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Liability of the Land Deed Official for the Forgery of Information and Documents Committed by the Parties Involved in the Creation of Deeds

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Abstract: This legal research aims to find out the responsibility of the Land Deed Official for falsifying information and documents committed by the applicant in making the deed. The type of research used by the author is normative legal research. This research uses primary legal materials and secondary legal materials. Primary legal materials are obtained from legislation, official records or minutes in making legislation and judges' decisions, while secondary legal materials are obtained from legal dictionaries, books, journals and so on. The data collection technique used is literature study. The research results show that in making deeds, Land Deed Official must apply the principle of caution and ensure the validity of the documents submitted, as well as understand the legal implications of the information provided by the parties. Land Deed Official can be held accountable administratively, civilly or criminally if it is proven that it was negligent or participated in falsifying information and documents in making the deed.

Keyword: Deed, Land Deed Official, Forgery, Accountability.

INTRODUCTION

Land is one of the fundamental assets for the Indonesian nation, serving as the primary capital in development to create a just and prosperous society. The utilization of land must be based on principles that evolve within Indonesian society (Diyan Isnaeni, 2017). As a natural asset, land has an essential function in human life, both as a place of residence and a source of livelihood (Tarfi & Amri, 2021). Land also plays a role as a production factor in business activities, thus requiring legal certainty for landholders as well as the general public. To ensure this legal certainty, a systematic registration mechanism is needed for each parcel of land, both in physical and juridical aspects, known as land registration.

Proof of ownership of land rights can be evidenced by a land certificate issued by an authorized official. Since the enactment of Law No. 5 of 1960 on the Basic Agrarian Law (UUPA), regulations related to it have continuously developed, one of which is the issuance of Government No. 24 of 2016 on Amendments to Government Regulation No. 37 of 1998 Regarding the Regulations of the Land Deed Official Position. The Land Deed Official has the

authority to create authentic deeds related to legal actions concerning Land Rights and Ownership Rights over Strata Title Units within a designated work area. This authority is granted based on a certificate of appointment issued by the National Land Agency. In carrying out their duties, Land Deed Official plays a role in supporting the Head of the Land Office in the land registration process by drafting deeds that serve as the basis for land registration activities.

According to Article 1868 of the Civil Code, an authentic deed is defined as a legal document that is drafted in a format prescribed by regulations, made by or in front of a public official who has the authority in the jurisdiction where the deed is issued. An authentic deed reflects the statements of the parties or the individuals involved, which are then formulated into an official document. In the system of legal proof, an authentic deed has perfect evidentiary power, meaning this document can independently serve as valid evidence without the need for additional proof. Furthermore, an authentic deed is binding, where all the information contained within it must be considered true and legally valid. The burden of proof lies with the party who claims the document's falsity if there is any party who doubts or challenges the authenticity of the contents of the authentic deed (Thamrin, 2011).

The deed made by the Land Deed Official serves as the basis for the process of registering changes in land registration data resulting from a legal act. The form of the Land Deed Official deed, which in English is referred to as the "form of deed" and in Dutch is known as "gedaantee akte," refers to the formal structure or composition of the deed made by the Land Deed Official (Salim, 2019). Article 96 paragraph (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration, states that the form of Land Deed Official deeds consists of: deed of sale and purchase, deed of exchange, deed of gift, deed of contribution to a company, deed of division of joint rights, deed of mortgage, deed of granting building rights/usage rights on ownership land, and power of attorney to encumber a mortgage.

The government issued Government Regulation No. 24 of 1997 on Land Registration as the legal basis for land administration activities. According to Article 1, paragraph 1 of Government Regulation No. 24 of 1997 on Land Registration, land registration is defined as a series of activities carried out by the government in a continuous, systematic, and structured manner, including the collection, processing, recording, presentation, and maintenance of physical and juridical data in the form of maps and registers. These activities relate to land parcels and strata title units, including the issuance of certificates as proof of ownership of land parcels that already have rights, as well as ownership rights over strata title units and other rights attached to them. The role and function of the Land Deed Official in the context of land registration regulations have become increasingly crucial and significant in supporting the implementation of land administration (Andreas F. Wonte, 2022).

The role of the Land Deed Official is to ensure that the obligations that must be fulfilled by the parties related to the transfer of rights have been carried out, as well as to guarantee the material and formal accuracy of every deed related to the transfer of rights over land and buildings. The responsibility of the Land Deed Official towards authentic deeds is limited to recording or writing the legal actions carried out by the parties into a deed format. In performing their duties, the Land Deed Official must apply the principle of caution. The Land Deed Official plays an important role in determining whether a certain action can be documented in the form of a deed or not, which requires the application of caution and accuracy, one of which is by verifying the identity of the parties presenting themselves to the Land Deed Official.

In carrying out their duties, the Land Deed Official must prioritize the principles of integrity, administrative order, and thoroughness in examining documents. The Land Deed Official must also have a high level of awareness and responsibility towards every legal product they produce. As part of their duties, the Land Deed Official is required to verify the formal requirements in the creation of a deed, including the identification documents of the parties involved and other documents that comply with the applicable laws and regulations. This step aims to prevent the falsification of information and documents submitted by the parties concerned to the Land Deed Official. The Land Deed Official is at risk of being involved in legal issues if this is not done carefully. Such issues could harm the Land Deed Official, as they might lead to the Land Deed Official being involved in both criminal and civil cases.

In practice, the Land Deed Official is often involved in legal disputes, either as a witness, defendant, co-defendant, or suspect (Mulyono, 2014). This may be caused by negligence in the process of creating the deed or errors in the deed they prepare, which could stem from mistakes made by the Land Deed Official themselves or the parties involved. These errors may arise due to inaccuracies in the information or documents submitted by the parties, including negligence in providing accurate information (lack of good faith from one of the parties). Additionally, it may occur due to an agreement that harms one party between the Land Deed Official and one of the involved parties. Based on the legal issues mentioned above, the author is interested in examining the accountability of the Land Deed Official regarding the falsification of statements and documents performed by the parties involved in the creation of the deed.

METHOD

This research is a normative legal study aimed at identifying and analyzing legal rules, legal principles, and relevant doctrines to provide solutions to legal issues concerning the accountability of the Land Deed Official for the falsification of statements and documents carried out by the parties involved in the creation of deeds. This research uses two research approaches: the conceptual approach and the statutory approach. The data collection technique used in this research is library research, which involves gathering primary legal materials by reviewing various laws and regulations related to the legal issue being studied. In addition, secondary legal materials are obtained through the collection of legal books, literature, legal journals, and previous scientific research relevant to the issues discussed (Marzuki, 2021).

RESULTS AND DISCUSSION

The Land Deed Official deed is an authentic deed that must comply with certain provisions and procedures in its creation process. According to Article 1868 of the Civil Code (KUH Perdata), an authentic deed is defined as a deed that is drawn up in the form prescribed by law, created by or before an authorized public official, and made at the location where the deed is created. A deed is categorized as authentic if it is drawn up by or before an official or public employee appointed by law, drawn up in a format regulated by law, and the public official involved in the creation of the deed must have the legal authority to carry out the deed creation process (Santoso, 2016).

In carrying out their duties and responsibilities, Land Deed Official must prioritize the principles of honesty, administrative order, and thoroughness in verifying the documents required for deed creation. The Land Deed Official must also have a high level of awareness and responsibility towards the legal products they produce. The Land Deed Official's duties include examining the completeness of the formal requirements for creating a deed, including verifying the identification documents of the parties involved and other documents that comply with the applicable laws and regulations. This examination aims to prevent the falsification of information and documents submitted by the parties to the Land Deed Official. These issues

could harm the Land Deed Official, as such problems may involve the Land Deed Official in both criminal and civil cases.

The format or form of the Land Deed Official deed has been determined by the government through the Head of the National Land Agency as regulated in the annex of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration, which serves as a guide for every Land Deed Official who creates an authentic deed.

The inclusion of data and identity of the parties in the authentic deed is very important because it is a formal requirement that must be met in the creation of the deed. The identity of each party involved is the basis for the Land Deed Official in determining the authority of the party to carry out the creation of the deed of sale and other deeds related to land rights. Document falsification refers to the act of altering or manipulating the contents of documents such as official letters, business contracts, personal identities, invoices, and other important documents with legal relevance. The criminal act of document falsification is regulated in the Criminal Code (KUHP) as a form of legal protection aimed at providing certainty regarding the validity of deeds created before the Land Deed Official, while also protecting the public from fraud and potential losses arising from the use of forged documents (Humaira R et al., 2024).

Government Regulation No. 24 of 2016 on Amendments to Government Regulation No. 37 of 1998 on the Regulation of the Position of Land Deed Official regulates that when a Land Deed Official is proven to have violated the provisions in carrying out their duties and position, they may be subject to administrative sanctions. The Land Deed Official Regulation does not provide for civil and criminal sanctions against Land Deed Official. Civil sanctions as stated in the Civil Code (KUH Perdata) and criminal sanctions as regulated in the Criminal Code (KUHP) may be applied if the violation committed by the Land Deed Official meets the elements of civil and criminal offenses.

Administrative sanctions that can be imposed on Land Deed Official due to violations of the applicable provisions in the execution of their duties can take various forms, ranging from written warnings to dismissal from their position as a Land Deed Official. Violations, whether minor or severe, can result in the dismissal of the Land Deed Official from their position. These sanctions are imposed when the Land Deed Official violates the provisions outlined in the Code of Ethics of the Indonesian Association of Land Deed. Article 6, paragraph 1 of the Code of Ethics states that members of Land Deed Official who violate the code of ethics may be subject to sanctions, including warnings, reprimands, suspension (temporary dismissal) from Land Deed Official membership, expulsion (permanent dismissal) from Land Deed Official membership, or dishonorable dismissal from Land Deed Official membership.

The enforcement of the law for violations committed by Land Deed Official is carried out in accordance with the provisions of the applicable laws and regulations, particularly in Article 12, paragraph (2) of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 2 of 2018 concerning the Guidance and Supervision of Land Deed Official. These violations include the failure to properly perform Land Deed Official duties in accordance with the regulations, non-compliance with obligations set out in legislation, violations of established prohibitions, and breaches of the applicable Code of Ethics. Article 13, paragraph (1) of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Regulation No. 2 of 2018 concerning the Guidance and Supervision of Land Deed Officials states that sanctions that may be imposed on a Land Deed Official proven to have committed a violation include written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal.

A dismissal sanction may be imposed on the Land Deed Official without prior written warning. Sanctions against the Land Deed Official may be preceded by temporary dismissal if the Land Deed Official is subject to either honorable dismissal or dishonorable dismissal. The imposition of a temporary dismissal sanction is carried out by the Head of the Regional Office of the National Land Agency, while honorable or dishonorable dismissal is carried out by the Minister.

Civil liability refers to the Land Deed Official civil responsibility related to negligence, oversight, and/or errors in the creation of the deed. This responsibility is related to deviations from the authentic deed, which includes legal defects, whether related to material requirements (concerning the subject and object) or formal requirements (concerning procedure and conditions). These deviations may be caused by mistakes, negligence, or even bad faith that harms the parties involved. Such deviations not only demand administrative accountability but also have the potential to be contested in the form of compensation or damages by the aggrieved party, as it may be considered an unlawful act.

Civil sanctions are imposed on the Land Deed Official for unlawful acts (*onrechtmatige daad*), which are actions that cause harm. Normatively, such acts are subject to the provisions of Article 1365 of the Civil Code, which states that any act that violates the law and causes harm to others obligates the person at fault to compensate for the loss (Prawira, 2016). The Land Deed Official liability may also arise from mistakes made due to negligence or lack of caution. Article 1366 of the Civil Code states that every person is responsible not only for the losses caused by their actions but also for losses caused by their negligence or lack of caution.

The authority of the Land Deed Official is to create authentic deeds that have perfect legal evidentiary power. A deed will have a legal defect if the formal and material requirements established in the creation of the deed are not met, so the deed cannot be used as a perfect proof. The Land Deed Official is responsible for mistakes and negligence if they result in losses for the parties involved. Determining whether the deed is not authentic or if the deed becomes a private document and is declared void or null and void by law, or constitutes an unlawful act that causes harm, must all be based on a court decision that has permanent legal force (Utari, 2021).

Criminal sanctions against a Land Deed Official can be imposed if the individual commits an act classified as a criminal offense under the provisions of the Criminal Code. One such example includes the creation of a false document, instructing another party to falsify data, or falsifying deeds, which can be classified as criminal acts (Harahap, 2021). According to Habib Adjie, the formal aspects in the creation of a deed by a Land Deed Official can serve as a basis or limit for criminal actions against the Land Deed Official if it is proven that these formal aspects were deliberately carried out with full awareness and planned intent by the involved Land Deed Official, such that the deed created is used as a means to commit a criminal act. Additionally, a Land Deed Official can be criminally liable if they consciously and deliberately cooperate with other parties to perform a legal action that is known to violate the applicable legal provisions (Adjie, 2009).

The Land Deed Official obligation is limited to the formal correctness of their duties. In carrying out their duties and responsibilities, the Land Deed Official must also adhere to the principle of caution, ensuring that the original supporting documents are shown to the Land Deed Official and have been declared original by the parties and based on documents issued by government agencies. The Land Deed Official is responsible if there is a violation of the formal correctness in the creation of the deed. Evidence indicating a violation by the Land Deed Official, along with a court ruling, is required to prove that they have violated the applicable formal provisions (Yudanti & Zulfa, 2022). The Land Deed Official responsibility only pertains to the formal aspects of their position. It is necessary to notify the Land Deed Official of any evidence of formal violations. This includes the time, date, month, and year of the parties' departure, along with their signatures and initials (Adtiah, et al., 2024).

Based on Article 263 of the Criminal Code, Article 263, paragraph (1) of the Criminal Code regulates the criminal offense of falsification, stating that a Land Deed Official cannot be held responsible for the material inaccuracies presented by the parties involved in the deed, if those parties submitted false information or data presented as if it were authentic. The Land Deed Official may be criminally liable if there is evidence that meets the elements listed in Article 55 of the Criminal Code. One of the conditions that must be met is that the Land Deed Official is aware of the falsification of the data. According to Article 55 of the Criminal Code, those who commit, instruct, or participate in the criminal act will be considered perpetrators (*dader*) of the criminal act. Additionally, those who intentionally provide or promise something, misuse authority or dignity, use violence, threats, deception, or provide opportunities, means, or information to encourage others to commit such an act can also be considered as perpetrators of the crime.

The Land Deed Official can be sentenced under Article 55 of the Criminal Code if they meet the following elements: performing all the elements of an unlawful act, instructing others to commit the offense, participating in the offense, or intentionally persuading others to commit the criminal act. The Land Deed Official may be held criminally responsible for participating in a criminal offense if proven. Based on Article 56 of the Criminal Code, a person can be sentenced as an accomplice (*medeplichtige*) to a crime if they intentionally assist at the time of or before the criminal act is committed, or if they intentionally provide opportunities, means, or information that facilitates the criminal act. The elements that must be fulfilled to criminally charge the Land Deed Official under Article 56 of the Criminal Code include: the assistance was provided intentionally, either during or before the criminal act was committed; the act was done intentionally; the intention to commit the criminal act must come from the person receiving the assistance; and the assistance provided may take the form of opportunities, efforts, or information.

There are several criteria that limit the imposition of criminal sanctions on a Land Deed Official, including if the Land Deed Official deliberately and consciously engages with one party in carrying out a legal action related to the formal aspects of the deed made in front of or by the Land Deed Official, with the goal of benefiting one party and harming the other party. Criminal sanctions can be imposed if the deed made in front of or by the Land Deed Official can be proven to be inconsistent with the legal basis or in conflict with the applicable regulations, and the Land Deed Official's actions that do not align with the applicable professional code of ethics also become grounds for criminal sanctions (Rizal, 2022).

CONCLUSION

The deed made by the Land Deed Official is one of the data sources for land registration maintenance, so it must be created in such a way that it can serve as a strong basis for the registration of the transfer and encumbrance of rights. A Land Deed Official can be held accountable administratively, civilly, or criminally if it is proven that they were negligent or involved in falsifying information and documents in the creation of the deed. Administrative accountability can be pursued if the Land Deed Official fails to fulfill their duties and violates the Land Deed Official code of ethics, in which case administrative accountability may result in dismissal without honor. Civil liability can be pursued if the Land Deed Official, in performing their duties, meets the elements outlined in Articles 1365 and 1366 of the Civil Code, allowing the Land Deed Official to be held liable for civil matters such as reimbursement of costs, compensation, and payment of interest. Criminal liability can be pursued if the Land Deed Official is proven to have met the elements of Articles 263, 55, and 56 of the Criminal Code, specifically if the Land Deed Official participated in the criminal act of forgery and did so intentionally.

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