was made.

Any creation of an authentic deed is required to be made by or before the general official authorized for it, in this case PPAT. However, after the existence of Article 86 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration it is possible that a PPAT deed can be made electronically. This also affects the applicable civil procedure law, including the civil proof system [1] as well as the power of proof of electronic PPAT deeds both in birth, formal, and material.

Based on the above descriptions, the legal issues that will be examined in this study are: How the power of proof of PPAT deeds made electronically.

2 Research Methods

Research on the power of proof of electronic PPAT deeds uses legal research that is normative juridical. Normative research is research that examines research objects based on legal conceptions, principles, and regulatory rules. This research uses a method of statutory approach (statute approach). This research will be analyzed using descriptive analysis, meaning analysis in the form of images or exposure to research objects. While the conclusion will be drawn by deductive methods, meaning concluding a general research description which is then made useful conclusions to answer the problem formulation.

3 Results and Discussions

The Land Deed Making Officer (hereinafter referred to as PPAT) has a central role and position in the implementation of land registration activities mandated by Law No. 5

on Basic Rules of Agrarian Principals and further regulated in Government Regulation No. 24 of 1997 which revokes and replaces Government Regulation No. 10 of 1961 by making a deed as evidence of certain legal acts regarding land rights or property rights to housing units. un, which will be used as the basis for the registration of changes in land registration data resulting from certain legal acts [5].

PPAT officials have the task of making deeds which is one of the juridical data sources needed in order to update land registration procedures [6]. Land registration activities include the collection, processing, storage and presentation of physical data and juridical data as well as the issuance of letters of proof of the rights of certain land fields. With the registration of land rights or the granting of land rights to the subject of rights, administratively this will certainly be achieved a guarantee of legal certainty for the subject, meaning that the subject of the right is administratively guaranteed to exercise the right to land ownership for whatever origin of the use of the right according to its designation.

The presence of PPAT as a public official is the answer to the community's need for legal certainty for any particular legal act with respect to the land they commit. Certain legal actions relating to land include buying and selling activities, exchanges, grants, income into the company (inbreng), sharing of joint rights, granting The Right to Use Building/Right to Use land Property Rights, granting Tanggungan Rights, and Granting Power of Attorney charging Dependent Rights. Legal actions regarding the land must be proven by deeds made by PPAT. This is because PPAT is an official who is given general authority to make a deed for any certain legal acts related to land as per Government Regulation of the Republic of Indonesia No. 24 of 2016 on Changes to Government Regulation No. 37 of 1998 concerning The Regulation of The Office of Land Deed Making Officers (PPAT).

The PPAT Act is a legal product made by a PPAT official regarding certain legal acts regarding land rights or property rights to flat units. Literally, the PPAT deed is the equivalent of 2 (two) words, namely the deed and the Land Deed Making Officer (PPAT). Based on the Grand Dictionary of Indonesian, deeds are defined as letters of proof containing statements (statements, confessions, decisions, and so on) about legal events made according to applicable regulations, witnessed and authorized by official officials. The term official refers to the understanding of the special officer who is handed the task of making a deed. The understanding of the official who is handed over makes the deed then interpreted as part of the authority in accordance with the position he is in. Examples of deeds issued on the basis of official authority are [8]:

1. By government officials as public officials for example: birth certificate, marriage certificate, child recognition certificate, divorce deed, death certificate;
2. By Notary as a general official, namely notary deed.

According to Sudikno Mertokusumo, a deed is a letter signed or signed by the parties who made it, containing the event on which a, right or alliance is based, which was originally created intentionally for proof. Deeds can be divided into 2 (two) types, namely authentic deeds and under-hand deeds, which will be described as follows:

1. The authentic deed mainly contains the description of an official who explains what he did and saw in front of him.⁹ An authentic deed is a deed in the form prescribed by law made by or before the general official authorized for it at the place where it was made. As a statement from an official that what the official said was as what he saw as true happening before him, his evidentiary power applies to everyone.
2. An under-hand deed is a deed that is not made by or with the intermediary of a general official such as the deed of sale and purchase agreement made and signed by the two parties who entered the agreement.

The PPAT deed is an authentic deed made by an authorized PPAT official who is assigned a special task regarding certain legal acts regarding land rights or property rights to flat units. Based on Article 1868 of the Civil Code, to be called an authentic deed must fulfill 3 (three) elements that are made by and before the competent public officials, made in a form that has been determined by law, and made in the place where the deed was made. The PPAT deed acquires the authentic nature of the deed and its authentic nature is not because of the Law that establishes it, but the authentic nature is obtained because it was made by or before the PPAT official authorized for it. Theoretically, what is meant by an authentic deed is a letter or deed that was originally intentionally officially made for proof.

Authentic deeds must fulfill what is required in Article 1868 of the Civil Code, their cumulative nature or must include all of them.¹¹ Furthermore, in Article 1870 of the Civil Code mentions that an authentic deed provides a perfect proof of what is contained in it. Therefore, the PPAT deed is an authentic deed that has perfect proofing power.

PPAT deeds made by authorized PPAT officials have an authentic and perfect nature. PPAT deeds that have authentic properties have 3 (three) kinds of evidentiary powers, including:

1. The power of external proof (*uitwendige bewijskracht*), which is the power of proof that exists in the physical deed itself. The outward ability of an authentic deed is the ability of an authentic deed judging by its physical form, which by law attaches the ability to prove its authenticity by looking at the physical or outward form of the deed.
2. The power of formal proof (*formele bewijskracht*), i.e. an event and the facts contained in the deed have been manifestly carried out by the PPAT or explained by the parties facing. Formal powers provide certainty in the form of the truth of time and place, the signature of the interceptor, witnesses and competent officials, and the testimony of the wireta.
3. The power of material proof (*materiele bewijskracht*), namely the certainty that what is in the deed is a valid proof against the parties who make the deed or those who get the right and are generally accepted, unless there is proof to the contrary (*legenbeijs*).

The law of proof is the most important part in achieving justice in the law enforcement process. Proof in a civil case is to convince the Judge of the truth or the propositions put forward in a dispute [12]. Proof is the determining stage in the process of the case because from the results of the proof can be known whether or not a lawsuit or objection is [13].

Proof is the most important stage in the settlement of a case in court to prove the truth of the occurrence of a certain event or legal relationship, or the existence of a right, which is used as the basis by the plaintiff to file a lawsuit to the court. Proof in civil events there are 2 (two) important elements, namely the element of evidence and the element of regulations regarding proof. The element of evidence in civil law is regulated in Article 1866 of the Civil Code which states that the evidence consists of:

1. Proof of writing

Proof of letter or writing is a proof of writing that contains certain information about a particular event, circumstance or thing and is signed. Broadly speaking, written evidence or evidence with letters consists of two kinds, namely deeds and writings or other letters. Deeds can be divided into 2 (two) types, namely authentic deeds and under-the-hand deeds. While the evidence of other letters is a written statement from one party to another either on behalf of individuals or companies/agencies.

Based on Article 165 HIR/285 RBg, the power of proof of authentic deeds is perfect and binding means having the power of external, formal and material proof. Based on Article 1881 of the Civil Code, the evidentiary power of letters that are not deeds is at the discretion of the Judge. Meanwhile, the power of proof of a copy of a deed has the power of proof as the original deed as Article 1888 paragraph (2) of the Civil Code.

2. Evidence with witnesses

Evidence with witnesses is proof of events that are seen and heard or experienced by a witness. The judge has the freedom to believe or not the testimony given by a witness. However, testimony must be supported by other evidentiary tools so that the proof avoids the lies of a witness. The provision is based on Article 1905 of the Civil Code which states that: “the testimony of a witness only, without any other means of evidence, in front of the court should not be trusted”.

3. Guessing

Guessing is a conclusion drawn from an event that is already clear and real. There are two kinds of guesses, namely: (1) The judge’s guess when the person who draws conclusions is the Judge and (2) The law when the one who draws conclusions is the law [15].

4. Confession

The meaning of confession based on Article 174 *Herzien Inlandsch Reglement* (HIR) is a confession spoken before the Judge, enough evidence to incriminate the person who claims it is good the confession is pronounced itself, both with the help of others, who are privileged to do that. In the Law of Civil Procedure there are known to be 2 (two) kinds of confessions, namely: (1) Confessions made before the court are confessions that

are binding and perfect evidence; (2) Confessions outside the court of confession are oral confessions and cannot be used other than in matters where evidence is permitted with witnesses, while the terms of proof are submitted to the Judge [12].

5. Oath

An oath is generally a solemn statement given or uttered at the time of giving a promise or statement in light of the Almighty nature of God and believing that who gives untrue testimony or promises will be punished by it. The provisions of the civil procedure law RBg/HIR mention there are 3 (three) types of oaths as evidence, namely suppletory oath (complement), oath decision (breaker), and oath estimator (assessor), which is stipulated in Articles 182–185 and 314 RBg/Articles 155–158 and 177 HIR [16], as follows;

- *Suppletoir* oath is a complementary oath ordered by the Judge because of his position to one of the litigant parties to complete the proof of the event in dispute as the basis of his verdict.
- The *oath of decisoir*/breaker is an oath that determinesthe resolution of disputes (*litis decisoir*) charged at the request of one party to his opponent.
- The *oath of aestimatoir*/assessor is an oath ordered by the Judge because of his position to the plaintiff to determine the number of damages that have not been clearly requested/mentioned in his lawsuit.

In addition to the rules of conventional evidence as mentioned in Article 1866 of the Civil Code, now in electronic transactions there are known electronic evidence tools in the form of electronic information and/or electronic documents and/or printouts stipulated in Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law).

Based on Article 5 paragraph (1) of the ITE Law mentions that Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence. The electronic evidence is an extension of the valid evidence in accordance with the Applicable Event Law in Indonesia. However, the evidence in the form of Electronic Information and/or Electronic Documents is declared valid when using the Electronic System in accordance with the provisions stipulated in the ITE Law and does not apply to letters that according to the Law must be made in written form and letters and documents that according to the Law must be made in the form of notary deeds or deeds made by deed-making officials.

Based on Article 1 number 1 of the ITE Law states that Electronic Information is one or a set of electronic data, including but not limited to writing, sound, images, maps, designs, photos, electronic data interchange (EDI), electronic mail, telegram, telex, telecopy or the like, letters, signs, numbers, Access Codes, symbols, or perforations that have meaning or can be understood by people who are able to Understand. In addition, based on Article 1 number 4 of the ITE Law states that Electronic Documents are any Electronic Information created, forwarded, transmitted, received, or stored in analog, digital, electromagnetic, optical, or the like, that can be seen, displayed, and/or heard through a Computer or Electronic System, including but not limited to writing, sound, images, maps, designs, photographs or the like, Letters, signs, numbers, Access Codes, symbols or perforations that have meaning or meaning or can be understood by people

who are able to understand them. In addition, Article 1 number 5 of the ITE Law states that Electronic Systems are a series of electronic devices and procedures that function to prepare, collect, process, analyze, store, display, announce, transmit, and/ or disseminate Electronic Information.

The main requirement for something to be classified as Electronic Information is that it must be one or a set of electronic data that has been processed and has a meaning. An electronic data is classified into an electronic document if:

1. It is electronic information;
2. Those made, forwarded, transmitted, received, or stored in analog, digital, electromagnetic, optical, or the like;
3. That can be viewed, displayed, and/or heard via an electronic computer;
4. Includes but is not limited to writing, sound, images, maps, designs, photographs, or the like, letters, signs, numbers, passcodes, symbols, or perforations;
5. Which has meaning.

Based on the series of articles mentioned above, it is read that electronic evidence consists of Electronic Information and/or Electronic Documents and/or printouts produced by electronic systems are an extension of valid evidence in accordance with the applicable Event Law in Indonesia [18]. Conversely, as an a-contrary the Electronic Information and/or Electronic Document and/or printout is not generated through the Electronic System, then the proof cannot be automatically assessed as a valid electronic proof.

Based on Article 5 paragraph (1) of the ITE Law mentions that Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence. In the process of proof at trial, digital evidence or electronic evidence tool is not needed the original form (*soft copy*), which is needed only the *print out* [18] (Sudarsono: 2020). Thus, Electronic Information and/or Electronic Documents and/or printouts are valid legal evidence under Article 5 paragraph (1) of the ITE Law.

The study of PPAT deeds made electronically as mentioned in Article 86 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flats Units, and Land Registration is associated with Article 5 paragraph (1) of the ITE Law as a valid legal proof of law.

An electronic evidence has the power of law if electronic information in it can be guaranteed its integrity, can be accounted for, easily accessible, and can explain a situation. If the evidence is used as evidence in front of the court, then the judges require the electronic evidence to be printed into a physical document first, then the printed results of the electronic evidence must be validated first by signing and given a wet stamp from the agency that issued the electronic document [19].

Based on Article 1 number 4 of Government Regulation of the Republic of Indonesia Number 24 of 2016 on Changes to Government Regulation No. 37 of 1998 concerning The Regulation of The Office of Land Deed Making Officials, which states that the PPAT deed is a deed made by PPAT as evidence of the implementation of certain legal acts regarding land rights or property rights to flat units, Attributed to Article 1868 of the Civil Code on authentic deeds, the PPAT deed is an authentic deed because it is made by

and before the competent general office (in this case PPAT), made in the form specified has been determined by the Law, and made in the place where the deed was made.

The PPAT deed acquires the authentic nature of the deed and its authentic nature is not because of the Law that establishes it, but the authentic nature is obtained because it was made by or before the PPAT official authorized for it. Authentic deeds must fulfill what is required in Article 1868 of the Civil Code, their cumulative nature or must include all [11]. Furthermore, in Article 1870 of the Civil Code mentions that an authentic deed provides a perfect proof of what is contained in it. Therefore, the PPAT deed is an authentic deed that has the power of perfect proof both outward, formal, and material.

4 Conclusion

The Electronic PPAT Deed is one of the expansions of written evidence/letters as Article 1866 of the Civil Code is associated with Article 5 paragraph (1) of the ITE Law. The PPAT Deed falls into the category of Electronic Information and/or Electronic Documents and/or printouts which are one of the legal evidence tools under Law No. 11 of 2008 on Information and Electronic Transactions (ITE Law). The Electronic PPAT Deed has perfect evidentiary power as long as it is made by and/or before the Land Deed Making Officer, made based on the provisions of the Law, made into the form of Electronic Documents and made using electronic systems as article 1 number 4 and Article 5 paragraph (1) of the ITE Law, as well as the provisions of Article 1866 of the Civil Code and Government Regulation of the Republic of Indonesia Number 24 of 2016 on Changes to Government Regulation No. 37 of 1998 concerning Regulations Office of Land Deed Maker.

Provisions of Article 86 of Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat Units, and Land Registration it is possible that a PPAT deed can be made electronically. However, the use of information technology based on electronic transactions must be followed by the development of laws and rules that can keep pace with advances in information technology. Therefore, a device of written rules or material law is needed that can protect every aspect of electronic transactions in the future and supported by legal formal tools, especially civil event law as a guideline related to problems in the electronic sphere. Assessing the validity of the Electronic PPAT deed in the law of proof must be balanced with adequate facilities from the Government and related agencies so that there are no obstacles in the process of proving a document/deed/letter that is done electronically so that it can still provide legal certainty for the community.

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