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### Legal Force of Grant Deeds made by the Official Making the Land Deed

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#### Abstract

Tracing the provisions governing the position and binding power of a PPAT deed as an authentic deed in the evidentiary system due to the legal vacuum and lack of synchronization of statutory regulations, makes it interesting to carry out further research. Article 1683 of the Civil Code explains that a gift is only considered binding if the object of the gift has been received by the donee or his/her proxy through an authentic deed. The research method in this thesis uses a normative juridical research type with a statutory approach and a conceptual approach. Based on the results of the discussion, it can be stated that First: PPAT's

authority to make a grant deed as an authentic deed has been regulated by Article 2 paragraph (2) government regulations Number 37 of 1998. Second, the legal status of ownership of land rights if the name of the land title certificate is not transferred. The grant is valid but does not have legal force in proving civil cases. Third, in granting land rights with the consent of some children, the role of PPAT is required in the procedures for implementing the grant as outlined in the deed of granting land rights so as not to cause disputes in the future.

**Keywords:** Deed, Grant, The Official Making the Land Deed

#### 1. Introduction

Land Deed Making Official (hereinafter referred to as PPAT) means "a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to condominium units" as explained in Article 1 point 1 of the Government Regulations of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials (PJPPAT). <sup>1</sup> In English, land deed officials, in Dutch land titles registrar, this official is given the authority by the state to make deeds regarding the transfer of land rights.<sup>2</sup> The position of PPAT is as a public official who is given special duties and authority to provide services to the community in the form of making a deed which proves that the legal act of transferring land rights, ownership rights to apartment units or granting mortgage rights to land has been carried out before him and the deed he makes is authentic deed.

PPAT consists of 3 (three) types, namely PPAT, temporary PPAT, and Special PPAT as explained in Article 1 numbers 1, 2, and 3 PJPPAT. A temporary PPAT is "a government official appointed because of his position to carry out PPAT duties by making PPAT deeds in areas where there are not enough PPATs". Meanwhile, a special PPAT is "a national land agency official who is appointed because of his position to carry out PPAT duties by making certain PPAT deeds specifically in the context of implementing certain government programs or tasks."<sup>3</sup> A special PPAT is an official appointed by the Minister to serve community groups to provide deed-making services in areas where there are not yet enough PPATs, namely the sub-district head or village head or the Head of the Land Office. Article 6 paragraph 2 of Government Regulation Number 24 of

<sup>1</sup> Bayu Praditya Herusantoso, *The Antinomy of Agrarian Reform Regulations After the Establishment of the Land Bank Authority*, Jurnal Ilmu Kenotariatan, Vol. 5, No. 1, (2024), h. 17-27.

<sup>2</sup> Marihot Pahala Siahaan, *Bea Perolehan Hak Atas Tanah Dan Bangunan Teori Dan Praktek*, Jakarta: Rajawali Pers, 2003, h. 42.

<sup>3</sup> Bayu Indra Permana, et al., *Legal Certainty of Income Tax Exemption on the Transfer of Rights to Land in the Sharing of Collective Integration Rights*, International Journal of Social Science and Education Research Studies, Vol. 2. No. 11, 2022, h. 13.

1997 concerning Land Registration as amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration regarding Land Registration that in carrying out land registration, the Head of the Land Office is assisted by PPAT and other officials assigned to carry out certain activities according to this Government Regulation and the relevant laws and regulations.<sup>4</sup>

The function of PPAT itself is to guarantee the material truth and formal truth in every deed of transfer of rights to land and buildings and also plays a role in checking the obligations of the parties that must be fulfilled in connection with the transfer of rights. The PPAT's responsibility for authentic deeds is only to record or express a legal act carried out by the party/person in the deed.<sup>5</sup> Through an authentic deed, rights and obligations are clearly determined, guaranteeing legal certainty, and at the same time it is hoped that disputes can be avoided.<sup>6</sup> Through an authentic deed that clearly determines rights and obligations, guarantees legal certainty, and at the same time it is hoped that disputes can be avoided. Even though these disputes cannot be avoided, in the process of resolving these disputes, authentic deeds which are the strongest and most complete written evidence make a real contribution to resolving cases cheaply and quickly.<sup>7</sup>

One of the authentic deeds made by PPAT which is discussed in this article is a deed of grant, where making a gift for immovable objects can be done with an authentic deed or private deed. However, to ensure legal certainty and so that it can be used as valid evidence, the transfer of the gift is carried out by making an authentic deed.<sup>8</sup> If the grant is received using an authentic deed, then the authentic deed of acceptance of the grant must be notified to the grantor and this notification must be made while the grantor is still alive. Before this notification occurs, there is no grant agreement that binds the grantor. A gift according to Article 1666 in conjunction with Article 1667 of the Civil Code (hereinafter referred to as the Civil Code) is "an agreement whereby the donor, during his lifetime, freely and irrevocably, hands over an object for the recipient's needs. The grant that accepts the delivery. Grants can only be in the form of existing objects. "If the gift includes objects that will only be available in the future then simply because of that the gift is void."

Furthermore, in the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration as amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration concerning Land

Registration it is also stated that the agreement The grant must be made in written form and a notarial deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations so that the transfer can be registered with the land office of the right. Tracing the provisions governing the position and binding power of a PPAT deed as an authentic deed in the evidentiary system due to the legal vacuum and lack of synchronization of statutory regulations, makes it interesting to carry out further research. One of the authentic deeds made by PPAT is a gift deed, where making a gift for immovable objects can be done with an authentic deed or private deed. However, to ensure legal certainty and so that it can be used as valid evidence, the transfer of the gift is carried out by making an authentic deed. This is as regulated in Article 1683 of the Civil Code which explains that a gift is only considered binding if the object of the gift has been received by the donee or his/her proxy through an authentic deed. Based on the background of this problem, the author is interested in reviewing and compiling legal articles with titles: **"Legal Power of Grant Deeds made by the Official Making the Land Deed"**

## 2. Methods

The research method in this research is a normative legal research method, namely a method of researching law from an internal perspective with legal norms as the research object. The researcher uses the Normative Juridical type of legal research, namely legal research that uses legal norms as the object of research based on an internal perspective that is able to provide legal arguments when conflicts, ambiguities or legal gaps are found. Carried out by reviewing various legal regulations, as well as literature containing theoretical concepts such as legal principles which are then connected to legal issues which will be discussed. The approaches used in this legal study are the statutory approach and the conceptual approach.

## 3. Discussion

### 3.1 Legal Strength of Grant Deed Made by PPAT

Normatively, the position of PPAT was born from legal norms in the UUPA, namely the provisions in Article 5 and Article 19, then concreted in PP Number 24 of 1997 concerning Land Registration (amended by PP Number 18 of 2021), also contained in Law Number 4 of 2021 1996 concerning Mortgage Rights. As implementing regulations, PP Number 37 of 1998 concerning PPAT and its amendments to PP Number 24 of 2016 were formed, as well as regulations of the Minister of Agrarian Affairs, consisting of Perka BPN Number 1 of 2006 and its amendments to Perka BPN Number 2 of 2018, and partially revoked by the Minister of ATR/ KBPN Number 33 of 2021 concerning PPAT Fees.<sup>9</sup> According to the provisions of the National Land Law, namely the Basic Agrarian Law Number 5 of 1960, it is regulated that all transfers of land rights and ownership rights to apartment units are through sale and purchase, exchange, grants, income and other legal acts of transfer of rights, except transfer of rights through Auctions can only be registered if proven by a deed made by the

<sup>4</sup> Bhim Prakoso, *Pendaftaran Tanah Sistematis Lengkap Sebagai Dasar Perubahan Sistem Publikasi Pendaftaran Tanah*, Journal of Private and Economic Law, Vol. 1, No. 1, 2021, h. 66.

<sup>5</sup> Ahmad Farich Sultoni, *Batas Pertanggungjawaban Notaris atas Pembuatan Akta Otentik*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 1, ((2021)), h. 69-90.

<sup>6</sup> Supriadi, *Hukum Agraria*, (Jakarta: Sinar Grafika, 2012), h.170

<sup>7</sup> Penjelasan Atas Undang-undang Nomor 2 Tahun 2014 tentang Perubahan Atas Undang-Undang Nomor 30 Tahun 2004 tentang Jabatan Notaris, TLNRI Nomor 5491

<sup>8</sup> Wirjono Projodikoro, *Asas-asas Hukum Perjanjian*, Bandung: Bale, 1999, h.119-120

<sup>9</sup> Winahyu Erwiningsih & Fakhrisya Zaili Sailan, *Akta Pejanbat Pembuat Akta Tanah; Kajian Komprehensif dan Tuntunan Penyusunannya*, Yogyakarta, Laksbang, h.18

authorized PPAT according to the provisions of the applicable laws and regulations.<sup>10</sup>

The existence of PPAT as a general official means that he is someone who is assisted in carrying out the duties of the Minister of Agrarian Affairs who is the main official in making deeds. So the main task of PPAT is to assist the Minister of Agrarian Affairs to make deeds of transfer of rights, granting new rights, mortgaging land, and granting mortgage rights over land. Because his status is merely that of an official, the regulations regarding the existence of PPAT are sufficient to be stated in a Ministerial Regulation.<sup>11</sup> General Explanation of Law Number 4 of 1996 According to the applicable laws and regulations, PPAT is a public official who has the authority to make deeds of transfer of land rights and other deeds in the context of encumbering land rights, the form of the deed is determined, as proof of carrying out certain legal acts regarding land located within their respective work areas. "In the position stated above, the deeds made by PPAT are authentic deeds."

All types of evidence have a value of independent evidentiary strength and the minimum limit of evidence must be at least 2 (two) valid pieces of evidence. The legal consequences of an authentic deed containing false information only have the power of proof as a private deed. An authentic deed means that the deed is made or executed by and or in the presence of a public official (such as a Notary, Judge, Registrar, Bailiff, Civil Registrar), so for private deeds the way it is made or made is not done by and or in the presence of an official. General employees, but only by interested parties. The function of a deed is as a means of proof as according to Article 1857 of the Civil Code, if the deed under the signature is acknowledged by the person to whom the writing is intended to be used, then the deed can be a perfect means of proof for the person who signed it as well as his heirs and other people. Who gets the rights from it.

The PPAT deed as an authentic deed has complete evidentiary value. There are principles underlying the PPAT deed as an authentic deed, namely:<sup>12</sup>

- a. *Uitwendige Bewijskracht*, The evidentiary value of a deed from external principles, externally does not need to be contradicted with other evidence, if someone considers that a PPAT deed does not meet the requirements as a deed, then the person concerned is obliged to prove that the deed is not externally an authentic deed.
- b. *Formele Bewijskracht*, The formal principle is that the PPAT deed must provide assurance that an event and fact mentioned in the deed was actually carried out by the Notary or explained by the parties present at the time stated in the deed in accordance with the procedures specified in the preparation of the deed.

- c. *Materiale Bewijskracht*, the material principle explains valid evidence for the parties who made the deed or those who received the rights and is generally valid, unless there is proof to the contrary. Information or statements stated or contained in deeds of office or minutes or statements of the parties given before a Notary/PPAT and the parties must be assessed correctly.

The PPAT Deed contains information and statements of the parties made at the will or request of the parties, and the Notary/PPAT makes it in the form determined according to the Law.<sup>13</sup> Cancellation of a PPAT deed through a court decision is not only due to errors or negligence on the part of the PPAT when making the deed, but cancellation of the PPAT deed can also be caused by errors or negligence of the parties binding themselves to the deed, so that there is an error or negligence causes a lawsuit from one of the parties.<sup>14</sup> In civil proceedings, it is not uncommon for a PPAT to be in the position of co-defendant which is given as a coercive measure, because notarial deeds, especially Partij Acte, then become evidence for civil cases.<sup>15</sup> PPAT is not involved and is even prohibited by law from being involved in any legal action as explained in the notarial deed which it formalizes.<sup>16</sup> PPAT is only limited to formulating the legal actions of the parties into a deed and then formalizing the deed. PPAT as a co-defendant is an attempt to force PPAT to produce information regarding the deed which will be used as evidence in the judicial process. A lawsuit stating that a Notarial/PPAT deed is invalid must be proven to be invalid from both physical, formal and material aspects.<sup>17</sup> If you cannot prove it, then the deed in question is still legally binding on the parties interested in the deed.

If the deed can be proven in court, then there is one aspect that causes the deed to be defective, so that the deed can become a degraded deed or a fraudulent deed, or even become null and void. Based on Article 1870 of the Civil Code regarding the power of binding and perfect evidence, an authentic, binding deed means that the judge is bound to believe the deed as long as the untruth cannot be proven, while the meaning of perfect means that it is deemed sufficient as evidence without any other evidence.<sup>18</sup>

The Deed of Grant as an authentic deed is essentially a means of evidence, ideally having perfect/complete evidentiary power externally, formally and materially, even without the support of other evidence. The gift deed is

<sup>13</sup> Paulus Effendi Lotulung, *Perlindungan Hukum bagi Notaris Selaku Pejabat Umum dalam Menjalankan Tugasnya*, (Bandung, Pradnya Paramita, 2003) h.88.

<sup>14</sup> Habib Adjie, *Kebatalan Dan Pembatalan Akta Notaris*, (Bandung, PT Refika Aditama, 2011) h. 68.

<sup>15</sup> Dendik Surya Wardana, Iswi Hariyani, & Dodik Prihatin AN, *Pertanggung Jawaban Notaris Terhadap Keabsahan Akta Outentik Yang Dilakukan Secara Electronic Dalam Pembuktian Di Pengadilan*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, (2021), h. 14-26.

<sup>16</sup> *Ibid*, h. 69.

<sup>17</sup> Khafid Setiawan, *et al.*, *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, 2021, h. 47.

<sup>18</sup> Liliana Tedjosaputro, *Etika Profesi Notaris dalam Penegakan Hukum Pidana*, (Yogyakarta, PT. Bayu Indra Grafika, 2005) h. 24

<sup>10</sup> Rahadiyan Veda Mahardika, & Gatot Suyanto, *Kedudukan Hukum Badan Bank Tanah Dalam Pengadaan Tanah Untuk Kepentingan Umum*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 2, 2022, h. 62.

<sup>11</sup> Husni Thamrin & M. Khoidin, *Hukum Notariat dan Pertanahan, Kewenangan Notaris dan PPAT Membuat Akta Pertanahan*, Yogyakarta, Laksbang Media, h.73

<sup>12</sup> Subekti, *Hukum Acara Perdata*, (Bandung; Bina Cipta, 1989), h.93-94

aimed at creating certainty, justice and legal benefits in society, as well as legal protection for the ownership rights of the object of the gift in question to both the grantor, his heirs and the recipient of the gift who is usually the defendant. G. Kartasapoetra, expressed his opinion regarding the relationship between humans and land, that: The importance of land for human life is because human life cannot be separated from land. They live on the land and obtain food by utilizing the land. The history of development or destruction is also determined by land. Land issues can give rise to terrible disputes and wars because people or a nation want to control the land of another person or nation because of the natural resources contained therein.<sup>19</sup>

Land is not only a place to live, but also as a place to do business and also as collateral for obtaining bank loans, for business purposes, renting and buying and selling. The importance of the use of land for individuals or legal entities requires a guarantee of legal certainty over that land. The definition of gift is contained in Article 1666 of the Civil Code, namely an agreement whereby a donor hands over an item free of charge, without being able to withdraw it, for the benefit of the person who receives the gift. The law only recognizes gifts between living people.

Government Regulation Number 24 of 1997 concerning Land Registration has come into effect, so for those who are subject to the Civil Code, the grant deed must be made in written form by a Notary. However, based on the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grants, entry into companies and other legal acts of transfer of rights, except that the transfer of rights through auction can only be registered if proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations. The grant must be stated in a deed made by PPAT, namely in the form of a grant deed. So, if someone wants to donate land and buildings to another person, the PPAT must make a gift deed. In addition, the act of gift is attended by at least two witnesses. Furthermore, based on Article 40 of Government Regulation Number 24 of 1997 concerning Land Registration, no later than 7 (seven) working days from the date the relevant deed is signed, the PPAT is obliged to submit the deed he made along with the relevant documents to the Land Office for registration and PPAT must provide written notification regarding the delivery of the deed to the Land Office to the parties concerned.

Land grants after the issuance of Government Regulation Number 24 of 1997 concerning Land Registration, must be carried out with a PPAT Deed (Land Deed Maker Official), apart from that, when making a grant deed it is necessary to pay attention to the object to be gifted, because in Government Regulation Number 10 of 1961 it is determined that For land grant objects, a grant deed must be made by the Land Deed Drafting Officer (PPAT), however, if the object is other than land (movable object granted), then the provisions in the Civil Code are used as the basis for making a grant deed, namely made and signed by a Notary. Acquisition of land by grant should register the transfer of

rights at the local Land Office as a form of securing the land grant. The legal strength of a gift deed lies in the function of the authentic deed itself, namely as legal evidence according to law (Articles 1682, 1867 and Article 1868 of the Civil Code). So this is a direct consequence of the statutory provisions, that there must be authentic deeds as a means of proof. That the implementation of the transfer of land rights due to a grant is proven by a grant letter or grant deed submitted to the PPAT, while the activities in the application for land rights must fulfill the necessary conditions. The implementation of registration of the transfer of land rights due to a grant is maximized at the Land Office by officers who carry out land certification services until it becomes a certificate with a guarantee of legal certainty.

### 3.2 Legal Consequences of Grant Deeds Made by PPAT

The legal strength of the gift deed lies in the function of the authentic deed itself, namely as a valid means of evidence according to law (Articles 1682, 1867 and Article 1868 of the Civil Code) so that this is a direct consequence which is a necessity of the statutory provisions, that there must be authentic deeds as a means of proof. To be valid evidence, the gift deed must be made and signed by an authorized official and the parties bound by it. The authentic deed made by PPAT discussed in this article is a grant deed, where making a grant for immovable objects can be done with an authentic deed or private deed. However, to ensure legal certainty and so that it can be used as valid evidence, the transfer of the gift is carried out by making an authentic deed.<sup>20</sup>

A gift according to Article 1666 in conjunction with Article 1667 of the Civil Code (hereinafter referred to as the Civil Code) is "an agreement whereby the donor, during his lifetime, freely and irrevocably, hands over an object for the needs of the recipient of the gift who accepts the handover. Grants can only be in the form of objects that already exist. "If the gift includes objects that will only be available in the future then simply because of that the gift is void."<sup>21</sup> The elements of grants based on the formula above can be described as follows:<sup>22</sup>

- a. A grant is a one-sided agreement that is made free of charge, meaning that there is no contra performance on the part of the grant recipient;
- b. In gifts it is always implied that the donor has the intention to benefit the party being given the gift;
- c. The objects of the gift agreement are all kinds of assets belonging to the grantor, both tangible and intangible objects, fixed and movable objects, including all kinds of receivables from the grantor;
- d. Grants are irrevocable;
- e. The gift must be made while the donor is still alive;
- f. Made with an authentic deed.

The provisions of Article 1682 of the Civil Code state that: No gift except as intended in Article 1687 can be made without a Notarial deed, the minutes of which (original

<sup>20</sup> Wirjono Projodikoro, *Asas-asas Hukum Perjanjian*, Bandung: Bale, 1999, h.119-120

<sup>21</sup> Asriadi Zainuddin, *Perbandingan Hibah Menurut Hukum Perdata dan Hukum Islam*, Jurnal Al-Himayah, Volume 1 Nomor 1, 2017

<sup>22</sup> *Ibid.*

<sup>19</sup> G. Kartasapoetra, *Hukum Pertanahan Teori dan Praktik*, Malang, Bayu Media Publishing, 2008, h.27



document) must be kept with the Notary and if this is not done then the gift is invalid. The provisions of Article 1682 of the Civil Code state that: No gift except as intended in Article 1687 can be made without a Notarial deed, the minutes of which (original document) must be kept with the Notary and if this is not done then the gift is invalid. Furthermore, in the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration as amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats and Land Registration concerning Land Registration it is also stated that the agreement The grant must be made in written form and a notarial deed made by the authorized PPAT in accordance with the provisions of the applicable laws and regulations so that the transfer can be registered with the land office of the right. The presence of PPAT as a public official is an answer to the community's need for legal certainty regarding every specific legal action regarding land that they carry out. Because based on the PPAT Position Regulations, the PPAT is the only official who is given general authority to make deeds for each specific legal act relating to land. In connection with a grant deed whose object is land, this raises a problem regarding the authenticity and legal force of the grant deed made by the PPAT, because the form of the PPAT deed is not regulated in law but is regulated in a Ministerial Regulation by the State Minister for Agrarian Affairs/Head of the Land Agency. Meanwhile, in Article 1682 of the Civil Code, the gift deed must be made in the form of an authentic deed, the elements of an authentic deed are regulated in Article 1868 of the Civil Code.

A land grant is a gift from someone to another person without any compensation and is done voluntarily, without any contravention from the recipient of the gift, the gift is made while the gift giver is still alive and the gift must be approved by the interested parties. Gifts include agreements "for free" (*omniet*) where the words "free of charge" are indicated by only the performance of one party, while the other party does not need to provide counter-performance in return. In the Civil Code, a gift in a testament is called "*Legaat*" (Will Grant) which is regulated in inheritance law, while this gift is an agreement. Because a gift according to the Civil Code is an agreement, it naturally cannot be withdrawn unilaterally by the gift giver.

Since the parties come to the Notary/PPAT office to make a grant of land and buildings, the making of the grant deed must be attended by the parties, in this case the Grant Giver and the Grant Recipient as well as witnesses who are related to the process of granting this grant, PPAT checks the data and completeness. Document, after that the grant deed is registered at the Land Office/BPN (National Land Agency), after registration the tax is paid on the grant, after the tax has been paid, the process of transferring the name of the certificate to the Grant Recipient is carried out based on the Grant Deed.<sup>23</sup> No gift except as intended in Article 1687 can be made without a notarial deed, the minut (original document) must be kept with the notary and if this is not done then the gift is invalid. The text of Article 1687 of the

Civil Code referred to above is: Hand-to-hand gifts in the form of tangible movable goods or receivables which will be paid upon payment, do not require a notarial deed and are valid if such gifts are simply handed over to the person who is given the gift himself. Or to another person who receives the gift to be passed on to the person given the gift.

If in the future there is a dispute or conflict between a gift made verbally and a gift written on a notarial deed, the grant written on a notarial deed will have legal force. Thus, it can be argued that written grants are stronger than verbal grants. In addition, Article 1688 of the Civil Code regulates that grants cannot be revoked or canceled except in the case of:

- a. If the conditions of the gift are not fulfilled by the recipient of the gift;
- b. If the person who is given the gift is guilty of committing or participating in an attempted murder or other crime against the person of the donor;
- c. If the donor falls into poverty and the donor refuses to provide for him.

Article 37 Paragraph 2 of Government Regulation Number 24 of 1997 concerning Land Registration states that the land must be registered in a deed made by and submitted to the authorized official in making the Land Deed to complete the process of transferring rights, namely PPAT. One form of legal protection for ownership of land rights is the existence of proof of ownership of land rights. Insufficiently strong evidence on land is one of the causes of the low process of registering land rights, low community participation in making land certificates even though it is very important and useful because the certificate is the strongest and most complete evidence that a person has to prove that the land that is recognized as belonging to him for a long time. Other people do not have the same evidence. Other proofs of ownership of land rights, such as *Girik*, or *Letter C*, *Letter D* or *Petuk*, and receipts and other proof of payment of Land and Building Tax (PBB), are not considered proof of land rights, but are only considered as ownership rights.<sup>24</sup> Therefore, its position as proof of land rights is still very weak compared to a certificate.

Based on Government Regulation Number 24 of 1997, parties who feel they have a right to land are limited to a period of 5 (five) years from the issuance of the land certificate to file a lawsuit against or in order to defend their rights. There are two types of land registration systems in force in Indonesia, namely the deed registration system and the registration of title system (in the sense of rights). The land registration system basically contains: What is registered, the form of storage and presentation of the juridical data, as well as the form of proof of rights, both in the form of a deed registration system and a rights registration system for each grant or creation of new rights as well as transfers and encumbrances with other rights later, must be proven by a deed. The deed itself contains juridical data on the land concerned, its legal actions, rights, recipients of the rights and what rights are imposed. In the deed registration system, the deeds are then registered by the Land Deed Official.

<sup>23</sup> Misbah Imam Soleh Hadi & Bayu Indra Permana, *Konstruksi Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*, Jurnal Ilmu Kenotariatan, Vol. 3, No. 1, (2022), h. 1-13.

<sup>24</sup> Bayu Indra Permana, *et al.*, *Problematika Pengenaan Pajak Penghasilan Terhadap Objek Waris: Dalam Perspektif Kepastian Hukum*, (Yogyakarta: Bintang Pustaka Madani, 2023), h. 19.

In the rights registration system, every time a new right is created and any legal acts that give rise to subsequent changes must also be proven by a deed. However, in carrying out the registration, it is not the deed that is registered, but the rights that are created and changes are made later. For the registration of rights and subsequent changes, a checklist is provided, which in English is called a register. The deed of grant of rights functions as a source of juridical data to register the rights granted in the land book. Likewise, the deed of transfer and encumbrance of rights functions as a data source for registering changes to the rights in the relevant land rights book. If changes occur, new books are not created, but instead they are recorded in the mutation room provided for the books in question.

The legal status of ownership of land rights if the name of the land title certificate in the grant is not changed is valid but does not have legal force in proving civil cases. In Islamic law verbal gifts are valid and can be executed or in writing, whereas in the Civil Code they must be made in an authentic notarial deed. The existence of a gift with a notarial deed contains a positive element when in the future there is a dispute regarding the object of the gift which is claimed by another party. These disputes usually occur because there are parties who object or will interfere with the existence of the donated property or objects. The existence of a notarial deed in this case is useful in preventing disputes through authentic evidence.

### 3.3 Arrangements for Grant Deeds Made by PPAT in the Future.

In the opinion of H. Salim, H.S., PPAT is "a person who is appointed and given the power by law to make a deed, where in the deed he makes, contains clauses or rules that regulate the legal relationship between the parties, relating to rights. Over land and/or ownership rights over apartment units".<sup>25</sup> An authentic deed is complete (binding) evidence, meaning that the truth of the things written in the deed is considered to be true, as long as it is true, no other party can prove otherwise. According to Subekti, a deed is different from a letter, namely "a writing that is deliberately created to be used as evidence of an event and is signed."<sup>26</sup> Based on this, it can be concluded that what is meant by the deed is:

- a. Actions (handling) or legal actions (*rechtshandeling*)
- b. A writing created to be used/used as evidence of a legal action, namely in the form of writing submitted to prove something. Which only he has the right to make.

A deed is a signed letter that contains information about events or things that are the basis of an agreement. According to Article 1867 of the Civil Code, it is stated that "written evidence is carried out using authentic writings or handwriting." The authentic deed in question is as explained in Article 1 1868 of the Civil Code (KUHPerdata), namely: "an authentic deed is a deed in the form determined by law, made by or in the presence of a public official who has authority for that purpose in the place where "One of the authentic deeds made by PPAT which is discussed in this article is a grant deed, where making a gift for immovable objects can be done with an authentic deed or private deed.

The transfer of gifts is carried out by making an authentic deed to guarantee legal certainty and so that it can become valid evidence. If the grant is received using an authentic deed, then the authentic deed of acceptance of the grant must be notified to the grantor and this notification must be made while the grantor is still alive. Before this notification occurs, there is no grant agreement that binds the grantor.

A gift according to Article 1666 in conjunction with Article 1667 of the Civil Code (Civil Code) is "an agreement whereby the donor, during his lifetime, free of charge and irrevocably, hands over an object for the needs of the recipient of the gift the handover. Grants can only be in the form of objects that already exist. "If the gift covers objects that will only come into existence at a later date then simply because of that the gift is void." Likewise, according to the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997, it is also stated that the grant agreement must be made in written form and a notarial deed made by the authorized PPAT according to the provisions of the applicable laws and regulations so that the transfer can be registered with the land office. That right. The making of the deed must also be attended by the parties carrying out the legal action and witnessed by at least 2 (two) witnesses who meet the requirements to act as explained in Article 1 38 paragraph (1) Government Regulation Number 24 of 1997. This was then reaffirmed in Article 1 1687 The Civil Code states that gifts made without using a notarial deed are considered to be void or never occurred.

Based on these provisions, it explains that what is called "gift (*Schenking*)" is an agreement (obligator) where one party undertakes freely (*omniet*) and absolutely (*onherrop elijk*) to give an object to another party, where the recipient The gift is an agreement, the gift (*schenking*) is immediately binding and cannot be revoked according to the wishes of one party.<sup>27</sup> These free words do not mean that there should not be any counter-performance. According to the law, a gift may be accompanied by a "burden" (*last*), namely an obligation on the part of the person receiving the gift to do something.<sup>28</sup> Article 1 which regulates gifts in civil law, it can be said that there are three types of elements of a gift, namely the grantor, the recipient of the gift and the goods or objects given, namely:

- a. Donor, namely as a property owner who will give part of his property to someone, whether to heirs, relatives or other people who are deemed worthy of being given a free gift without expecting anything in return provided that the gift giver must be an adult as explained in Article 1 1677 Civil Code.
- b. The recipient of the gift, namely someone who is either an adult or a minor, provided they are represented by their parent or guardian, who receives the assets from the donor free of charge. There is a prohibition as explained in Article 1678 of the Civil Code that husband and wife are prohibited from making gifts while they are married. However, this provision does not apply to gifts or gifts of movable property, the price

<sup>25</sup> Salim, HS dan H Abdullah. *Teknik Perancang Kontrak dan MOU*. Jakarta: Sinar Grafika, 2007, h.63

<sup>26</sup> Subekti, *Hukum Pembuktian*, (Jakarta: Pradnya Paramitha, 2005), h.25

<sup>27</sup> Asriadi Zainuddin, *Perbandingan Hibah Menurut Hukum Perdata dan Hukum Islam*, Jurnal Al-Himayah, Volume 1 Nomor 1, 2017, h. 78.

<sup>28</sup> R. Subekti, *Aneka Perjanjian*, (Jakarta: Citra Aditya Bakti, 1989). h. 112

of which is not too high, considering the ability of the donor.

- c. The object of the gift, which can only include existing items, the gift of items that do not already belong to the grantor is void (Article 1667 of the Civil Code).

The transfer of rights in a gift must meet the legal requirements for a transfer of rights in order to guarantee legal certainty for the parties, where there are 2 (two) conditions, namely:

1. Material requirements which essentially divide the grant requirements into the substance of each subject in the grant.
  - a) Donors must meet the following requirements:
    1. The donor is the legal owner of the object to be donated and his name is listed on the certificate or other than the certificate;
    2. Legally competent;
    3. If what is donated is joint property, then the donation must obtain prior approval from the husband or wife, and;
    4. There must be consent from the donor's biological children.
  - b) Grant recipients must meet the requirements:
    1. If the gift is property rights, then the recipient of the gift is an Indonesian citizen, government bank, religious body, and social body;
    2. If the grant is building use rights and/or business use rights, then the recipient of the grant is an Indonesian citizen and a legal entity established and domiciled in Indonesia;
    3. If the grant is a use right, then the recipient of the grant is the subject of the private use right, namely an individual Indonesian citizen, a legal entity established and domiciled in Indonesia, as well as a foreign legal entity that has a representative in Indonesia.
2. Formal requirements refer to the provisions in Article 137 paragraph (1) of Government Regulation Number 24 of 1997 which requires grants through authentic deeds. However, there are exceptions in the case where grants do not absolutely have to use an authentic deed if in circumstances determined by the Minister or Head of the Land Office if its authenticity is deemed sufficient to carry out land registration activities as regulated in Article 137 paragraph (2) of Government Regulation Number 25 of 1997.

In this case the grant process is made by and in front of PPAT. The grant procedure based on Article 1682 of the Civil Code is carried out by notarial deed. Grants can be made either by PPAT deed or notarial deed depending on the object of the grant. An example of a grant deed made by PPAT is a land grant, while one of the grant deeds made by a notary is a share grant deed. The making of the grant deed made by PPAT is attended by the parties, namely the grantor and the grantee and witnessed by at least two witnesses who meet the requirements. After that, the grant deed is signed by the parties, witnesses and PPAT, then PPAT is obliged to submit the deed and related documents to the Land Office for registration within a maximum of 7 days from signing. The PPAT then delivers written notification regarding the delivery of the deed to the parties. The gift deed is made to prove that the act of gift has indeed been carried out and to

explain that the grantor has carried out a legal act, namely handing over his gifted property in the form of land to the grantee and that the grantee is the new holder of rights to the land that has been gifted.

According to the author, the role of PPAT is needed in the procedures for implementing grants as outlined in the deed of grant of land rights.<sup>29</sup> Where in its implementation, it is ensured that the property donated is the right of the grantor and in the comparison of the gift deed there is approval from all the children so that they know to whom the property is donated by their parents, so that if it turns out to be detrimental to the legitimacy of the portie, it will be easier for the child giving the gift. Know it. Where by implementing the precautionary principle, protection is implemented for:

1. **Donation recipient:** The gift deed is not canceled by filing a lawsuit with the court;
2. **Children or heirs of the gift giver:** Know who their parents gave the gift to, their legal rights are protected, and know about the gift no more than 1/3;
3. **PPAT:** The grant deed made is not cancelled, the grant deed is in accordance with the procedures where the grant to Muslims is not more than 1/3 (one third), and does not harm other parties.

Regarding grants based on the Civil Code, according to the author, the role of PPAT is needed in the grant implementation procedures as outlined in the deed of grant of land rights. Where in its implementation, it is ensured that the property donated is the right of the grantor and in the comparison of the gift deed there is approval from all the children so that they know to whom the property was donated by their parents.

#### 4. Conclusion

PPAT's authority to make grant deeds as authentic deeds is limited by Article 2 paragraph (2) PP Number 37 of 1998. This is so that the authority given to PPAT does not conflict with the authority of other officials who can make authentic deeds, such as notaries. Article 1868 of the Civil Code explains that PPAT exists and is accepted by the legal community, so that the position of PPAT is recognized as an official who is authorized to carry out some of the functions of a public official, namely in making special authentic deeds of transfer and encumbrance with objects of land rights and ownership rights to apartment units. The legal status of ownership of land rights if the name of the land title certificate in the grant is not changed is valid but has no legal force in proving civil cases. Gifts made verbally are valid and can be implemented, whereas according to the provisions of the Civil Code they must be made in an authentic notarial deed.

Disputes usually occur because there are parties who object or will interfere with the existence of the donated property or objects. The existence of a notarial deed in this case is useful in preventing disputes through authentic evidence. The binding power of a PPAT deed as an authentic deed based on national land law is stated in Article 32 of Government Regulation Number 24 of 1997 concerning

<sup>29</sup> Khafid Setiawan, Bhim Prakoso, & Moh. Ali, *Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian*, Jurnal Ilmu Kenotariatan, Vol. 2, No. 2, (2021), h. 43-52.

Land Registration, not perfect evidence as intended in Article 1870 of the Civil Code. In granting land rights with the consent of some children, it is necessary to avoid causing disputes in the future. Preventive legal protection for the parties which can be carried out with PPAT requires the party giving the gift to obtain the consent of all his children, and ensure that the property donated is his and does not own more than 1/3. The repressive protection is through the Religious Courts.

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