

The Function of the Land Deed Making Officer in the Prevention of Land Disputes



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ABSTRACT: Disputes or cases regarding land become a social, legal, or cultural problem in Indonesia because it involves the interests of the community and can cause prolonged legal problems and one of the officials appointed by the government to resolve problems or disputes regarding land is the Land Deed Making Officer. Therefore, the formulation of the problem in this study is how to regulate the law regarding the function of the Land Deed Making Officer in preventing land cases and what are the legal responsibilities of the Land Deed Making Officer in preventing land cases. The research method used is normative research method. The results of this study are first, every object that will be transferred or guaranteed must be checked at the land office before the deed is signed. Second, the form of responsibility of the Land Deed Making Officer in providing legal protection to parties is based on the principle of responsibility for error (based on fault of liability). So that there must be a strong source of law equivalent to the law, not just implementing regulations, and it is important for the Land Deed Making Officer not only to pursue formal truths, but material things are also important.

KEYWORDS: Land Deed Making Officer, Prevention, Land Disputes.

A. INTRODUCTION

Throughout the history of Indonesia, farmers who have been the backbone of the agrarian sector, since the colonial era, independence, until now, have mostly not enjoyed what true independence means, which is free from oppression, poverty and becoming a dignified nation in the international world.¹ Article 2 paragraph (1) Number 5 of 1960 concerning Basic Regulations on Agrarian Principles states that on the basis of the provisions in Article 33 paragraph (3) of the 1945 Constitution and matters referred to in article 1, earth, water and space, including the natural resources contained therein are at the highest level controlled by the state, as an organization of power of all the people. With the provisions of Article 33 paragraph (3) of the 1945 Constitution which states that the earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people.

In this case, in realizing development, it should be in favor of the interests of many people. Article 6 of the Basic Agrarian Law stipulates that all land rights have a social function. The description of this Article is that land must be used according to the circumstances or nature and purpose of granting rights. The function and task of the state as an organization of power of all people (Indonesia) is to regulate efforts to achieve common prosperity and the state has a strong role to distribute prosperity to all people (Indonesia) in accordance with the principles of justice and prosperity or preference for the interests of the people.²

The status of land rights in Indonesia can be divided into two, namely permanent land rights and temporary land rights.³ Permanent land rights are regulated in the provisions of article 16 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles including proprietary, cultivation rights, building rights, use rights, rental rights, land clearing rights, and forest product collection rights. Temporary land rights are regulated in the provisions of article 53 of the Basic Agrarian Law including liens, profit-sharing business rights, hitchhiking rights, and agricultural land lease rights. The temporary nature of these land rights means that at one time they cease to exist as legal institutions and are therefore deemed incompatible with the principles of the National Land Law.⁴

¹ Achmad Sodiki, *Politik Hukum Agraria* (Jakarta: Konstitusi Press (Konpress), 2013).

² Muchsin Muchsin and Anna Anna, *Hukum Agraria Indonesia Dalam Perspektif Sejarah* (Malang: PT. Refika Aditama, 2007).

³ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria Isi Dan Pelaksanaannya* (Jakarta: Djamban, 2007).

⁴ Harsono.

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Disputes in the land sector can lead to prolonged conflicts between residents of the community in dispute or between community members and a legal entity. It all started with questions about who was more entitled to the land, so the parties competed to prove to each other that they were more entitled to the land. Through this right of control from the state, the state as the ruling body will always be able to control or direct the management of the functions of the earth, space water and natural resources contained therein in accordance with existing regulations and policies, namely within the scope of juridical control with a public aspect.⁵

Increasingly, there is a need for legal certainty and certainty of land ownership rights, to obtain legal certainty and land rights certainty, the community needs to register land to obtain a land title certificate that serves as a strong proof of land ownership rights.⁶ Land registration is intended to provide certainty of rights and legal protection for land rights holders by proving land certificates, as an instrument for structuring land tenure and ownership as well as an instrument of control in the use and utilization of land. Land registration is *rechtcastral* which includes land measurement, mapping, and bookkeeping activities; registration of such rights; granting a valid Land Rights Certificate as a strong evidentiary tool.⁷

Land Deed Making Officer besides having duties, also has authority. The authority of the Land Deed Making Officer is to make deeds. A deed made by an official is a deed regarding certain legal acts regarding land rights and property rights to apartment units located within his work area. Certain legal acts evidenced by the deed of the Land Deed Making Officer, namely buying, and selling; exchange; grant; income into the company (*inbreng*); sharing of common rights; granting of dependent rights; granting building use rights/use rights over freehold land; The grant of power imposes a dependent right. The deed made by the Land Deed Making Officer is in the form of a signed letter made by a person or authorized official and functions as evidence of an act or legal action or event that has been committed by the parties.⁸

According to article 55 of the Regulation of the Head of the National Land Agency Number 1 of 2006 juncto Regulation of the Head of the National Land Agency Number 23 of 2009 concerning the provisions for the implementation of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer, it is determined that " Land Deed Making Officer is responsible in every act of deed." Problems arise during the registration of the transfer of land rights to the object of dispute due to the return of the files or documents used in the registration by the land office. So that in preventing land cases as stated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases, there is a need for legal remedies related to the function of Land Deed Making Officials in preventing land cases.

The existence of this research is in addition to research related to land cases and Power Deed Making Officials, which distinguishes it from previous research with related themes is to analyze related to how the function of Land Deed Making officials in preventing land cases, this study will discuss the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases. Previous research has not been raised with this more specific theme, such as in the thesis from Ismudiyatun which discusses how the duties and functions of Land Deed Making Officials in land registration in Kudus Regency are in accordance with the Regulation of the Head of the National Land Agency Number 1 of 2006 and what factors make the implementation of land registration in Kudus Regency and how efforts to handle it.⁹ From Ekasari discussed how the responsibility of the Land Deed Making Officer in the transfer of land rights and how the implementation of registration of land rights transfer by sale and purchase in Magetan Regency.¹⁰

So that the formulation of the problem in this research article is to analyze how the legal regulation on the function of the Land Deed Making Officer in preventing land cases and to find out how the legal responsibility of the Land Deed Making Officer in preventing land cases. It is hoped that this research will add to the analysis related to land cases.

B. METHOD

In this study, the author uses normative research methods or doctrinal legal research, literature studies or document studies, namely research aimed at written regulations or other legal materials.¹¹ This research is also prescriptive, aims to provide an

⁵ Muhammad Bakri, *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)* (Yogyakarta: Citra Media, 2007).

⁶ Adrian Sutedi, *Sertifikat Hak Atas Tanah* (Jakarta: Sinar Grafika, 2012).

⁷ J.B. Daliyo, *Hukum Agraria I* (Jakarta: Prehallindo, 2001).

⁸ Urip Santoso, *Pejabat Pembuat Akta Tanah* (Jakarta: Kencana, 2016).

⁹ Anna Ismudiyatun, "Tugas dan Fungsi Pejabat Pembuat Akta Tanah (PPAT) dalam Pendaftaran Tanah di Kabupaten Kudus Propinsi Jawa Tengah" (Semarang, Universitas Diponegoro, 2009).

¹⁰ Dhian Ekasari, "Analisis Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) dalam Pelaksanaan Peralihan Hak Atas Tanah Sengketa di Kabupaten Magetan" (Semarang, Universitas Islam Sultan Agung, 2021).

¹¹ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif* (Jakarta: PT. Raja Grafindo Persada, 2004).

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overview of the facts accompanied by an accurate analysis of applicable laws and regulations and practices regarding the causes of a thing.¹² The approach used is a statutory approach; conceptual approach; and case approach.¹³

C. RESULT AND DISCUSSION

LEGAL REGULATION ON THE FUNCTION OF LAND DEED MAKING OFFICER IN PREVENTING LAND CASES

Legal Regulations to Prevent Land Cases

The occurrence of land cases in Indonesia proves that land management in Indonesia has not been good and there is not strong legal certainty of land rights. The number of land cases shows that there has not been a community welfare. Land cases that occur in Indonesia are increasing from year to year and no effective settlement method has been found, in the sense that it does not harm the disputing parties. In general, land disputes arise due to several factors, namely due to incomplete regulations; regulatory non-compliance; land officials who are less responsive to the needs and amount of land available; less accurate and incomplete data; erroneous soil data; limited human resources in charge of resolving land disputes; erroneous land transactions; the actions of the right applicant or the existence of settlements from other agencies, so that there is overlapping authority.¹⁴

The rise of land cases shows that the implementation of land management has not been optimal and hampers ongoing development programs. The increase in the number of land cases is certainly an important concern to find a way out so that land can be managed and utilized as an asset that can provide the greatest prosperity for the people of Indonesia. In Indonesia, especially in the regions, if there is a land case, it is usually resolved by traditional elders such as traditional chiefs, tribal chiefs, or influential people in an area. This is because the local traditional head / head generally has data on land in their respective areas, although the land data is rarely written, but the head or traditional leader concerned knows the ownership of land in his area. As time goes by, the traditional leaders are increasingly lost, meaning that there is no longer a figure who can resolve land disputes, land conflicts, land cases, so this also results in many land case problems that have not been resolved properly. The settlement of land disputes is not purely private law, but also falls within the jurisdiction of public law.¹⁵

In order to provide legal certainty to implement land policy, the government, in this case the Ministry of Agrarian and Spatial Planning/National Land Agency formed Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases. Based on this regulation, land cases are divided into 3 groups, namely disputes, conflicts, and cases. Disputes according to Article 1 point 2 are land disputes between natural persons, legal entities, or institutions that do not have a broad impact. Conflict according to Article 1 point 3 is a land dispute between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have a broad impact. Meanwhile, cases according to Article 1 number 4 are land disputes whose handling and settlement are through judicial institutions.

According to Article 5 of Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases states that:

“Cases that constitute disputes and conflicts are classified into 3 classifications:

- a. Serious cases are cases that involve many parties, have complex legal dimensions, and/or have the potential to cause social, economic, political and security turmoil.
- b. A medium case is a case between parties whose legal and/or administrative dimensions are quite clear which, if determined to be resolved through legal and administrative approaches, does not cause social, economic, political and security turmoil.
- c. A minor case is a case of a complaint or request for a referral that is administrative technical in nature and the resolution is sufficient with a letter of settlement instructions to the complainant or applicant.

There are various kinds of subjects involved in this land case, there are several classifications, which can be between central government agencies; between government agencies; between local governments and central governments; between local governments; between communities and governments; between communities. One of the land cases that often occurs is because proof of ownership of land has less legal force because the community does not understand and understand about land law. The problems that occur are not only legal problems, but also problems regarding the physical land itself. Often people assume that by physically controlling the land or living on a piece of location for a long time, it means that the land or location is theirs.

The Agrarian Reform Consortium recorded at least 450 agrarian conflicts throughout 2016, covering an area of 1,265,027 hectares and involving 86,745 Family Cards spread across all provinces in Indonesia. In the previous year there were 252 agrarian conflicts, so there was a significant increase this year, almost double the number. If on average, then every day there is one agrarian conflict and 7,756 hectares. Plantations remain the highest causing sector of agrarian conflicts, followed by the property

¹² Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).

¹³ Soekanto and Mamudji, *Penelitian Hukum Normatif*.

¹⁴ Mudjiono Mudjiono, “Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan,” *Jurnal Hukum IUS QUIA IUSTUM* 14, no. 3 (2007), <https://journal.uui.ac.id/IUSTUM/article/view/1087>.

¹⁵ Mudjiono.

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sector, then in the infrastructure, forestry, mining, coastal and marine sectors, finally the oil and gas and agriculture sectors.¹⁶ Many agrarian conflicts in 2016 occurred because: (1) at the regulatory level there was no paradigm shift in looking at land and natural resources. Land and Natural Resources are still seen as natural wealth that must be managed by large-scale investors both national and foreign; (2) Corruption and Collusion in the granting of land and natural resource concessions; (3) the government apparatus, especially the Police, Local Government has not changed in dealing with agrarian conflicts in the field. The number of land cases from disputes, conflicts, and land cases in Indonesia every year has increased based on justisia.atrbpn.go.id applications along with the number of disputes, conflicts, and land cases for the past 3 years from 2017 to 2019 obtained results in 2017 reaching 12,680 cases; 2018 reached 22,355 cases; 2019 reached 30,817 cases.

The high number of land cases is caused by the inequality of control of natural resources between communities that depend on natural resource-based economic resources (land, forests, plantations, environmental services, etc.) with control by the business sector, especially the large-scale industrial sector of plantations, forestry and mining, and control by the state which still negates the rights of indigenous / local peoples (tenure, traditional, ulayat). Most land cases in Indonesia are dominated by land rights transfer registrations. The high lift shows that the reconstruction or prevention of potential cases in this case disputes, conflicts and land cases in Indonesia has not been fully understood by the competent officials, in this case the Land Deed Making Officer and other related parties. So that regarding this matter, land cases lead to land disputes, land conflicts and land cases in court, it is due to the disharmony between regulations, as well as officials who are authorized in the process and public knowledge about the land system in Indonesia.

When viewed from the subject (problematic parties), land cases show community disputes with communities (including investors), communities with government agencies, and between government agencies. Land cases in this case disputes, conflicts and agrarian cases currently show that land administration in Indonesia needs improvement, to provide legal certainty of land rights. One of the root causes of the problem is caused by the land registration system itself. Thus, to provide legal certainty and protection, land rights holders are given certificates. Certificate is a letter of proof of rights that applies as a strong proof of physical data and juridical data contained therein, if the physical data and juridical data are in accordance with the data in the letter of measurement and land book.¹⁷

An authentic deed essentially contains formal truth in accordance with what the parties notified to the Land Deed Making Officer. However, the Land Deed Making Officer has the obligation to ensure that what is contained in the Land Deed Making Officer deed has really been understood and in accordance with the wishes of the parties, namely by reading it so that it becomes clear the contents of the Land Deed Making Officer Deed, and providing access to information, including access to related laws and regulations for the parties signing the deed. Thus, the parties can decide freely whether to approve the contents of the Land Deed Making Officer to be signed.

Land Deed Making Officer as a general officer appointed by the Government and authorized to make authentic deeds regarding certain legal acts regarding land rights. The Land Deed Making Officer is authorized to make deed agreements that intend to transfer land rights, grant new rights to land, mortgage land or lend money with land rights as dependents. The issuance of an authentic deed to the issuance of a Certificate of Land Rights is an effort to realize certainty and provide legal protection for interested parties (clients). Because legal traffic in public life requires evidence that clearly determines the rights and obligations of a person as a legal subject in society. In this case, the evidence in question is the Certificate of Land Rights. Authentic deeds as the strongest evidence have an important role in every legal relationship in public life. The role of the Land Deed Making Officer in community service is to speed up certification until an authentic deed in the form of a Land Rights Certificate can be issued.

In carrying out the profession of Land Deed Making Officer, they are Land Deed Making Officers under the legal umbrella of Government Regulation Number 24 of 2016 as a substitute for Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officers. In the Regulation, it has been clearly stated that Land Deed Making Officer is a General Officer who is authorized to make authentic deeds and other authorities as stipulated by Law. It can be interpreted that Land Deed Making Officer is a Government Official (although not given a salary by the government) which is an extension to carry out some government authority, this can be proven by the use of the State emblem on the Land Deed Making Officer stamp bearing the Garuda Bird symbol. Because his duty is one of the duties of the government and the State, the results of his work have legal consequences, the Land Deed Making Officer is burdened with some of the power of the State and gives to his deeds authentic and executory powers.¹⁸

Functions of Land Deed Making Officer in Land Dispute Prevention

The profession in the field of law is a noble or honorable profession or a noble profession (*officium nobile*) and is very influential in the State Order. Professions in the Field of Law, including Police, Advocates, Prosecutors, Judges, and Notaries and Land Deed

¹⁶ Priyo Katon Prasetyo et al., *Permasalahan Dalam Perencanaan Dan Persiapan Pengadaan Tanah Untuk Kepentingan Umum Di Indonesia* (Yogyakarta: STN Press, 2020).

¹⁷ Santoso, *Pejabat Pembuat Akta Tanah*.

¹⁸ Suhrawadi K. Lubis, *Etika Profesi Hukum* (Jakarta: Sinar Grafika, 2006).

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Making Officers are the Main Pillars in Law Enforcement to carry out the National Law Development Strategy. High Professionalism and Integrity of everyone who carries out the Profession in the Field of Law is absolutely needed in accordance with their Main Duties, Functions and Authorities. The Legal Profession as an Honorable Profession, there are Professional Moral Values that must be obeyed by the Legal Apparatus who carry out the profession, which are as follows: Honesty, Authenticity, Responsibility, Moral Independence, and Moral Courage.¹⁹

The establishment of a Specific Legal Umbrella governing the Position of Land Deed Making Officer with Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer when viewed the basis for its formation is sourced from Article 7 paragraph (3) of Government Regulation Number 24 of 1997, which is based on the Basic Regulation of Agrarian Principles that: "The Land Deed Making Officer Position Regulations as referred to in paragraph (1) are regulated by Government Regulations". In Article 7 paragraph (1) of Government Regulation Number 24 of 1997 it is stated that "Land Deed Making Officer as referred to in Article 6 Paragraph (2) is appointed and dismissed by the Minister. While the Government Regulation in question is Government Regulation Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning Land Deed Making Officer Position Regulations, as well as its Implementing Regulations regulated in the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 4 of 1999 concerning Provisions of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Making Officials.

In carrying out their duties, the Land Deed Making Officer must adhere to the principle of *Tabellionis Officium Fideliter Exercebo* which means that the Land Deed Making Officer must work traditionally. This means that no matter how advanced the era, no matter how sophisticated the electronic devices, what the Land Deed Making Officer does in seeking formal truth must remain the same as it has been established. It can be said that it is already a Standard Operating Procedure.²⁰ This is in accordance with the juridical character of the Land Deed Making Officer, the first Land Deed Making Officer deed, the cancellation of the Land Deed Making Officer deed by the judge cannot be justified, because the deed is the will of the facers, the Land Deed Making Officer only records (writes) what is desired and stated by the parties facing the Land Deed Making Officer, there is no obligation for the Land Deed Making Officer to materially investigate the matters raised by the Land Deed Making Officer. The second is that the function of the Land Deed Making Officer is only to record the wishes expressed before the Land Deed Making Officer. Third, the Land Deed Making Officer has no material liability for matters raised before the Land Deed Making Officer. Fourth, the Land Deed Making Officer deed has perfect evidentiary power for the parties, their heirs and anyone who gets rights from the deed. Fifth, each Land Deed Making Officer deed contains only one act or legal act. If a Land Deed Making Officer deed contains more than one legal act, then the deed has no executory title force and is invalid.²¹

The role of Land Deed Making Officer in preventing land cases is indeed very crucial in carrying out the duties of his position, because Land Deed Making Officer in carrying out his duties and position is also vulnerable to being entangled in the law, in addition to maintaining a balance against strict supervision for Land Deed Making Officer in carrying out his office duties. The guidance and supervision of the implementation of the duties of the Land Deed Making Officer is carried out by the Head of the Provincial National Land Agency and the Head of the local Land Office.²² A Land Deed Making Officer who once encountered a legal problem related to the deed he made containing legal defects is often called by law enforcement officials in the framework of law enforcement processes, whether they are witnesses, suspects or defendants. In the process of law enforcement by law enforcement officials, there are special procedures that are not normatively regulated in the Land Deed Making Officer position regulations. Unlike the treatment given to the Notary Office, where the provisions regarding summoning and taking deed minutes have special procedures in the law enforcement process.

Provisions regarding the legal protection of Land Deed Making Officer are not regulated normatively by Land Deed Making Officer Position Regulations, besides that a Land Deed Making Officer in carrying out the functions of his office should not be subject to the principle of equality before the law, if in carrying out his position has followed the procedures prescribed by laws and regulations. However, with the "approval" of the Land Deed Making Officer being examined by investigators, public prosecutors and/or judges, there is already an element of conditioning for the Land Deed Making Officer to be placed in a position not to be in the category of "nobile person" or "officium nobile", but like a person who is subject to the principle of equality before the law as happens to people in general. Furthermore, it is a fundamental question whether the Land Deed Making Officer

¹⁹ Abdulkadir Muhammad, *Etika Profesi Hukum* (Bandung: PT. Citra Aditya Bakti, 2011).

²⁰ Habib Ajie, *Aktualisasi Jabatan Notaris Pasca Lima Tahun Berlakunya Undang-Undang Jabatan Notaris (UUJN)* (Yogyakarta: Program Studi Magister Kenotariatan Fakultas Hukum UGM, 2009).

²¹ M. Ali Boediarso, *Komplikasi Kaidah Hukum Putusan Mahkamah Agung, Hukum Acara Perdata Setengah Abad* (Jakarta: Swa Justitia, 2005).

²² "Peraturan Kepala Badan Pertanahan Nasional 1 Tahun 2006 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 37 Tahun 1998 Tentang Pejabat Pembuat Akta Tanah." (2006).

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which is a certain position that carries out part of the government's duties, especially in the land sector in the Indonesian legal system, has received proper legal protection.

In the world of Land Deed Making Officer, it is known as adagium: "everyone who comes before a Notary/Land Deed Making Officer has correctly said no directly proportional to telling the truth, which means a lie or giving false information, it is the responsibility of the concerned (the parties)". Then, the Land Deed Making Officer deed as an authentic deed has perfect evidentiary power so that the parties who read the deed must see what it is and the notary does not need to prove anything on the deed made before or by a notary. Therefore, other people who judge or declare the Land Deed Making Officer is incorrect, then those who assess or declare it must prove their judgment or statement in accordance with applicable legal procedures.

LEGAL RESPONSIBILITIES OF LAND DEED MAKING OFFICER IN PREVENTING LAND CASES

The Role of Land Deed Making Officer to Prevent Land Cases

In land cases, the definition of disputes, conflicts, and land cases is distinguished as stipulated in Article 1 number (1) to paragraph (4) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning / National Land Agency Number 11 of 2016 concerning the Settlement of Land Cases, by providing limitations on the definition of disputes, conflicts, and land cases. impact: finition states that Land Cases are Disputes, Conflicts, and Land Cases to obtain settlement handling in accordance with the provisions of laws and regulations and/or land policy; Land Disputes, hereinafter referred to as Disputes, are land disputes between natural persons, legal entities, or institutions that have no broad impact; Land Conflict, hereinafter referred to as Conflict, is a land dispute between individuals, groups, groups, organizations, legal entities, or institutions that have a tendency or have a broad impact.

In current practice, there are many cases of land disputes that are tried in general courts in civil and criminal cases, there are also land disputes that are tried in the state administrative court regarding the cancellation of certificates as products of state administrative entities, there are also land cases that enter religious courts regarding the position of joint property land in marriage, inheritance and waqf land disputes. Therefore, many land cases/disputes filed in general courts, religious courts and administrative courts that have the power to remain cannot be executed due to conflicting decisions. Various regulations changed or replaced to resolve disputes, conflicts and land cases have not yet reaped results, nor have the concepts or ideas put forward by experts and academics have minimized disputes. The last idea is to form a land court which is actually included in the Land Law Bill which until now has not been realized. Thus, it is necessary to strengthen regulations and strengthen institutions that handle Dispute Resolution, Conflict and Land Cases. Commitment and political will from the Government and the bearance of formal power and all Indonesian people so that the discourse on the establishment of a Special Land Court can be realized in order to resolve land disputes or conflicts quickly based on fair law.

The Deed of the Land Deed Making Officer is a proof of deed consisting of a date and a signature according to the events that form the basis of a right or agreement used in evidence. The deed made by the Land Deed Making Officer who is authorized to make deeds is an authentic deed.²³ In carrying out their duties, the Land Deed Making Officer applies the precautionary principle to minimize the occurrence of lawsuits. The application of this precautionary principle is part of efforts to prevent cases from occurring in the future. In the implementation of land registration activities for the first time produce a letter of proof of rights in the form of a certificate. Ownership of land rights that so far have not had a certificate from the Land Office, but only based on evidence of ownership rights administered from the village such as Letter C, can immediately register them with the relevant Land Office in order to immediately obtain a certificate of Ownership of Land Rights. In managing land that is still under Letter C, the Land Deed Making Officer pays close attention to the management at the Kelurahan/Village, as well as the management at the Land Office so as not to experience problems in the future. In addition, in managing land registration that is still Letter C, the Land Deed Making Officer applies the precautionary principle in order to maintain the dignity of the position by the Land Deed Making Officer, as well as implements matters stipulated by law. The precautionary principle by the Land Deed Making Officer is very necessary because it supports the quality of work in making deeds and community services.²⁴

A deed of the Land Deed Making Officer is said to be valid if the deed drawn up by the parties must meet the requirements specified in the law. However, if the terms of the agreement and competence are not met, the deed that has been made can be requested for cancellation through the Court. If certain objects and legal causes are not fulfilled, the deed made is null and void. This means that the deed is considered non-existent.²⁵ A Land Deed Making Officer carrying out the duties and authorities of his position sometimes makes mistakes which may involve formal or material requirements which result in the loss of the authenticity of the deed or the strength of proof of the deed no longer being perfect evidence but becoming underhanded, which can be done

²³ Djoko Purnomo, *Kedudukan Dan Fungsi Camat Sebagai Pejabat Pembuat Akta Tanah* (Surabaya: Universitas Airlangga, 2006).

²⁴ Hendri Dwicahyo Wanda, "Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah dalam Pengurusan Peralihan Tanah 'Letter C,'" *Masalah-Masalah Hukum* 46, no. 2 (April 2017): 112-23.

²⁵ Salim HS., *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT)* (Jakarta: PT. Raja Grafindo Persada, 2016).

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by Land Deed Making Officer intentionally or unintentionally. The role of the Land Deed Making Officer in preventing intellectual and material falsification in the making of the deed aims to provide guarantees for a Land Deed Making Officer to be able to defend himself and defend his rights to work as a Land Deed Making Officer. The Land Deed Making Officer in carrying out the task of making a deed, in accordance with their responsibilities, has carried out the standard rules that are used as the basis or basis in the Land Deed Making Officer's efforts to provide legal protection for the parties, both in a preventive and repressive manner, before and after the deed is signed sale and purchase of land, and the process of transferring land rights.

As for the form of the role of the Land Deed Making Officer in preventing intellectual and material falsification in the making of deeds and the process of transferring land rights, namely: ensuring that the rights and obligations of the parties in buying and selling have been fulfilled in accordance with the provisions of Article 1458 of the Civil Code, as well as the legal terms of the agreement according to with Article 1320 of the Civil Code and the fulfillment of the terms of sale and purchase in cash, clear and real; make a deed of sale and purchase in the form and procedure in accordance with what has been determined in the applicable laws and regulations. The Land Deed Making Officer fully understands the legal provisions and laws and regulations relating to the duties and authorities of the position of Land Deed Making Officer; The Land Deed Making Officer does not only rely on formal truth based on written data or information from the parties, but it is better for the Land Deed Making Officer to try to investigate the material truth of the deed to be made, although so far there is no regulation requiring a Land Deed Making Officer to do so; the making of a deed of sale and purchase must be based on the form and procedure stipulated by the laws and regulations, the Land Deed Making Officer must also really state what the parties want in the deed; ensure that in drawing up the deed the Land Deed Making Officer must be present before him at the same time as the interested parties; The Land Deed Making Officer must thoroughly study, be thorough, careful and neat in making the deed, especially regarding the legal actions that will be contained in the deed, so that the actions taken do not cause harm to the parties or other parties; Land Deed Making Officers do not rely on or fully entrust the ability of Land Deed Making Officer office employees even though these employees have high credibility. The Land Deed Making Officer must continue to research and revise the draft deed that he will make and sign.

The Land Deed Making Officer serves applications to make certain land deeds mentioned above. In the face of such applications, the Land Deed Making Officer shall take a decision to reject or grant the application concerned. If he grants the request, a deed is drawn up which is intended.²⁶ Land Deed Making Officer has a role to determine whether an action can be stated in the form of a deed or not, so that the implementation of the principle of prudence (prudence) must be carried out, one of which is by ensuring the validity and completeness of documents related to the object of the agreement.

Regarding the responsibility of the Land Deed Making Officer lies only in the formal correctness of the data provided by the face. This is as stipulated in Article 54 Paragraph (2) and Paragraph (3) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 as amended and supplemented by Perkebunan Number 23 of 2009 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer as referred to in paragraph (1) Land Deed Making Officer is not allowed contains the words "in accordance with or according to the information of the parties unless supported by formal data" and the Land Deed Making Officer has the authority to refuse the making of deeds, which are not based on formal data. Based on the above rules, Land Deed Making Officer is not allowed to contain the words "according to or according to the description of the parties" unless supported by formal data. Formal data in the form of identity, data and land certificates, sale and purchase binding agreements and sale and purchase deeds are confirmed to be formally correct by the Land Deed Making Officer, while material truth is not the responsibility of the Land Deed Making Officer.

The thing that needs to be considered by the Seller and the Land Buyer Party is that the Land Deed Making Officer who will be asked to make a deed of land sale and purchase agreement is the Land Deed Making Officer whose seat and authority covers the area where the land is used as the object of the sale and purchase transaction. So, it is not a Land Deed Making Officer whose position and authority covers the area of existence of parties involved in land sale and purchase transactions.²⁷ Article 101 paragraph 1 and paragraph 3 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 explains:

"The preparation of the Land Deed Making Officer deed must be attended by the parties who perform the legal act concerned or the person authorized by him with a written power of attorney in accordance with applicable laws and regulations. The Land Deed Making Officer must read the deed to the parties concerned and provide an explanation of the content and purpose of making the deed, and the registration procedure that must be carried out subsequently in accordance with applicable regulations."

Making a sale and purchase deed Land Deed Making Officer must pay attention to the subject and object in the sale and purchase. Regarding the subject of buying and selling, namely the seller and the buyer, it must be ascertained in advance whether

²⁶ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya* (Jakarta: Universitas Trisakti, 2013).

²⁷ Eko Yulian Isnur, *Tata Cara Mengurus Surat-Surat Rumah Dan Tanah* (Yogyakarta: Pustaka Yustisia, 2009).

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the seller is a capable legal subject and has the authority to carry out all legal actions on the object being traded and the buyer is a legal subject who qualifies as the holder of land rights and / or property rights to the apartment unit on the object being traded.²⁸ The preparation of the deed as referred to in Article 38 paragraph (1) of Government Regulation Number 24 of 1997 is attended by the parties who commit the legal act concerned and witnessed by at least 2 (two) witnesses who are qualified to act as witnesses in the legal act. Furthermore, regarding the object of sale and purchase, it must also be noted that the object of sale and purchase as specified in Article 39 of Government Regulation Number 24 of 1997 Land Deed Making Officer refuses to make a deed.

Land Deed Making Officer's Accountability to Deeds Made

Land problems have now penetrated complex social problems and require solutions with a comprehensive approach. The development of the nature and substance of land dispute cases is no longer only a land administration issue that can be resolved through administrative law, but the complexity of the land has penetrated the political, social, cultural realms and related to nationalism and human rights issues. Land issues also enter criminal law issues, namely related to land cases accompanied by violations of criminal law (criminal acts). Guided by some of the most recent land cases, the common causes of land disputes, land conflicts, and land cases can be grouped into Legal factors include overlapping regulations, inadequate regulations, overlapping judiciary, settlement, and convoluted bureaucracy. While non-legal factors include overlapping land use, high economic value of land, increased public awareness, land remains population increases, and poverty. So, the emergence of land conflicts can be grouped into two factors, namely legal factors, and non-legal factors.

a. Legal Factors

It consists of three parts, namely the overlapping laws and regulations and the overlapping judiciary. Overlapping regulations such as the Basic Agrarian Law as the parent of regulations in the field of agrarian resources, but in making other regulations do not place the Basic Agrarian Law as the parent law, so that it conflicts with new sectoral laws such as the Forestry Law, Basic Mining Law, and Investment Law. And what is meant by overlapping courts, for example, at this time there are three judicial institutions that can handle a land conflict, namely civilly, criminally and state administration. In certain forms of conflict, one of the parties who wins civilly does not necessarily win criminally (in the case of a conflict accompanied by a criminal act) or will win in the State Administrative Court.

b. Non-Legal Factors

In non-legal factors that are at the root of land conflicts, including overlapping land use, high land economic value, public awareness of land use increases, land decreases while the community continues to grow, and due to poverty; overlapping land use, i.e. over time rapid population growth results in population numbers increasing, while food production remains or may decrease due to many agricultural lands switching functions it is inevitable that the same piece of land may arise different interests; high economic value of the soil; increased public awareness; land remains while the population increases; and poverty.

The responsibility of the Land Deed Making Officer in providing legal protection to the parties, arises due to unlawful acts in carrying out the duties of his position, causing losses to the parties who request their services. The responsibility of the Land Deed Making Officer in providing legal protection to the parties, arises due to unlawful acts in carrying out the duties of his position, causing losses to the parties who request their services. The concept of Land Deed Making Officer liability when associated with his profession of making authentic deeds adheres to the principle of responsibility based on fault of liability, so that in making authentic deeds, Land Deed Making Officers must be responsible if there is an error or violation of the deed he made. Conversely, if the element of violation occurs from the parties, then the Land Deed Making Officer concerned cannot be held accountable, because the Land Deed Making Officer only records what is submitted by the parties to be stated in the deed.

False information submitted by the parties is the responsibility of the parties if the Land Deed Making Officer is not impartial. This opinion is in accordance with the results of the author's interview with Notary Diana Hexa Dewi, S.H., who said that, basically the Land Deed Making Officer is not responsible for the contents of the deed made before him, because the content of the deed is the will and agreement desired by the parties, in this case the Land Deed Making Officer's task is only to pour the agreement of the parties into the form of an authentic deed, so that the Land Deed Making Officer is only responsible for the formal form of authentic deed as stipulated by the Laws. Land Deed Making Officer in carrying out his position in carrying out some activities of transfer and registration of land rights in Indonesia in accordance with the law in order to create certainty, order and legal protection, especially for interested parties in the deed, generally for all communities before carrying out the deed of sale and purchase of land rights, the Land Deed Making Officer must first inspect the local Land Office to find out the suitability of land title certificates with the lists in the Land Office by showing the original certificate to the Land Office. In addition, the Land Deed Making Officer also has the right to refuse to make a deed in the event of the will of the parties or the fact that is not based on formal data.

The responsibility of the Land Deed Making Officer in providing legal protection to the parties, arises due to unlawful acts committed by the Land Deed Making Officer in carrying out the duties of his position, causing losses to the parties who request

²⁸ Hatta Isnaini Wahyu Utomo, *Memahami Peraturan Pejabat Pembuat Akta Tanah* (Jakarta: Kencana, 2020).

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their services. The form of responsibility of Land Deed Making Officer when related to his profession adheres to the principle of fault of liability. So that in making an authentic deed, the Land Deed Making Officer must be responsible if there is an error or violation of the deed he made. However, if an element of error or violation occurs from the parties, then the Land Deed Making Officer concerned cannot be held accountable, because the Land Deed Making Officer only records what is conveyed by the parties or the facts to be stated in the deed. False information submitted by the parties is the responsibility of the parties.²⁹ The Land Deed Making Officer in this case only confirms what happened, what was seen, and said by the parties then the Land Deed Making Officer poured it into the deed. So that if there is a mistake made by a Land Deed Making Officer either intentionally or due to negligence abusing the authority of Government Regulation 37 of 1998 resulting in people experiencing losses, and if the mistake can be proven by the party who feels aggrieved, then the Land Deed Making Officer can be sanctioned in accordance with the laws.

For this reason, the Land Deed Making Officer must also look correctly at the process of the stages that must be carried out, both formal and material provisions in making a sale and purchase deed that meets the formal requirements:

- a. Article 97 paragraph (1) of the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Term of Implementations of Government Regulation Number 24 of 1997 concerning Land Registration.
- b. Article 96 Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments of Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Land Registration.
- c. Article 98 paragraph (2); Article 99 paragraph (1); Article 101 paragraph (1) Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Term of Implementations of Government Regulation Number 24 of 1997 concerning Land Registration.
- d. Article 23 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer.
- e. Article 40 paragraph (1) and paragraph (2), Government Regulation Number 24 of 1997 concerning Land Registration.
- f. Article 91 paragraph (1) of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies.

Then the material condition is whether the seller has the right to sell the rights to the land; whether the buyer has the right to purchase the land in question; whether the seller or buyer acts alone or as a power of attorney; whether the land is allowed to be bought and sold and not in dispute. In this case, the Land Deed Making Officer in making an authentic deed, is not only limited to referring to the formal truth submitted by the parties, because the formal truth is not necessarily followed by the material truth, so this will certainly harm the seller.

Responsibilities of Land Deed Making Officer in Administrative

Land Deed Making Officer as a public official, if in carrying out his duties not in accordance with his authority, namely violating Article 62 of Government Regulation No. 24 of 1997 concerning Land Registration, may be subject to administrative sanctions up to dismissal from his position by the Head of the Indonesian National Land Agency. Administrative sanctions imposed by Land Deed Making Officer for violating Article 11 paragraph (1), Article 13 paragraph (2), and Article 15 paragraph (1) of Law No. 4 of 1996 concerning Land Liability Rights and Objects related to Land, and in accordance with Article 6 paragraph (1) of the Land Deed Making Officer Association Code of Ethics, Article 23 paragraph (1) can be in the form of sanctions, i.e. reprimand; commemoration; schorsing of membership of the Association Land Deed Making Officer; termination from membership of the Association Land Deed Making Officer; dishonorable dismissal from membership of the Association Land Deed Making Officer.

In addition to administrative responsibilities, the Land Deed Making Officer is also given responsibilities related to taxation which is an additional form of authority Land Deed Making Officer granted by the Tax Law, namely Government Regulation Number 71 of 2008 concerning the Third Amendment to Government Regulation No. 48 of 1994 concerning Payment of Income Tax on Income from Transfer of Land and or Building Rights and Law Number 28 of 2009 Medium authority to determine whether or not the Duty on the Acquisition of Land and Building Rights should be validated in the transfer of land rights, in accordance with Law Number 28 of 2009, into the authority of each regional Regional Regulation, because Duty on the Acquisition of Land and Building Rights is a regional tax. In the author's opinion, local government agencies should clearly not have the authority to participate or interfere or even determine the price of certain land parcels that are the object of the transfer of rights, it can even be said that officials of local government institutions can be said to have committed abuse of authority.³⁰

Responsibilities of Land Deed Making Officer in Civil

The Land Deed Making Officer's civil liability is related to gaps, omissions and/or negligence in making a sale and purchase deed that deviates from formal and material requirements. Land Deed Making Officer can not only be subject to administrative

²⁹ Andi Maminanga, *Pelaksanaan Kewajiban Majelis Pengawas Daerah Dalam Pelaksanaan Jabatan Notaris Berdasarkan UUJN* (Yogyakarta: Universitas Gadjah Mada, 2008).

³⁰ Mulyono Mulyono, *Legal Standing* (Yogyakarta: Cakrawala Media, 2016).

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sanctions but also sued for civil damages by the aggrieved parties. Land Deed Making Officer can be sued civilly if the parties deny what is written in the deed. Based on this general principle, the author assumes that the actions of a Land Deed Making Officer that have caused a deed to become legally defective can be considered an unlawful act, if the actions committed by the Land Deed Making Officer are contrary to the legal obligations of the parties; subjective rights of the parties; Decency; Fit; thoroughness, and prudence. If the Land Deed Making Officer violates any of these criteria, then it can be said that the Land Deed Making Officer is sufficient to commit an unlawful act, so the unlawful act in this case does not necessarily meet these four criteria cumulatively.

Responsibilities of Land Deed Making Officer in Criminal

Criminal sanctions may be imposed as long as the Land Deed Making Officer has produced a forged letter or forged a deed with qualifications as a criminal offence. Material requirements and formal requirements of the Land Deed Making Officer deed making procedure are formal aspects that must be passed in making a land sale and purchase deed related to the duties of the Land Deed Making Officer position. The imposition of criminal sanctions can be carried out if the limits stipulated by the Laws related to Land Deed Making Officer, Land Deed Making Officer Position Regulations; The code of ethics of the Land Deed Making Officer, and the formulation mentioned in the Criminal Code were violated. Criminal sanctions may be imposed if the Land Deed Making Officer has produced a forged letter or forged a deed with qualifications as a criminal offence. Material requirements and formal requirements of the Land Deed Making Officer deed preparation procedure are formal aspects that must be passed in making a land sale and purchase deed related to the duties of the Land Deed Making Officer position. The imposition of criminal sanctions can be carried out if the limits stipulated by the Laws related to Land Deed Making Officer, Land Deed Making Officer Position Regulations; The code of ethics of the Land Deed Making Officer, and the formulation mentioned in the Criminal Code were violated.

The position of Land Deed Making Officer in this case is a person who is only ordered (*manus ministra*) and in the context of making a sale and purchase deed is only a medium (tool) for the birth of an authentic deed, while the initiative arises from the faces/parties so that in this case the Land Deed Making Officer is the party who is told not the party who ordered. However, if a Land Deed Making Officer has intentionally and intentionally and consciously cooperated with the face, then the Land Deed Making Officer can be subject to Article 263 paragraph (1) of the Criminal Code associated with Article 55 (1), namely participating in a criminal act. In addition, because the products produced by Land Deed Making Officer are subject to weight as stipulated in Article 264 paragraph (1) letter a of the Criminal Code Jo Article 55 paragraph (1) of the Criminal Code.

D. CONCLUSION

The Land Deed Making Officer is tasked with serving applications for making certain land deeds with land registration and Land Deed Making Officer Department regulations. In the face of such applications, the Land Deed Making Officer shall take a decision to reject or grant the application concerned. Land Deed Making Officer in the part of preventing land cases through Standard Operational Procedures that every object to be transferred or guaranteed, the certificate of title (client) of the object must be checked to the land office before the deed is signed.

The form of responsibility of the Land Deed Making Officer in providing legal protection to the parties when related to their profession adheres to the principle of fault of liability. So that in making an authentic deed, the Land Deed Making Officer must be responsible if there is an error or violation of the deed he made. However, if an element of error or violation occurs from the parties, then the Land Deed Making Officer concerned cannot be held accountable, because the Land Deed Making Officer only records what is submitted by the parties or the face to be poured into the deed. Land Deed Making Officer is also responsible for every deed issued both administratively, civilly, and criminally. This is important for awareness for the government to increase supervision and provide stronger legal regulations than just implementing regulations, Land Deed Making Officers need to be regulated in the strata of the Law and so that in the future Land Deed Making Officers to not only pursue mere formal truth, but material truth becomes one of the important things to be pursued by Land Deed Making Officers so that in the future they can resolve disputes soil.

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