

## Legal Strength Of Grant Deed Made By Land Deed Official In The Authenticity Of The Deed Perspective

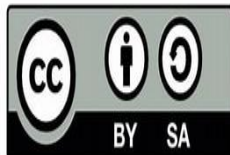
Aulia Rahmawati<sup>1</sup>, Marlina br Purba<sup>2</sup>

<sup>1,2</sup> Surabaya University

<sup>1</sup>auliaiar0907@gmail.com, <sup>2</sup>lina@staff.ubaya.ac.id

**Abstract:** *The position and strength of a PPAT deed as an authentic deed in the evidence system due to the lack of synchronization of laws and regulations, so it is interesting to conduct further research. One of the authentic deeds made by PPAT discussed in this thesis is a deed of gift, where to make a gift for immovable property can be done with an authentic deed or a deed under hand. However, to ensure legal certainty and to be a valid evidence, the transfer of the gift is carried out by making an authentic deed. The research uses the Normative Juridical method (legal research), namely legal research using legal norms as the object of its research based on an internal perspective that is able to provide legal arguments when conflicts, ambiguities, or legal gaps are found. The result is The power of grant deed made by the PPAT is a private deed, because the form and format of the deed of grant made by the PPAT are not regulated in the Law but are only regulated in the Ministerial Regulation. Therefore, the deed of grant made by the PPAT is not an authentic deed, so that its legal force remains binding on both parties but only as a private deed. The legal consequence of the deed of grant made by the PPAT is that the deed of grant is downgraded to a private deed because the position of the deed of grant made by the PPAT does not meet the qualifications of an authentic deed as stipulated in Article 1868 of the Civil Code. This is certainly detrimental to the parties, because the implementation of the grant as stipulated in Article 1682 of the Civil Code must be carried out with an authentic deed.*

**Keywords:** Deeds, Grants, Land Deed Making Officials.



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### HOW TO CITE:

Aulia Rahmawati, Marlina br Purba, “Legal Strength Of Grant Deed Made By Land Deed Official In The Authenticity Of The Deed Perspective,” *Mimbar Yustitia: Jurnal Hukum Dan Hak Asasi Manusia* 8, no. 1 (2024): 46–58, <https://doi.org/10.52166/mimbar.v7i2>.

*Submitted: 23/11/2024; Reviewed: 27/12/2024; Accepted: 30/12/2024*

## I. INTRODUCTION

The position of the Land Deed Making Officer (hereinafter referred to as PPAT) is as a public official who is given special duties and authority to provide services to the public in the form of making deeds that prove that a legal act of transferring land rights, Ownership Rights for Apartment Units or granting Mortgage Rights over land has been carried out before him and the Deed he makes is an authentic deed.<sup>1</sup> Historically, the position of PPAT in relation to the making of authentic deeds in the land sector is to assist the Head of the Land Office in carrying out land registration. Legally, the legal basis of PPAT is PJPPAT as the implementer of the Basic Agrarian Law Number 5 of 1960 (hereinafter referred to as UUPA). According to Boedi Harsono, several elements contained in the position of PPAT can be described, namely:<sup>2</sup>

- 1) Public officials;
- 2) Authority to make authentic deeds;
- 3) Regarding certain legal acts regarding land rights or ownership rights to apartment units.

The function of the PPAT itself guarantees the material truth and formal truth in every deed of transfer of land and building rights and also plays a role in checking the obligations of the parties that must be fulfilled in relation to the transfer of said rights. The responsibility of the PPAT for an authentic deed is only to record or pour out a legal act carried out by the party/applicant into the deed. An authentic deed made by the PPAT is the strongest and most complete evidence and has an important role in every legal relationship in the life of society. The need for written evidence in the form of an authentic deed is increasing in line with the growing demands for legal interests, both at the national and regional levels. Through an authentic deed, rights and obligations are clearly determined, legal certainty is guaranteed, and it is also hoped that disputes can be avoided.<sup>3</sup>

Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in the life of society. Through authentic deeds that clearly determine rights and obligations, guarantee legal certainty, and at the same time it is hoped that disputes can be avoided. Although the dispute cannot be avoided, in the process of resolving the dispute, authentic deeds which are the strongest and most complete written evidence provide real contributions to the resolution of cases cheaply and quickly.

The Land Deed Making Officer has the function to make authentic deeds, so authentic deeds made by the PPAT are deeds related to the following legal acts:

- a) Sale and purchase;
- b) Exchange;

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<sup>1</sup> Marihot Pahala Siahaan, *Bea Perolehan Hak Atas Tanah Dan Bangunan Teori Dan Praktek*, (Jakarta: Rajawali Pers, 2003), p 42.

<sup>2</sup> Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria dan Pelaksanaanya*, (Jakarta: Djambatan, 2008), p.485.

<sup>3</sup> Supriadi, *Hukum Agraria*, (Jakarta: Sinar Grafika, 2012), p.170

- c) Grant;
- d) Income into the company (inbreng);
- e) Distribution of joint rights;
- f) Granting of Building Use Rights/Use Rights on Freehold Land;
- g) Granting of Mortgage Rights;
- h) Granting of power of attorney to grant mortgage rights.

One of the authentic deeds made by PPAT discussed in this article is a deed of gift, where to make a gift for immovable property can be done with an authentic deed or a private deed. However, to ensure legal certainty and to be valid evidence, the transfer of the gift is done by making an authentic deed.<sup>4</sup> If the acceptance of a grant is made by 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 grant according to Article 1 1666 in conjunction with Article 1 1667 of the Civil Code (hereinafter referred to as the Civil Code) is “An agreement by which the grantor, during his lifetime, freely and irrevocably, hands over an object for the needs of the recipient of the grant who receives the transfer. Grants can only be in the form of objects that already exist. If the grant includes objects that will only exist in the future, then the grant is void.” The elements of a grant based on the formula above can be described as follows: <sup>5</sup>

- a) A grant is a unilateral agreement made free of charge, meaning there is no counter-performance from the recipient of the grant;
- b) A grant always states that the grantor has the intention to benefit the party being granted the grant;
- c) The object of the grant agreement is all kinds of property owned by the grantor, both tangible and intangible, fixed and movable objects, including all kinds of receivables of the grantor;
- d) A grant cannot be withdrawn;
- e) The grant must be made while the grantor is still alive;
- f) Made with an authentic deed.

The provisions of Article 1682 of the Civil Code state that: No gift except as referred to in Article 1687 of the Civil Code may be made without a notarial deed, the minutes of which (the original text) must be kept with a notary and if this is not done, 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, Apartment Units, and Land Registration (hereinafter referred to as PP Land Registration).

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<sup>4</sup> Wirjono Projodikoro, *Asas-asas Hukum Perjanjian*, (Bandung : Bale, 1999), p.119-120

<sup>5</sup> Asriadi Zainuddin, "Perbandingan Hibah Menurut Hukum Perdata dan Hukum Islam", *Jurnal Al-Himayah* 1, No 1, (2017): 34.

The grant agreement must be made in writing and a notarial deed made by an authorized PPAT according to the provisions of applicable laws and regulations so that the transfer of said rights can be registered with the land office. Based on the provisions of Article 1868 of the Civil Code, it is stated that: An authentic deed is a deed made in the form determined by law by or before a public official authorized for that purpose at the place where the deed was made. Based on the provisions above, a legal issue arises regarding the deed of grant made by the PPAT, because in Article 1682 in conjunction with Article 1868 of the Civil Code, the deed of grant is made by a Notary.

The regulation of the form of PPAT deed is regulated in Government Regulation Number 24 of 1997 concerning Land Registration as amended by PP Land Registration and PP PPAT, while regarding the form, content, and type and method of making PPAT deed are further regulated and stipulated in the Ministerial Regulation by the Minister of State for Agrarian Affairs/Head of the National Land Agency in Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementation Provisions of Government Regulation Number 24 of 1997 concerning Land Registration as amended by Regulation of the Head of the National Land Agency Number 8 of 2012 (hereinafter referred to as *Perkaban 8/2012*)

PPAT as a public official is the answer to the community's need for legal certainty for every specific legal act regarding the land they carry out. Because based on the PPAT Position Regulation, PPAT is the only official who is given general authority to make a deed for every specific legal act regarding land. In relation to the deed of grant whose object is land, it raises a problem related to the authenticity and legal force of the deed of grant made by the PPAT, because the form of the PPAT deed is not regulated in the Law but is regulated in the Ministerial Regulation by the Minister of State for Agrarian Affairs/Head of the Land Agency. While in Article 1682 of the Civil Code, the deed of grant must be made in the form of an authentic deed whose elements of an authentic deed are regulated in Article 1868 of the Civil Code.

Investigating the provisions governing the position and binding power of a PPAT deed as an authentic deed in the evidence system due to the legal vacuum, so it is interesting to conduct further research. The preparation of this thesis will discuss the power and validity of the deed of grant made by PPAT. One of the authentic deeds made by PPAT discussed in this thesis is a deed of grant, where to make a grant for immovable property can be done with an authentic deed or a deed under hand. However, to ensure legal certainty and to be a valid evidence, the transfer of the grant is carried out by making an authentic deed. This is as regulated in Article 1683 of the Civil Code which explains that a new grant is considered binding if the object of the grant has been received by the recipient of the grant or his attorney through an authentic deed.

## II. METHODS

The research method in this study is the normative legal research method, which is a method of researching law from an internal perspective with legal norms as the object of research. The researcher uses the type of Normative Juridical legal research (legal research), which is a legal research using 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.<sup>6</sup> The approach used in this legal study is the statute approach and the conceptual approach. Qualitative descriptive data analysis is carried out by analyzing secondary data that is narrative or theoretical, the definition and substance of which are sourced from several literatures which are then analyzed in order to answer the problem of the limitations of notary authority in the sale and purchase agreement.

## III. ANALYSIS AND DISCUSSION

### Legal Strength of Grant Deed Made by Land Deed Official

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 deeds that prove that a legal act of transferring land rights, Ownership Rights for Apartment Units or granting Mortgage Rights over land has been carried out before him and the Deed he makes is an authentic deed.<sup>7</sup> Legally, the legal basis of PPAT is PJPPAT as the implementer of the Basic Agrarian Law Number 5 of 1960 (UUPA). According to the provisions of the National Land Law, namely the Basic Agrarian Law Number 5 of 1960, it is stipulated that all Transfers of Land Rights and Ownership Rights of Apartment Units through sale and purchase, exchange, grants, income and other legal acts of transfer of rights, except for transfers of rights through auctions can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations.

As stated in Article 1 number 24 of Government Regulation Number 24 of 1997 concerning Land Registration, it states that a PPAT is a Public Official who is given the authority to make certain deeds, namely deeds of transfer and encumbrance of land rights and Ownership Rights for Apartment Units, and deeds granting power of attorney to encumber mortgage rights.<sup>8</sup> In addition, it is mandatory to assist clients if they want to transfer land rights without deviating from the regulations of their position as an Official Making Land Deeds. According to Article 1868 of the Civil Code, which states that an authentic deed is a deed

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<sup>6</sup> Johnny Ibrahim, *Teori & Metodologi Penelitian Hukum Normatif*, (Malang : Bayumedia Publishing, 2008), p. 27

<sup>7</sup> Winahyu Erwiningsih & Fakhriyasa Zaili Sailan, *Akta Pejanbat Pembuat Akta Tanah ; Kajian Komprehensif dan Tuntunan Penyusunannya*, (Yogyakarta: Laksbang Justitia, 2015), p.18

<sup>8</sup> Milinia Mutiara Yushinta Dewi & Bayu Indra Permana, "Keabsahan Akta Yang Dibuat Oleh Calon Notaris Yang Sedang Magang Di Kantor Notaris", *Jurnal Ilmu Kenotariatan* 3, No. 2, (2022):76.

made in a form determined by law by or before public officials who have the authority to do so, at the place where the deed is made. Article 1 number (1) of Law Number 2 of 2014 concerning the Position of Notary states that a Notary is a Public Official who is authorized to make authentic deeds and other authorities as referred to in this law.

According to the Legal Dictionary, one of the meanings of *Ambtenaren* is Official. Thus, *Openbare Ambtenaren* is an official who has duties related to the public interest, so it is appropriate if *Openbare Ambtenaren* is interpreted as a Public Official. Specifically related to *Openbare Ambtenaren* which is translated as a Public Official, it is interpreted as an official who is assigned the task of making authentic deeds that serve the public interest, and such qualifications are given to Notaries.<sup>9</sup> The PPAT deed is made as evidence that functions to ensure a legal event with the aim of avoiding disputes. Therefore, the making of the deed must be such that it does not contain unclear things so as not to cause disputes in the future.<sup>10</sup> Article 4 paragraph (1) of Government Regulation Number 37 of 1998 confirms that PPAT is only authorized to make deeds regarding land rights or Ownership Rights for Apartment Units located in his/her work area. Exceptions to Article 4 paragraph (1) are determined in paragraph (2), namely for exchange deeds, company entry deeds (*inbreng*) and joint rights division deeds regarding several land rights and Ownership Rights for Apartment Units which are not all located in the work area of a PPAT, can be made by a PPAT whose work area includes one of the land plots or apartment units whose rights are the object of a legal act.<sup>11</sup>

Because his status is merely as an official, the regulations regarding the existence of PPAT are sufficient to be stated in the Ministerial Regulation.<sup>12</sup> The criteria or indicators to determine whether a PPAT deed is an authentic deed or not are the provisions of Article 1868 of the Civil Code, which determines the requirements for a deed to be qualified as an authentic deed, namely that the deed must be made in a certain form determined by Law, must be made by (door) or before (*teen overstaan*) a Public Official, and made by or before a Public Official authorized for that purpose within the scope of his/her work area. According to the provisions of the law, the regulation of authentic deeds that do not require a certain form of the deed and are determined by and in the Law (*wet*) as referred to in Article 1868 of the Civil Code. The form, content, and type and method of making PPAT deeds are regulated by the Minister of State for Agrarian Affairs/Head of the Land Agency in Article 9597 and Article 9698 of PMNA/Ka.BPN Number 3 of

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<sup>9</sup> Saleh Adiwinata, A. Teloeki, H. Boerhanoeddin St. Batoeah, *Kamus Istilah Hukum Fockema Andreae Belanda Indonesia*, (Jakarta: Binacipta, 1983), p. 363,

<sup>10</sup> J.Andy Hartanto, *Problematika Hukum Jual Beli Tanah Belum Bersertifikat*, (Yogyakarta : Laksbang Mediatama, 2009), p.45

<sup>11</sup> *Ibid*, p.45

<sup>12</sup> Husni Thamrin & M. Khoidin, *Hukum Notariat dan Pertanahan, Kewenangan Notaris dan PPAT Membuat Akta Pertanahan*, (Yogyakarta, Laksbang Media, 2013), p.73

1997 as amended by PerKa.BPN No. 8/201299 while the PPAT deed form is made and issued by the BPN as regulated in Article 51100 of PerKa.BPN 1/2006.

The PPAT deed contains information and statements from the parties made at the will or request of the parties, and the Notary/PPAT makes it in the form determined by law.<sup>13</sup> PPAT is not involved and is prohibited by law from being involved in any legal act as stated in the notarial deed that he/she formalizes.<sup>14</sup> PPAT only formulates the legal acts of the parties into their deed and then formalizes the deed. Based on Article 37 of PP Number 24 of 1997 which states that: "Transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant, income in a company and other legal acts of transfer of rights, except for transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to applicable provisions". For the implementation of the transfer of rights, the PPAT must submit the PPAT deed to the Land Agency Office within 7 (seven) working days as referred to in Article 40 Paragraph (1) and Paragraph (2) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24" of 1997 concerning Land Registration.

The transfer of land rights, and especially the ownership rights to the land, can be carried out properly, so a PPAT who will make the transfer of land rights must ensure the truth of the land rights (ownership rights) and the competence and authority to act of those who will transfer and receive the transfer of land rights. Regarding the provisions of the grant are regulated in Article 1666-Article 1693 of the Civil Code. The definition of a grant is contained in Article 1666 of the Civil Code, namely an agreement by which a grantor hands over an item free of charge, without being able to withdraw it, for the benefit of someone who receives the transfer of the item. The law only recognizes grants between living people. The terms and procedures for grants based on the provisions of the Civil Code:<sup>15</sup> First, The grantor must be an adult, that is, legally competent, except in the rights stipulated in the seventh chapter of the first book of the Civil Code (Article 1677 of the Civil Code); Second, A grant must be made with a notarial deed, the original of which is kept by a notary (Article 1682 of the Civil Code); Third, A grant binds the grantor or issues a consequence starting from the grant with clear words that are accepted by the recipient of the grant (Article 1683 of the Civil Code); Fourth, A grant to a minor who is under the authority of a parent must be accepted by the person exercising parental authority (Article 1685 of the Civil Code).

Based on Article 1682 of the Civil Code, a deed of grant must be made in writing with a Notarial Deed. However, after the enactment of Government Regulation Number 24 of 1997, every grant of land and buildings must be made

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<sup>13</sup> *Ibid*, p 88

<sup>14</sup> *Ibid*, p. 69

<sup>15</sup> Sediono Tjondronegoro, *Dua Abad Penguasaan Tanah*, (Jakarta: Gramedia, 2004), p. 35

with a PPAT deed. According to the provisions above, it can be seen that the grant must be stated in a deed made by the PPAT, namely a deed of grant. So, if someone wants to donate their land and buildings to another person, the grant must be made a deed of grant by the PPAT. In addition, the act of grant 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 of signing the deed in question, the PPAT is required to submit the deed he made along with the relevant documents to the Land Office for registration and the PPAT is required to submit written notification regarding the submission of the deed to the Land Office to the relevant parties.<sup>16</sup>

An authentic deed is regulated by its elements in Article 1868 of the Civil Code which must be fulfilled cumulatively, not alternatively. The first element, made by or before a public official who has the authority to do so. The second element, made at the place where the official is authorized.<sup>17</sup> The third element, made in the form determined by Law (Eene authentieke deede is de zoodanige welke in de wettelijke vorm is verleden, the door of ten overstaan van openbare ambtenaren die daartoe bevoegd zijn ten plaatse alwaar zulks is geschied). The third element states that the form of an authentic deed is determined by law, not by regulations that are lower than law. Meanwhile, in making a deed of grant, the form, content, type and method of making it are guided by what has been determined in Attachment to Perkebuan Number 8 of 2012 which has been amended by Permen Agrarian Regulation Number 16 of 2021. Therefore, the deed of grant made by PPAT is not an authentic deed because the form of the deed is determined in the form of a Ministerial Regulation, not a law, so that its legal force is only as a private deed as per Article 1869 of the Civil Code.

A Grant is an agreement whereby the donor, during his or her lifetime, freely and irrevocably, hands over an object for the needs of the recipient of the grant who accepts the grant.<sup>18</sup> In this case, the transfer of land rights through a grant is done using an authentic deed. An authentic deed is a deed made by an authorized public official that contains or describes authentically an action taken or a condition seen or witnessed by the public official who made the deed.<sup>19</sup> The legal force of a deed of grant lies in the function of the authentic deed itself, namely as a valid evidence according to the law (Articles 1682, 1867 and 1868 of the Civil Code) so that this is a direct consequence which is a requirement of the provisions of the law, that there must be authentic deeds as a means of proof. In order to be a valid

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<sup>16</sup> Bhim Prakoso, dkk., "Arrangement of Agrarian Reform as A Basis For Providing Legal Certainty For the Community", *Acten Journal Law Review* 1, No. 1, (2024): 1-16.

<sup>17</sup> Holla, et.al., "Legal Certainty Regarding the Conversion of Land Certificates To An Electronic System Based On Security Principles", *Jurnal Ilmu Kenotariatan* 5, No. 2, (2024): 88-102

<sup>18</sup> Gede Adi Nugraha, "Akibat Kepailitan Terhadap Adanya Perjanjian Hibah", *Jurnal Kertha Semaya* 4, No. 1 (2015): 3.

<sup>19</sup> Budiman Sinaga, N. P. D, *Hukum Kontrak dan Penyelesaian Sengketa Perspektif Hukum Perdata*, (Jakarta, Raja Grafindo, 2005), p.36



evidence, a deed of grant must be made and signed by an authorized official and the parties bound by it.

PPAT has the authority to make deeds related to legal acts regarding land rights, based on Article 2 paragraph (1) of the PP PPAT, deeds that can be made by PPAT are deeds related to the following legal acts: Buying and selling; Bartering; Grants; Inclusion in a company (inbrengr); Sharing of joint rights; Granting of Building Use Rights/Use Rights on Freehold Land; Granting of Mortgage Rights; and Granting of power of attorney to grant mortgage rights.<sup>20</sup>

A grant according to Article 1666 in conjunction with Article 1667 of the Civil Code (hereinafter referred to as the Civil Code) is “An agreement by which the grantor, during his lifetime, freely and irrevocably, hands over an object for the needs of the recipient of the grant who receives the transfer. Grants can only be in the form of objects that already exist. If the grant includes objects that will only exist in the future, then the grant is void.”<sup>21</sup> The elements of a grant based on the formula above can be described as follows:<sup>22</sup> A grant is a unilateral agreement made free of charge, meaning there is no counter-performance from the recipient of the grant; In a grant it is always implied that the grantor has the intention to benefit the party being granted the grant; The object of the grant agreement is all kinds of property owned by the grantor, both tangible and intangible, fixed and movable objects, including all kinds of receivables of the grantor; The grant cannot be withdrawn; The grant must be made while the grantor is still alive; and Made with an authentic deed.<sup>23</sup>

The provisions of Article 1682 of the Civil Code state that: No grant, except as referred to in Article 1687, may be made without a notarial deed, the minutes (original text) of which must be kept with a notary and if this is not done, the grant is invalid.<sup>24</sup> Furthermore, in the provisions of Article 1 37 paragraph (1) of the PP on Land Registration, it is also stated that a grant agreement must be made in written form and a notarial deed made by an authorized PPAT according to the provisions of applicable laws and regulations so that the transfer of said rights can be registered with the land office. One of the authentic deeds made by the PPAT discussed in this thesis is a deed of grant, where to make a grant for immovable property can be done with an authentic deed or a private deed. However, to guarantee legal certainty and to be valid evidence, the transfer of the grant is carried out by making an authentic deed. This is as regulated in Article 1 1683 of the Civil

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<sup>20</sup> Meralda Amala Istighfarin, “Perlindungan Hukum Kreditur Dan Pemilik Jaminan Dalam Pelaksanaan Perjanjian Kredit Dengan Jaminan Tanah Milik Orang Lain”, *Acten Journal Law Review* 1, No. 1, (2024): 65-85.

<sup>21</sup> Asriadi Zainuddin, “Perbandingan Hibah Menurut Hukum Perdata dan Hukum Islam”, *Jurnal Al-Himayah* 1 No. 1, (2017):67

<sup>22</sup> *Ibid*

<sup>23</sup> Tiyas Putri Megawati, dkk., “Tanggung Jawab Para Pihak Setelah Pelaksanaan Lelang Tanah Kas Desa (Studi Kasus di Desa Cangaan Kabupaten Bojonegoro)”, *Acten Journal Law Review* 1, No. 1, (2024): 17-38.

<sup>24</sup> Article 1682 Civil Code

Code which explains that a grant is only considered binding if the object of the grant has been received by the recipient of the grant or his attorney through an authentic deed.

Granting and buying and selling are regulated in the third book, namely the Contract, in Chapter Five of the Civil Code. Land grants are grants from one person to another without any compensation and are made voluntarily, without any counter-performance from the recipient of the grant, the grant is made when the grantor is still alive and the grant must be approved by the interested parties. Grants include "free" agreements (*omniet*) where the word "free" is indicated by only one party's performance, while the other party does not need to provide counter-performance in return. Such agreements are also called "unilateral" as opposed to "reciprocal" agreements (*bilateral*).<sup>25</sup>

Many agreements are certainly reciprocal, because what is common is that the person who undertakes a performance because he will receive a counter-performance. The words "during the lifetime" of the grantor, are to distinguish the grantor from grants made in a testament (*will*), which will only have power and be valid after the grantor dies and at any time while the grantor is still alive, can be changed or withdrawn by him. The grant in the testament in the Civil Code is called "Legaat" (*Will Grant*) which is regulated in inheritance law, while this grant is an agreement. Because a grant according to the Civil Code is an agreement, it is automatically not unilaterally withdrawn by the grantor.<sup>26</sup>

No grant except as referred to in Article 1687 can be made without a notarial deed, the minutes (original text) of which must be kept with a notary and if not done so then the grant is invalid. The text of Article 1687 of the Civil Code referred to above is: A grant from hand to hand in the form of tangible movable goods or a debt letter that will be paid subject to, does not require a notarial deed and is valid if such a grant is simply handed over to the person who is given the grant or to another person who receives the grant to be forwarded to the person who is given the grant.<sup>27</sup> The provision that a notarial deed must be made in a grant is intended to have legal force so that it is not easily sued by a third party or other person.<sup>28</sup> If in the future there is a dispute or conflict between a grant made

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<sup>25</sup> J. Andy Hartanto, *Panduan Lengkap Hukum Praktis: Kepemilikan tanah*, (Yogyakarta: Laksbang Justitia, 2015), p.31.

<sup>26</sup> Marvel Romi Sutiono, dan Kenneth Bradley Sajogo, "Perlindungan Hukum Pemegang Saham Perseroan Terbatas Terbuka Pada Rapat Umum Pemegang Saham Secara Elektronik", *Acten Journal Law Review* 1, No. 1, (2024): 86-102.

<sup>27</sup> Bayu Indra Permana, *Aspek Kepastian Hukum Pembebasan Pajak Penghasilan Terhadap Peralihan Hak Atas Tanah Dalam Pembagian Hak Bersama Waris*, (Skripsi, Fakultas Hukum Universitas Jember, 2022).

<sup>28</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* 2. No. 11, (2022):1-13.

verbally and a grant written on a notarial deed, the one that has legal force is the grant written on the notarial deed.<sup>29</sup>

Every transfer of land rights must be accompanied by a deed made by and submitted to the Land Deed Making Officer (PPAT), making the PPAT a very important player in the process. If a PPAT deed is used to organize government affairs in the form of a series of one unit of the land registration process, then functionally the PPAT is considered to be included in the category of State Administrative Officers.<sup>30</sup> Especially in areas where the law is not well understood, the transfer of land rights sometimes causes disputes. Meanwhile, the village head's office will then issue a grant certificate to be used as a requirement for Land Registration registration, where the community believes that the grant administration can be completed there. A legal act that seeks to transfer land rights includes inheritance distribution and land grants.

In the rights registration system, every new right created and legal acts that cause changes later, must also be proven by a deed. However, in the implementation of the registration, it is not the deed that is registered, but the rights that are created and their changes later. The deed of grant of rights functions as a source of legal data to register the rights granted in the land book. Likewise, the deed of transfer and encumbrance of rights functions as a source of data to register changes to the rights in the relevant land rights book. If changes occur, no new books are made, but they are recorded in the mutation space provided in the relevant books.<sup>31</sup>

That based on Article 1863 of the Civil Code, a grant must be made with an authentic deed made by a Notary, if it is not made with the deed, the grant becomes invalid. Then after the enactment of the Basic Agrarian Law and PP Number 24 of 1997, every implementation of a grant in the form of land and/or buildings is carried out with a PPAT deed. Therefore, the implementation of the grant must basically be carried out in writing with an authentic deed. However, with the position of the PPAT grant deed that does not meet the qualifications of an authentic deed based on Article 1868 of the Civil Code cumulatively, because in making a grant deed by a PPAT, the form, content, and type and method of making are only guided by ministerial regulations, not the Law. So that this has a legal consequence on the deed of grant made by the PPAT being degraded in its evidentiary power to become a private deed.

## VI. CONCLUSION

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<sup>29</sup> Mohammad Reynaldy Adam, and Wiwik Wulandari, "Kepastian Hukum Akta Perubahan Badan Kredit Desa Menjadi PT. Lembaga Keuangan Mikro", *Jurnal Ilmu Kenotariatan* 4, No. 2, (2023): 164.

<sup>30</sup> Bayu Indra Permana, et.al., "Responsibility of Notary for Registered Private Deed in the Perspective of Law of Evidence", *Jurnal Justiciabelen* 7, No. 1, (2024): 70.

<sup>31</sup> Khafid Setiawan, Bhim Prakoso, & Moh. Ali, "Notaris Dalam Pembuatan Akta Kontrak Yang Berlandaskan Prinsip Kehati-hatian", *Jurnal Ilmu Kenotariatan* 2, No. 2, (2021): 50.

The power of grant deed made by the PPAT is a private deed, because the form and format of the deed of grant made by the PPAT are not regulated in the Law but are only regulated in the Ministerial Regulation. Therefore, the deed of grant made by the PPAT is not an authentic deed, so that its legal force remains binding on both parties but only as a private deed. The legal consequence of the deed of grant made by the PPAT is that the deed of grant is downgraded to a private deed because the position of the deed of grant made by the PPAT does not meet the qualifications of an authentic deed as stipulated in Article 1868 of the Civil Code. This is certainly detrimental to the parties, because the implementation of the grant as stipulated in Article 1682 of the Civil Code must be carried out with an authentic deed.

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