

## Legal Consequences of Not Applying the Prudential Principle in the Sale and Purchase Agreement by the Land Deed Official

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### Abstract

The Land Deed Official as the official authorized to issue the Authentic Deed is obliged to examine the truth of the documents that are a requirement in the issuance of the Notarial Sale and Purchase Agreement. In practice, there are Land Deed Officials who ignore the obligation to examine the documents brought by the parties as in the case of Muslims in Decision Number 538/Pid.B/2019/PN.Pdg where there is a forgery of signatures by the parties in the agreement to make a Notarial Sale and Purchase Agreement, the testimony of the reporting witness which was later corroborated by the results of the criminalistics laboratory examination showed that the signature in the Notarial Sale and Purchase Agreement was declared non-identical to the actual signature, as a result, the Notarial Sale and Purchase Agreement caused losses to other parties. Notarial Sale and Purchase Agreement Notarial Sale and Purchase Agreement Based on these problems, it raises the question of what are the legal consequences of not applying the prudential principle in the Notarial Sale and Purchase Agreement by the Land Deed Official and what are the legal consequences of the validity of the Notarial Sale and Purchase Agreement which is proven to have forged signatures in the deed. The research method used is normative juridical research using a statutory approach and a case approach using data collection methods through documentation studies and literature studies of court decisions. The result of the research is that a Land Deed Official who does not apply the principle of prudence can be subject to administrative sanctions following the mistakes made, as for the validity of the Notarial Sale and Purchase Agreement which is proven to have a forged signature, the Notarial Sale and Purchase Agreement is declared null and void. A Land Deed Official in making an authentic deed must pay attention to the prudential principle, one of which is by requiring the parties to be present in person and checking the authenticity of the parties' identities to prevent identity forgery in making a Notarial Sale and Purchase Agreement. prudential Notarial Sale and Purchase Agreement Notarial Sale and Purchase Agreement

**Keywords:** Prudential Principle; Notarial Sale and Purchase Agreement; Land Deed Official; Forgery of Signature. Notarial Sale and Purchase Agreement

### Abstrak

Pejabat Pembuat Akta Tanah sebagai pejabat yang berwenang menerbitkan Akta Autentik wajib meneliti kebenaran surat-surat yang menjadi syarat dalam penerbitan Akta Jual Beli. Pada praktiknya, terdapat Pejabat Pembuat Akta Tanah yang mengabaikan kewajiban untuk meneliti surat-surat yang dibawa oleh para penghadap seperti pada kasus Muslim pada Putusan Nomor 538/Pid.B/2019/PN.Pdg dimana terdapat pemalsuan tandatangan oleh para pihak dalam persetujuan pembuatan Akta Jual Beli, keterangan pihak saksi pelapor yang kemudian dikuatkan oleh hasil pemeriksaan laboratorium kriminalistik menunjukkan bahwa tandatangan dalam Akta Jual Beli tersebut dinyatakan non identik dengan tanda tangan yang sebenarnya, akibatnya Akta Jual Beli tersebut menimbulkan kerugian bagi pihak lainnya. Berdasarkan permasalahan tersebut, menimbulkan pertanyaan apa akibat hukum tidak diterapkannya prinsip kehati-hatian dalam akta jual beli oleh Pejabat Pembuat Akta Tanah dan bagaimana akibat hukum terhadap keabsahan Akta Jual Beli yang terbukti terdapat pemalsuan tanda tangan di dalam akta. Metode penelitian yang digunakan adalah penelitian yuridis normatif menggunakan pendekatan undang-undang dan pendekatan kasus dengan menggunakan metode pengumpulan data melalui studi dokumentasi dan studi pustaka terhadap putusan pengadilan. Hasil penelitian yang dihasilkan adalah seorang Pejabat Pembuat Akta Tanah yang tidak menerapkan prinsip kehati-hatian dapat dikenakan sanksi administrasi sesuai dengan kesalahan yang diperbuat, adapun keabsahan akta jual beli yang terbukti terjadi pemalsuan tanda tangan maka akta jual beli tersebut dinyatakan batal demi hukum. Seorang Pejabat Pembuat Akta Tanah dalam pembuatan akta autentik harus memperhatikan prinsip kehati-hatian salah satunya dengan mensyaratkan agar para pihak hadir

*secara langsung dan mengecek keaslian identitas para pihak agar mencegah terjadinya pemalsuan identitas dalam pembuatan akta jual beli.*

**Kata kunci:** Prinsip Kehati-hatian; Akta Jual Beli; Pembuat Akta Tanah; Pemalsuan Tanda Tangan.

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## Introduction

Indonesia as a state based on the law has a constitutional basis and an ideal basis, to guarantee legal protection, certainty, and order, it is necessary to have written evidence that is authentic and has perfect legal force before or by an authorized official, namely a Notary or a Land Deed Official. Notaries and Land Deed Officials have an important role in serving the legal interests of the community, the state gives attributive authority to Notaries in issuing authentic deeds for the benefit of the community. The professional position of Land Deed Official is set inside Constitution Number 5 of 1960 concerning Regulation Base Trees Agrarian, Regulation Government Number 24 of 1997, and Regulations Government Number 37 of 1998, with this rule, a Land Deed Official in carrying out their duties must be subject to and comply with the obligations and prohibitions regulated in these rules.

The existence of a Land Deed Official is very much needed in fulfilling the interests of the community because it provides a guarantee of legal certainty for the community in making authentic deeds as stipulated in Article 1868 of the Civil Code which reads: (R. Subekti, 2006)

*"An authentic deed is a deep deed form defined by law, made by or in front employees ruling general for it's in the place where deed he made".*

The article explains deed authenticity as a deed made corresponding with provision laws made by an authorized official for making a deed in the region authority official.

- a. The deed of the Land Deed Official as strong authentic evidence is required to fulfill the procedures stipulated in the applicable laws and regulations. A deed can be said to be an authentic deed if the factors are fulfilled: The form of the deed is by the provisions of the law;
- b. The deed is made by or before a public official;
- c. The deed was made within the jurisdiction of the public official who made the authentic deed. (Tobing, 1980)

The authentic deed has a role as evidence if something is disputed, this is as stated in Article 1866 of the Civil Code which states that evidence consists of: (R. Subekti, 2006)

1. Written evidence;
2. Evidence with witnesses;
3. Presumptions;
4. Confession;
5. Oath.

Written evidence is the highest proof consisting of authentic deeds and deeds under the hand. Materially, the evidentiary power of a deed under the hand applies only to the person for whom the statement is given, while for other parties the evidentiary power is based on the judge's judgment (Meitinah, 2016). Authentic deeds are said to be perfect evidence where the truth stated in the deed does not need to be proven by other evidence (Sulastini, 2011).

One example of an authentic deed issued by a Land Deed Official is a Notarial Sale and Purchase Agreement, a Notarial Sale and Purchase Agreement made by a Land Deed Official must not contain errors because they can interfere with the process of issuing a land certificate for the right owner. The Notarial Sale and Purchase Agreement made must be following the legal documents brought by the Conveyors and the Land Deed Official is obliged to examine the truth of these letters (Selamat Lumban Gao, 2019).

Notarial Sale and Purchase Agreement  
Notarial Sale and Purchase Agreement  
Notarial Sale and Purchase Agreement  
Land Deed Official  
This research will try to examine and analyze the sale and purchase agreement related to the implementation of the sale and purchase of land, considering that the sale and purchase agreement of land can be said to be an authentic deed, based on the provisions in article 1868 of the Civil Code in the process of making a deed must be carried out by the parties in the presence of an authorized official, such as a Notary/Land Deed Official.

In addition to the provisions of Article 101 (1) Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency, Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration *Jo Regulation* of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to Regulations The State Minister for 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 has regulated the process of drawing up Notarial Sale and Purchase Agreements carried out by a Notary/Land Deed Official by stating:

- (1) The making of a deed by a Land Deed Official must be attended by the parties to the legal act concerned or the person authorized by them by a written power of attorney following the prevailing laws and regulations;
- (2) The making of a deed by a Land Deed Official must be witnessed by at least 2 witnesses who, according to the provisions of the prevailing laws and regulations, are qualified to act as witnesses in a legal action, testifying inter alia as to the presence of the parties or their proxies, the existence of the documents presented in the making of the deed, and the execution of the legal action by the parties concerned;
- (3) The Land Deed Official shall be obliged to read out the deed to the parties concerned and give an explanation regarding the content and purpose of the deed, and the registration procedures that must be carried out subsequently following the applicable provisions.

The article explains the process of making a deed which must be attended by the parties concerned and witnessed by at least two witnesses and for the Sale and Purchase agreement the Land Deed Official is required to read out and explain the contents of the deed to the parties.

However, in practice, it is often found that the making of a Sale and Purchase agreement by a Land Deed Official is not following the procedure which results in the Land Deed Official becoming a witness in a criminal case, the defendant or co-defendant of the Sale and Purchase agreement he made. As happened in a criminal case decided by the Padang District Court with Decision Number 538/PID.B/2019/PN Pdg where one of the Land Deed Officials in the city of Padang was implicated in a case and he was then questioned as a witness to the legal issue.

The case arose because the reporting witness felt aggrieved by the issuance of Deed of Sale and Purchase No. 112/2007, Deed of Sale and Purchase No. 165/2007, and Deed of Sale and Purchase No. 37/2008 made by the Land Deed Official in Padang where the signatures on the Deed of Sale and Purchase were tampered with. Initially, there was a change in the Certificate of Title held by the reporting witness, namely Certificate of Title No. 514 which was later changed to Certificate of Title No. 2106 covering an area of 34,745 M<sup>2</sup> and was further divided into 3 parcels and then a Sale and Purchase Agreement was made on the land to another party, the act was carried out by the Defendant without the knowledge of the reporting witness as the party who was one of the owners of the land. Whereas the reporting witness never went to the Land Deed Official to ask for a Sale and Purchase Agreement to be made on the land in question, so the reporting witness assumed that the reporting witness's signature contained in the Sale and Purchase Agreement was a forged signature and thumbprint. To corroborate this fact, the complainant witnesses conducted a criminalistics laboratory examination at the Forensic Laboratory Centre of the Medan Branch of the Criminal Investigation Agency of the Indonesian National Police on the signatures and subsequently found that the signatures of the complainant witnesses contained in the Sale and Purchase Agreement were declared non-identical/not the same as their actual fingerprints.

Based on this case, in the making of the Sale and Purchase Agreement, there are still errors that occur and make the Sale and Purchase Agreement issued by the Land Deed Official doubt its authenticity. When forged signatures are found in the Sale and Purchase Agreement by the parties, it raises questions about how the legal consequences of not applying the prudential principle in the Sale and Purchase Agreement by the Land Deed Official and how the validity of the Sale and Purchase Agreement which is proven to have forged signatures in the deed. Based on these problems, the researcher intends to research with the title "Legal Consequences of Not Applying the Prudential Principle in the Sale and Purchase Agreement by the Land Deed Official".

### **Research Problems**

Based on the background of the problem described above, the following problem formulation can be stated:

1. What are the Legal Effects of Not Applying the Prudential Principle in the Sale and Purchase Agreement by the Land Deed Official?
2. How is the validity of a Sale and Purchase Agreement that is proven to have forged signatures in the Sale and Purchase Agreement?

### **Research Method**

The research method used in this research is normative juridical research, which is carried out through literature studies, especially secondary data such as laws and regulations, court decisions, contract agreements, or other legal documents. This normative juridical method can also be complemented by interviews and discussions. Research using this normative juridical method is supported by literature related to the problem under study (Sonata, 2014). Normative juridical legal research methodology bases its analysis on applicable laws and regulations that are relevant to the legal issues that are the focus of the research (Benuf, 2020). With this normative research conducted, it can be used as a reference source for judges. The data source used by the author in the research is

secondary data sources because it emphasizes the study of positive legal principles derived from library data and uses normative juridical legal research.

The approach used in this research is the Statute Approach, namely by reviewing and analyzing all laws or regulations that correlate with the problem under study. In addition, researchers also use the Case Approach, namely by conducting a study of cases related to the issue at hand and have become court decisions that have permanent legal force. The main object of study, in this case, the approach is Reasoning. The Reasoning method is to pay attention to the court's consideration to arrive at a decision (H. Salim HS, 2013). The case-Based Reasoning (CBR) method is a method by analyzing new cases based on old cases that have occurred and providing solutions to new cases based on old cases that have the highest similarity value.

The specifications of this research use descriptive techniques, namely describing the state of the object under study, then analyzing using legal theories so that the author can conclude the problems studied. The data collection method used is in the form of documentation studies and literature studies using data analysis techniques used by the author in this research qualitative analysis. Qualitative analysis is a way of analyzing data sourced from legal materials based on concepts, theories, laws and regulations, doctrines, legal principles, expert opinions, or the views of researchers themselves (Ishaq, 2017).

## **Discussion**

### **Legal Consequences of Not Applying the Prudential Principle in the Sale and Purchase Agreement by the Land Deed Officer**

The Land Deed Official as a party who makes a Sale and Purchase Agreement must be able to take responsibility for the deed he has made. As in the criminal case in Padang District Court Decision No. 538/PID.b/2019/PN Pdg where there was an act of forgery of signatures in the Sale and Purchase Agreement and was convicted under Article 266 paragraph (2) of the Criminal Code. The judge of the Padang District Court stated that there was a criminal offense of "using a forged authentic deed". In this case, there was the use of a forged authentic deed by forging the signatures of the parties in the act of issuing a new Certificate and executing a Sale and Purchase Agreement to the purchasers committed by the defendant. In the case, the Land Deed Official was required to give his testimony because he was the party who issued the Sale and Purchase Agreement No. 112/2007 of 2007, Sale and Purchase Agreement No. 165/2007 of 2007, and Sale and Purchase Agreement No. 37/2007. After all, after a criminalistics laboratory examination at the Forensic Laboratory Centre of the Criminal Investigation Agency of the Medan Branch of the Indonesian National Police on the signatures, it was found that the signatures of the reporting witnesses contained in the Sale and Purchase Agreement were declared non-identical/not the same as their actual fingerprints.

The Land Deed Official in case No. 538/PID.b/2019/PN Pdg in his statement did not remember the reporting witness ever coming to the office, did not even remember the reporting witness's face, and never handed over the money to the reporting witnesses. Based on the testimony of the reporting witness, he never came to the office of the Land Deed Official and never signed the Sale and Purchase Agreement issued by the Land Deed Official, this was proven because there were errors in the date of birth and occupation of the reporting witness on the Sale and Purchase Agreement.

The Land Deed Official as the maker of the Sale and Purchase Agreement should act carefully in carrying out his official duties and apply the principle of prudence, especially in the process of making a Sale and Purchase Agreement. The principle of prudence is contained in the oath of office of the Land Deed Official in Article 34 paragraph (1) of the Regulation of the Head of the National Land Agency Number 1 of 2006, namely:

*"To carry out my office honestly, orderly, carefully and conscientiously, responsibly and impartially."*

Regulation of the emphasize that Land Deed Official when to do professional position must Act in a manner orderly, thorough, and complete awareness or apply principle caution in operating authority.

The prudential principle is the application of Article 16 paragraph (1) letter of the Law Position Notary Public namely the obligation of the Notary/Land Deed Official Official to act carefully in carrying out the duties of his position. The notary/Land Deed Official has a role in determining whether an action can be put in the form of a deed or not so that the implementation of the principle of accuracy (prudence) must be carried out in the process of making a deed by:

- a. Identify appearers based on their identities shown to the Notary / Land Deed Official.
- b. Inquire, then listen and examine the wishes or wishes of the parties.
- c. Examine evidence of letters relating to the wishes or will of the parties.
- d. Provide advice and make the framework of the Deed to fulfill the wishes or wishes of the parties.
- e. Fulfill all administrative techniques for making a Notary Deed, such as reading, signing, providing copies, and filing for minutes.
- f. Carry out other obligations related to the performance of Notary duties.

When linked between Article 16 paragraph (1) letter a of the Notary Law with the testimony of the Land Deed Official and the reporting witness to the Case in the Padang District Court Decision Number: 538/PID.b/2019/PN PdG, the Land Deed Official when making the Sale and Purchase Agreement did not recognize the parties based on their identity, it can be seen that there was an error in the date of birth and occupation of the reporting witness stated in the Sale and Purchase Agreement. In addition, the Land Deed Official did not even ask, listen and examine the wishes or will of the parties, this is evident because the reporting witness as one of the parties to the Sale and Purchase Agreement never came or met with the Land Deed Official so that during the process of making the Sale and Purchase Agreement the Land Deed Official ignored point b because he did not ask, listen and examine the wishes or will of all parties. Furthermore, the Land Deed Official did not even examine the evidence of letters relating to the wishes or will of the parties, this was aimed at forging signatures in the Certificate and Sale and Purchase Agreement. But in reality, the Notary in his position as the Land Deed Official in this case still granted the will of the parties to conduct the sale and purchase and poured it into a Sale and Purchase Agreement as a public official.

As a general official, the Land Deed Official must be careful in carrying out his duties, so the Land Deed Official must be careful when checking the formal correctness of the documents submitted to him. Land Deed Officials are also required to be honest in carrying out their duties such as being honest with themselves, society, and God. Land Deed Officials when carrying out their duties must have good faith and by the applicable code of ethics or rules, as stated in Article 3 letter f of the Code of Ethics for Land Deed Officials which requires that

Land Deed Officials must be responsible, fair and impartial, and Article 4 letter r number 1, whereby the Land Deed Official is prohibited from committing acts that violate the provisions in the Position Regulations for the Land Deed Official and other statutory provisions related to the main duties of the Land Deed Official. The Land Deed Official should make a deed that can be used as evidence that a certain legal action has been carried out regarding land rights by Article 1 point 4 PP Regulations for the Land Deed Official, if the deed issued by the Land Deed Official is made based on the correct procedure it will give legal certainty for the parties concerned.

A Land Deed Official is indeed only authorized to check the formal truth of the parties' identities and the legal basis of the parties' actions as regulated in Article 54 paragraph (2) and paragraph (3) of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Indonesia Number 1 of 2006 as amended and supplemented by Regulation of the Head of the Agency land National Regulation Number 23 of 2009 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Official. Land Deed Official is not required to check the material truth of the parties' identities because the Land Deed Official only includes the information or wishes of the appearers submitted to him. Therefore, before making a deed, the Land Deed Official must check carefully regarding the formal correctness of the data to be outlined in the deed, namely as follows:

- a. Checking the certificate at the local Land Office;
- b. Examine the identity documents, skills, and authorities of the parties (based on identity cards, Marriage Certificate, Power of Attorney, Wife/Husband's Agreement, Marriage Agreement, Company Articles of Association, and amendments thereto);
- c. Ask for Taxpayer Identification Number;
- d. Ask for a Statement Letter that you are not in a dispute regarding the object of legal action, both physically and juridically;
- e. Request a permit from the competent authority in the case of transfer or encumbrance of objects in legal actions such as: for agricultural land, for the right of use on State Land, for land whose certificates have defects, for the purchase of residential property rights not exceeding five parcels with a total area of 5000m<sup>2</sup>;
- f. Request proof of full payment of the Value Added Tax (VAT) and Building Tax (*BPHTB*);
- g. For the creation of a deed for a part of a land parcel that has been registered/formerly customary property rights, it is obligatory to request that a measurement be made in advance by the local Land Office and a *NIB* (Land Parcel Identification Number) of the land be issued;
- h. For each deed, the Land Deed Official shall include the Land Parcel Identification Number, the Certificate Number, and the Tax Notification Letter Number of the Tax Notification Letter Payable (Cahyadi, 2013).

The Land Deed Official is responsible for his intentions and or negligence in the mistake of making a Sale and Purchase Agreement that does not meet the formal and material requirements in making a Deed of a Land Deed Official, if the act is committed, the Land Deed Official can be subject to administrative sanctions. Based on the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006, deviations from the formal and material

requirements include serious violations which result in a Land Deed Official being dismissed either respectfully or dishonorably (Soraya Rafika Putri, 2019).

As a result of not applying the precautionary principle by the Land Deed Official in making the Deed, the Land Deed Official may be subject to sanctions as stated in Article 62 of Government Regulation Number 24 of 1997 concerning Land Registration, which reads:

*"Land Deed Officials who in the performance of their duties ignore the provisions referred to in Article 38, Article 39, and Article 40 as well as the provisions and instructions given by the Minister or a designated Official shall be subject to administrative action in the form of a written warning up to dismissal from their position as Land Deed Official, without prejudice to the possibility of being sued for damages by parties who suffer losses caused by the neglect of these provisions".*

The article explains that if a Land Deed Official makes a mistake, he/she can be subject to administrative action either through a written warning or dismissal from his/her position. It does not rule out the possibility that the Land Deed Official can be sued for compensation if his actions harm other parties.

According to Philipus M. Hadjon, administrative sanctions broadly include four parts, namely as follows: (Sjaifurrachman dan Adjie Habib, 2011)

1. Government coercion

Government coercion is a real action of the authorities to stop a situation that is prohibited by the rules of administrative law and so that these actions are not carried out by citizens because these actions are contrary to the law. So that in this case, the Land Deed Official can be subject to coercion from the government to stop his actions that are contrary to the law, in this case, the Court Decision is one of the coercive actions of the government which requests that the Land Deed Official do something or not do something.

2. Withdrawal of a favorable decision (decree).

Sanctions used if there is someone makes a mistake can be done by revoking or withdrawing a decision or decree by issuing a new decree. This sanction is used if there is a violation of the rules or conditions written in the written determination.

In the case of a Land Deed Official who commits an error, the Decree on the Appointment of a Land Deed Official may be revoked or withdrawn and it is decided not to be able to exercise authority in his/her position as a Land Deed Official.

3. Imposition of administrative fines

A person who commits an error in his/her position may also be subject to administrative fines if he/she violates laws and regulations and may be charged a certain amount of money based on applicable laws and regulations. The government has the authority to impose such sanctions.

If a Land Deed Official is proven to have made a mistake in making a deed, the Land Deed Official may be subject to an administrative fine, one of which can be imposed in the form of a monetary fine, the determination of the fine is following the applicable laws and regulations and is determined by the competent government, in this case, the Court that examines and decides the case.



4. Sanctions for the imposition of forced money by the government

Sanction is like adding definite penalties by the government to increase the punishment of the perpetrator in addition to the imposition of fines that have been mentioned in the applicable laws and regulations.

The Land Deed Official in case No. 538/PID.b/2019/PN PdG was compelled by the government to execute the decision in the case. The Sale and Purchase Agreement issued by the Land Deed Official was decided by the judge to be returned to the National Land Agency of Padang City, this is an act of coercion from the government related to the Sale and Purchase Agreement issued.

Land Deed Officials who do not perform their duties properly and ignore the principles of prudence in making deeds can be held accountable following their professional code of ethics because there has been a violation committed by them which has consequences for the authenticity of the deed they make. According to the provisions of Article 9 of the Code of Ethics for Land Deed Officials, if there is a member of the Association of Land Deed Officials who is suspected of violating the Code of Ethics, whether the allegation comes from the knowledge of the Regional Honorary Council itself or because of a report from the Regional Management or other parties to the Regional Honorary Council, then the Regional Honorary Council within no later than 7 (seven) days holds a Regional Honorary Council session to discuss the alleged violation and afterward summons the Land Deed Official concerned to be questioned and defend himself. In the decision of the Regional Honorary Council hearing, if it is proven that there is a violation of the Code of Ethics, then the hearing also determines the sanctions against the violator, which according to the level are in the form of reprimand, warning, suspension (temporary dismissal), onzetting (dismissal), and dishonorable dismissal from membership of the Association of Land Deed Officials.

The principle of prudence should be considered by the Land Deed Official when making a Sale and Purchase Agreement, as stipulated in Article 34 paragraph (1) of the Regulation of the Head of the National Land Agency Number 1 of 2006 where the Land Deed Official when performing his official work must act in an orderly, careful and mindful manner or apply the principle of prudence in carrying out his duties, one of which is when making a Sale and Purchase Agreement. In the process of making a Sale and Purchase Agreement, it should pay attention to Article 16 paragraph (1) letter a of the Notary Position Law where the Notary / Land Deed Official when making a Sale and Purchase Agreement should introduce the parties, ask, listen and examine the wishes or will of the parties and examine the evidence of letters related to the wishes or will of the parties. But in reality, in Criminal Case Number: 538/PID.b/2019/PN PdG the Land Deed Official ignored the procedures that had been regulated in the process of making Sale and Purchase Agreement No. 112/2007, Sale and Purchase Agreement No. 165/2007, and Sale and Purchase Agreement No. 37/2007 where there were forged signatures in the Sale and Purchase Agreement and it was found that the reporting witness had never met directly with the Land Deed Official.

If the principle of prudence is applied by the Land Deed Official such as introducing the confrontation based on the identity shown; asking, then listening and scrutinizing the wishes or will of the parties; examining the evidence of letters relating to the wishes or will of the parties and carefully examining the formal truth of the data to be set out in the deed is carried out carefully with scrutiny, then the act of forgery of signatures in Criminal Case Number: 538/PID.b/2019/PN

Pdg will not occur as long as the Land Deed Official applies the principle of prudence.

Administrative sanctions for Land Deed Officials who violate the precautionary principle concerning the Sale and Purchase Binding agreement may be subject to the following sanctions: (Hatta Isnaini Wahyu Utomo and Hendry Dwicahyo Wanda, 2020)

a. Oral Warning;

Land Deed Officials who do not apply the principle of prudence in making Deeds, especially in the matter of Sale and Purchase Agreements, may be subject to an oral warning from the Regional Honour Council of Land Deed Officials.

b. Termination while; Temporary Dismissal;

Land Deed Officials who are negligent in their position and do not apply the precautionary principle can also be temporarily dismissed by the Regional Honour Council, this temporary dismissal is given so that the Land Deed Official realizes that the legal actions he/she has taken are wrong and so that such actions are not repeated in the future. One of the reasons for a Land Deed Official to be temporarily dismissed is when in the process of bankruptcy or postponement of debt payment obligations; being under guardianship; committing violations of the obligations and prohibitions of the Land Deed Official code of ethics; and undergoing a period of detention.

c. Honorable Dismissal

A Land Deed Official may be respectfully dismissed through a meeting held by the Honorary Council of Land Deed Officials if a Land Deed Official is proven and subject to criminal sanctions through a court decision, in addition to if the Land Deed Official is declared bankrupt.

d. Dismissal with Dishonour.

Dismissal with dishonor is given to a Land Deed Official who is clearly and proven to have committed a mistake and received criminal sanctions for his/her actions through a court decision. The dismissal is decided after a summons and a joint meeting of the Land Deed Official Honour Council.

Based on the administrative sanctions mentioned above, the actions committed by the Land Deed Official in Criminal Case Number: 538/PID.b/2019/PN Pdg should have received an oral warning and temporary dismissal by the Regional Honorary Council of Land Deed Officials for violating the code of ethics in applying the precautionary principle following Article 9 of the Code of Ethics for Land Deed Officials. Although in the trial the Land Deed Officials were not sanctioned through a court decision, the Honorary Council should have given an Oral Warning to the Land Deed Officials, namely Armalina Ahmad, S.H., M.Kn. and Yanses Saam, S.H. because of their lack of prudence in making the deed, namely not presenting the reporting witness directly in making the Sale and Purchase Agreement and not conducting a proper identity check and negligence in making the Sale and Purchase Agreement causing losses to the reporting witness. With the sanction of verbal warning through the Board of Honourable Assembly, it can make the Land Deed Officials more aware of the mistakes they have made and make them apply the principle of prudence in carrying out their duties and authority in this case making a Sale and Purchase Agreement.

### **The validity of a Sale and Purchase Agreement where there is evidence of forged signatures in the Sale and Purchase Agreement**

A Land Deed Official who commits an intentional act or omission in making a Sale and Purchase Agreement that is contrary to the formal and material requirements will result in the deed made by the Land Deed Official becoming legally defective. If a deed issued by a Land Deed Official is proven to have errors in its making due to the non-application of the precautionary principle as in Article 3 letter o of the Code of Ethics for Land Deed Officials, this will affect the validity of the deed. The consequences of the deed issued due to the non-application of the precautionary principle by the Land Deed Official are as follows:

1. Deeds of Land Deed Officials Can Be Cancelled

An agreement that does not meet the subjective requirements has the effect of being cancellable, which means that the cancellation must be requested to the Judge, but if there is no cancellation from one of the parties and there has been no cancellation from the Judge, then the agreement remains valid as well as an agreement that does not have a defect of will. If a Sale and Purchase Agreement is declared cancellable, it means that from the outset the deed is deemed to exist but the deed can be annulled by the court at the request of the parties concerned. (Sesaria Arimbi, 2022)

2. Deed of Land Deed Official Null and void

If an agreement does not meet the objective requirements, then the agreement is null and void, so that the agreement is considered to have never existed and juridically from the beginning there was no agreement and there was no obligation between the people who intended to make an agreement.

The implementation of making a Sale and Purchase Agreement is following Article 1868 of the Civil Code (*KUHPerdata*) in the process of making a Sale and Purchase Agreement must be carried out by the parties in front of an authorized official, namely the Land Deed Official. The process of making a Sale and Purchase Agreement is also regulated in Article 101 of the Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 which reads as follows:

- (1) *The making of a deed by a Land Deed Official must be attended by the parties to the legal act concerned or the person authorized by them with a written power of attorney following the prevailing laws and regulations.*
- (2) *The making of a deed by a Land Deed Official must be witnessed by at least 2 witnesses who, according to the provisions of the prevailing laws and regulations, are qualified to act as witnesses in a legal action, testifying inter alia to the presence of the parties or their proxies, the existence of the documents presented in the making of the deed, and the execution of the legal action by the parties concerned.*
- (3) *The Land Deed Official shall be obliged to discuss the deed with the parties concerned and provide an explanation of the content and purpose of the deed, and the registration procedures that must be carried out subsequently following the applicable provisions.*

The regulation stipulates that the process of making a Sale and Purchase Agreement must be attended by the parties concerned, attended by at least two witnesses and the Land Deed Official must read out and explain the contents and purpose of the deed to the parties. If these rules are not carried out, it will have

implications for the validity of the Sale and Purchase Agreement, which can be canceled or null and void.

The Sale and Purchase Agreement is a form of agreement, in the making of the agreement some conditions are not fulfilled in the validity of the agreement. According to Article 1320 of the Civil Code, the conditions for the validity of an agreement are as follows: (R. Subekti, 2006)

a. Agreement of the parties

Both parties to the agreement have mutually agreed on the matters agreed upon, one of which is to provide a signature as a sign of agreement.

b. Capability to make an engagement or legal action

Every person who agrees must be capable, namely an adult with, a healthy mind, not in guardianship, and has a legal capacity to perform legal acts.

c. A certain thing,

There is an object in the form of things or goods that are clear as something that is promised in an agreement.

d. A lawful cause

Agreements made are not made for prohibited reasons, are false, and are not contrary to applicable laws and regulations. Article 1335 of the Civil Code explains that an agreement that does not use a lawful cause or is made with a false or prohibited cause, has no legal force.

If it is related to the case of Decision Number 538/PID.b/2019/PN Pdg, there are at least 2 (two) conditions that are not fulfilled in the Sale and Purchase Agreement made by the Land Deed Official, namely:

a. Agreement of the Parties

In this case, there was no agreement between the Defendant and his siblings regarding the division and sale of the land in Sale and Purchase Agreement No. 2106, where the heirs were not aware of the sale and purchase and never appeared before the Notary/Land Deed Official from the beginning of the preparation of the Sale and Purchase Agreement until the signing of Sale and Purchase Agreement No. 112/2007, Sale and Purchase Agreement No. 165/2007 and Sale and Purchase Agreement No. 37/2008, where the presence and signatures of the heirs in the consent section were forged. The existence of forged signatures in the Sale and Purchase Agreement is contrary to Article 4 letter o of the Code of Ethics for Land Deed Officials which reads:

*"Being the instrument of another person or party to merely sign a deed made by another person as a deed made by/in the presence of the relevant Land Deed Official,"*

The regulation explains that every Land Deed Official both in the context of carrying out official duties and in everyday life is prohibited from being a tool or other party as if signing a deed made before a Land Deed Official. Therefore, the actions of the Land Deed Official in forging the signature of the Sale and Purchase Agreement may be subject to sanctions and affect the validity of the Sale and Purchase Agreement.

b. A Lawful Cause

By falsifying the signatures and thumbprints on the consent of the heirs regarding the sale and purchase of land, there is a violation of the requirement of "lawful cause" because the Defendant in the agreement in bad faith falsified the presence of the heirs so that it seemed as if the Defendant as the Seller had obtained the heirs' consent to sell the land and building to the Buyers, and then as if the heirs had signed the Sale and Purchase Agreement as if the heirs had

signed it so that the signatures of consent on the Sale and Purchase Agreement were fake.

The "agreement of the parties" requirement is a subjective requirement that if this requirement is not fulfilled, the agreement that has been made can be canceled. Meanwhile, the "lawful cause" requirement is an objective requirement which, if this requirement is not fulfilled, the agreement made is declared null and void, meaning that an agreement is considered to have never existed or occurred from the start so that the parties may not base a legal action they carry out based on this reason.

Thus, due to the non-fulfillment of the subjective and objective conditions, the Deed of Sale and Purchase No. 112/2007 of 2007, Deed of Sale and Purchase No. 165/2007 of 2007, Deed of Sale and Purchase No. 37/2007 made before the Land Deed Officials Armalina Ahmad and Yanses Saam, S.H. can be canceled or null and void.

Signature forgery in case 538/PID.b/2019/PN Pdg can cancel the agreement in the Sale and Purchase Agreement. One of the things that cause the Sale and Purchase Agreement to be null and void is that the formal and material requirements are not fulfilled. The proof of signature forgery in the Sale and Purchase Agreement causes the deed made by the Land Deed Official, namely Sale and Purchase Agreement No. 112/2007 of 2007, Sale and Purchase Agreement No. 165/2007 of 2007, Sale and Purchase Agreement No. 37/2007 to have evidentiary power as a deed under the hand. According to the provisions of Article 84 of the Notary Law, violations committed by a Land Deed Official that result in a deed only having the evidentiary force of a deed under hand or a deed becoming null and void can be a reason for the party who suffers a loss to claim reimbursement of costs, compensation, and interest from the Land Deed Official as civil liability. In addition, the Land Deed Official is deemed to have been careless and inconsiderate in carrying out his/her position because the deed he/she made only has the evidentiary force of a deed under the hand so that it can be subject to administrative sanctions according to the applicable code of ethics.

In this case, Certificate of Title No. 2106 and Deed of Sale and Purchase No. 112/2007 of 2007, Deed of Sale and Purchase No. 165/2007 of 2007, Deed of Sale and Purchase No. 37/2007 which became evidence were declared by the Judge in the verdict to be "Returned to the National Land Agency of Padang City" and "Returned to Retnowati". This shows that the consequences that occur due to the forgery of signatures in the agreement, namely in the Deed of Sale and Purchase and the Certificate of Ownership are "null and void" this is guided by the validity requirements of the agreement in Article 1320 of the Civil Code which states that an agreement is said to be valid if it is based on the agreement of the parties, capable, a certain matter and a halal cause.

In the case of Decision 538/PID.b/2019/PN Pdg, the elements of the agreement and lawful cause are not fulfilled because there is a forgery of the parties' agreement regarding the issuance of a new Certificate and Sale and Purchase Agreement, based on this, it should be interpreted that the agreement has occurred is null and void because the subjective requirements in the valid requirements of the agreement are not fulfilled. The consequence of null and void is that the Deed of Sale and Purchase No. 112/2007 of 2007, Deed of Sale and Purchase No. 165/2007 of 2007, and Deed of Sale and Purchase No. 37/2007 are considered null and void, and are considered not to exist or have never occurred

from the beginning so that the parties may not base a legal action they perform based on these reasons.

### Conclusion

Based on the results of the discussion that has been presented, the conclusions are as follows:

1. As a result of the non-application of the precautionary principle by the Land Deed Official in making a Deed, the Land Deed Official may be subject to Sanctions as in the Code of Ethics for Land Deed Officials Article 3 letter f and Article 62 of Government Regulation Number 24 of 1997, as well as Administrative Sanctions in the form of a written warning to dismissal from his position as a Land Deed Official, without reducing the possibility of being sued for compensation by parties who suffer losses. Actions are taken by the Land Deed Official in Decision 538/PID.b/2019/PN Pdg are subject to sanctions in the form of Government Coercion to follow the court's decision, namely returning the Sale and Purchase Agreement that has been issued to the National Land Agency of Padang City.
2. The validity of a Sale and Purchase Agreement that is proven to contain forged signatures can be measured through the fulfillment of formal and material requirements as stated in Article 1320 of the Civil Code. If these conditions are not met, the Sale and Purchase Agreement can be canceled and may be null and void. The validity of a Sale and Purchase Agreement that has been declared to have forged signatures is null and void, this is because the conditions of the agreement, namely a lawful cause, are not fulfilled. As a consequence of null and void, the Sale and Purchase Agreement No. 112/2007 of 2007, Sale and Purchase Agreement No. 165/2007 of 2007, and Sale and Purchase Agreement No. 37/2007 are considered null and void and are considered not to exist or never happened in the first place.

### Suggestion

Based on the explanation that the author has described, the author provides the following suggestions:

1. Land Deed Officials should when making an authentic deed such as a Sale and Purchase Agreement must apply the principle of prudence such as introducing the confrontation based on their identity, asking, listening, and scrutinizing the wishes or will of the parties, and examining the evidence of letters relating to the wishes or will of the parties as outlined in the Sale and Purchase Agreement following Article Article 16 paragraph (1) letter a of the Notary Office Law.
2. In making an agreement such as a Sale and Purchase Agreement, the parties should pay attention to the Terms of validity of the agreement in Article 1320 of the Civil Code, because if these conditions are not met, the agreement made can be declared null and void or can be canceled.

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