

THE PRUDENTIAL PRINCIPLE ANALYSIS OF LAND DEED OFFICIAL (PPAT) AS AN EFFORT TO MINIMIZE DISPUTES IN UNCERTIFIED LAND TRADING

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Abstract

Uncertified land transition prone to cause dispute if Land Deed Official (PPAT) does not apply the prudential principle. This research analyzes: first, what is the Official Regulation of Land Deed Official (PPAT) has implemented the prudential principle? Second, how is the prudential principle of Land Deed Official (PPAT) in uncertified land transition? The research method used was normative legal research. From this research was concluded that: First, the Official Regulation of Land Deed Official (PPAT) had implemented the prudential principle. Secondly, the prudential principle of Land Deed Official (PPAT) in uncertified land transition was reflected in the obligation of Land Deed Official to refuse to make deed if not accompanied by formal data.

Keywords: Prudential Principle, Land Deed Official, Trading

INTRODUCTION

The existence of land that has great value in human life often creates problems, so in order to avoid the increasing number of problems occurred, then the State is obliged to give assurance of legal certainty of land ownership rights for the community through land registration. From the urgency relating to legal certainty of land ownership rights, the Government followed up by issuing Law Number 5 of 1960 on Basic Agrarian Law (BAL/UUPA) to regulate all matters relating to earth, water and space.

The inception of BAL became the beginning for the achievement of legal certainty within the scope of land. BAL introduced various land rights either primary, such as property rights, cultivation rights, building use rights and use rights, or secondary such as lease rights and the right of picking up forest products. From the existence of various land rights then determined the way to achieve a legal certainty of ownership. Article 19 of the BAL mandates on the whole territory of the Republic of Indonesia held land registry are *cadastral recht*, thus ensuring legal certainty. Land registration activities in the estuary gave birth proof of land ownership rights in the form of certificate.

The mandate of BAL to carry out land registration in order to achieve legal certainty of land ownership rights up to now has not been fully implemented. This is because the community has not fully understood the importance of proof of land ownership rights in the form of certificate. Most of the community particularly in the countryside still consider the *fiscal cadaster*, commonly referred to as *Letter C*, *Petuk D*, *Girik*, etc., as proof of land ownership rights. The community in general has not understood that in the concept of *fiscal cadaster* registration its main purpose is not to provide legal certainty, but to determine who is obliged to pay taxes on the land.¹

Economical value of land that increasingly makes many people less concerned for rights attached to the land. The community, especially in the countryside, do not care that the land has not been certified. Although the land is

¹ H. Muchsin, Imam Koeswahyono, Soimin, *Hukum Agraria Indonesia : Dalam Perspektif Sejarah*, Refika Aditama, Bandung, 2007, hlm. 23

still grounded *Letter C Petuk D, Girik* or the like but the transition is very much encountered. In this condition, in the end, the people who become prone to harmed in the case of dispute of the land transition because the evidence of ownership is not the strongest evidence.

Uncertified land transition prone to cause problems if not done by applying the prudential principles. Uncertified land transition must be done in front of Land Deed Official (PPAT). In uncertified land transition, Land Deed Official has very important role for the creation of legal certainty for the parties. Land Deed Official shall apply the prudential principles in uncertified land transition to prevent problems arising in the future.

The prudential principle has the meaning of putting vigilant attitude either on self or others by paying attention to the consequences of any action taken, either currently or in the future.² The prudential principle should also be part of various regulations, especially in regulations relating to the needs of the wider community of a legal certainty as in Land Deed Official Regulation as well as on regulations relating to land rights transition.

Based on the description in the background, this research is based on the following problems: *First*, what is the regulation of Land Deed Official (PPAT) Office has implemented the Prudential Principle in the implementation the duties of Land Deed Official (PPAT) Office. *Second*, how is the prudential principle of Land Deed Official (PPAT) in uncertified land transition.

RESEARCH METHODS

The method used in this research was normative juridical research method that emphasizes the legal norms by analyzing related legislation. In this research, the researcher used two methods of problems approach, were: 1) *Statute Approach*, approach by reviewing all legislation regulations relating to

² Adam Smith, *The Theory Of Moral Sentiments Indianapolis*, Oxford University Press ,Oxford, 1976, hlm. 153

the problems (legal issues) at hand. 2) *Conceptual Approach*, i.e. approach that moved from the views and doctrines that developed in the science of law.³

RESEARCH RESULT AND DISCUSSION

Overview of Prudential Principles

In general, the prudential principle can be interpreted as the basis of truth which is becoming the basis for thinking and acting with great care. The prudential principle in the global scope is known as *prudential regulation* or *precautionary principle*.

The prudential principle is the development of the principle of *prudence*. Black's Law Dictionary defines about "*prudence*" as follows: "*carefulness, precaution, attentiveness and good judgment, as applied to action or of care reconduct. That degree of care required by the exigencies or circumstance under which it is to be exercised. This term, in the language of the law, is commonly associated with care and diligence ad contrasted with negligence*".⁴ The definition is freely translated: "carefulness, precaution, attention and objective assessment as contained in action or concern. The level of concern requires urgency or a situation that requires a lot of training. This condition in legal language is associated with caring and persistence in the opposite carelessness."

Whereas in the modern world of England, *prudence* is a feeling of caution and full calculations on self-interest. It was stated by Alasdair MacIntyre, who stated: *Prudence is the virtue which is manifested in acting so that one's adherence to other virtues is exemplified in one's actions.* (The virtue expressed in action in such a way that the loyalty of the virtue to the other is made an example to the actions of another).⁵

³ Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media, Jakarta, 2010, hlm. 95-97

⁴ Henry Campell Black, *Black's Law Dictionary : Definitions Of The Terms And Phrases Of American And English Jurisprudence*, Ancient And Modern, West Publishing Co, St. Paul, Minn, 1968, p. 1468

⁵ Alasdair Macintyre, *A Short History Of Ethics (A History Of Moral Philosophy From The Homeric Age To The Twentieth Century)*, Alden Press Oxford, Great Britain, 1976, p. 74

The sense of *prudence* is also expressed by Adam Smith in the Theory of Moral Virtue, which gives the sense of *prudence* as: “that careful and laborious and circumspect state of mind, ever watchful and ever attentive to the most distant consequences of every action, could not be thing pleasant or agreeable for its own sake, but upon account of its tendency to procure the greatest goods and to keep off the greatest evils”, Which when translated freely means: "attitude is very careful, very vigilant and attentive to the most distant consequences of any action, cannot be a nice thing or agreeable for its own sake, but on the responsibility of the tendency to acquire the greatest kindness and to avoid the greatest crime".⁶

From the *prudence* theory expressed by Adam Smith it can be seen that *prudence* is inner state of vigilant, careful and very careful, always attentive to the most distant consequences of any action, to acquire the greatest kindness and to avoid the greatest crime.⁷

This virtue concerns the obligation to maintain personal life as well as the consequences that arise to others. In *prudence* principle, according to Adam Smith, people have this virtue always cautious and be wary of him, his interests and his life, not only concerned his interests for the present, but also wary of his life in the future. When doing something then someone notices the long-term consequences that can occur from his current actions. For the sake of his interests then he also cares about the interests of others.

The prudential principle of an action will be taken if there is sufficient evidence, so in the absence of sufficient evidence there will be no specific action taken. The prudential principle has the purpose of anticipating and preventing from the beginning an uncertain consequences of a certain activity undertaken by humans.⁸

⁶ Adam Smith Dalam Sonny Keraf, *Pasar Bebas, Keadilan Dan Peran Pemerintah*, Kanisius, Yogyakarta, 1996, hlm. 107

⁷ Johannes Ibrahim, P. Lindawaty S. Sewu, Hassanain Haykal, “Prinsip Kehati-Hatian Dalam Konsistensi Penerbitan Kebijakan PPAP Sebagai Upaya Menciptakan Struktur Perbankan Yang Sehat”, artikel dalam *Jurnal Ilmu Hukum Litigasi*, Volume 14 No. 1 April 2013

⁸ Sri Wartini, “Implementasi Prinsip Kehati-hatian Dalam *Sanitary And Phythosanitary Agreement*”, Studi Kasus: Keputusan Appellate Body WTO Dalam Kasus Hormone Beef Antara

From some doctrines on the prudential principle as described above, then it can be concluded that the prudential principle is a cornerstone of thought that is used before doing something by first considering all possibilities to avoid problems in the future.

The Prudential Principle in Official Regulation of Land Deed Official

Promotion of sustainable National development requires the support of legal certainty in the field of land. It becomes the philosophical basis for the holding of land registration activities by the Government. The implementation of land registration is carried out by the Government through the Head of Office assisted by Land Deed Official (PPAT) and other Officials assigned to carry out certain activities related to land registration.

Land Deed Official (PPAT) has the main duty to carry out part of land registration activity by making deed as evidence of certain legal actions concerning land rights or ownership of Unit of Flats, which will be the basis for registration of changes in land registration data caused by legal action. Legal actions that mentioned above are: trading, exchange, grant, corporate income (*inbreng*), distribution of collective rights, granting of building rights/use rights to land of property rights, granting of dependents rights and authorizing burdensome dependents rights.

As an official whose signature is capable of causing the rights transition, it is reasonable that Land Deed Official acts in full of prudence in performing the duties. Land Deed Official as the official authorized to make deed in the field of land shall perform the office duties in accordance with the Official Regulation of Land Deed Official. The Official Regulation of Land Deed Official is governed in Government Regulation No. 37 of 1998 on the Official Regulation of Land Deed Official as amended by Government Regulation No. 24 of 1986 on Amendment to Government Regulation No. 37 of 1998 on the Official Regulation of Land Deed Official, as well as the implementing

Uni Eropa Dengan Amerika Serikat”, artikel dalam *Jurnal Hukum*, No. 2 Vol. 14 April 2007: 296 - 313

regulation, namely the Regulation of National Land Agency Number 1 of 2006 concerning the Provisions of the Implementation of Government Regulation Number 37 of 1998 on the Official Regulation of Land Deed Official (Perkaban/National Land Agency No. 1 of 2016).

If viewed from the overall provisions in the Official Regulation of Land Deed Official either on Government Regulation Number 37 of 1998 on the Official Regulation of Land Deed Official or Government Regulation Number 24 of 2016 on the Amendment of Government Regulation Number 37 of 1998 concerning the Official Regulation of Land Deed Official, indeed there is only one Article indicates the prudential principle for Land Deed Official in carrying out the duties, but from one article it should be understood about the norms contained therein.

In the Official Regulation of Land Deed Official, there is provision that instructs Land Deed Official applying the prudential principles in the implementation of the official duties, namely Article 22 of In Official Regulation of Land Deed Official stated that "the Deed of Land Deed Official shall be read/explained its contents to the parties by attended by at least 2 (two) witnesses before being signed at once by the parties, witnesses and Land Deed Official (PPAT)."

The provisions in Article 22 of the Official Regulation of Land Deed Official, if described will be found the formulation that the Deed of Land Deed Official shall be: a) Shall be read/explained its contents; b) In its making shall be attended by 2 (two) witnesses; c) Signed by the parties, witnesses and Land Deed Official.

The duty to read and explain the contents of the deed is to ensure that the confronters have fully understood what is contained in the deed. According to R. Soegondo Notodisoerjo, this reading should be done clearly, so that it can be captured by the confronter and witnesses.⁹ The purpose of reading the deed is said by J. C. H. Melis as quoted by Tan Thong Kie is to: 1) a guarantee to the

⁹ R. Soegondo Notodisoerjo, *Hukum Notaris Di Indonesia : Suatu Penjelasan*, Rajawali Pers, Jakarta, 1982, hlm. 164

confronter that what they sign is the same as what they hear from the reading; and 2) a certainty for the confronter that what is written in the deed is the true will of the confronter. Tan Thong Kie furthermore concluded 3 (three) benefits of reading deed, are: 1) At the last minute in the process of inaugurated (*verlijden*) deed, the official authorized to make the deed is still given the opportunity to correct mistakes in writing that were not previously seen; 2) The confronters are given the opportunity to ask what is less clear to them before the deed is signed; 3) To give an opportunity to officials authorized making the deeds and the confronters in the last seconds held rethinking, asking and, if necessary, changing the deed.¹⁰

According to the author, the deed must be read and explained its contents by Land Deed Official (PPAT) because not all the confronters who come to Land Deed Official can read and easily understand what is written in the deed that will be signed. With the obligation of Land Deed Officials read and explain the contents of the deed will make the parties easier to understand what is being done and is expected to provide the sense of justice for all parties because of the respective rights and obligations of the parties are described by Land Deed Officials through the reading of the deed. The reading of the deed by Land Deed Official is expected to make the confronters more understand what is stated in the deed that will be signed, and be able to avoid any claim from one party in the future due to differences in interpretation of the things written in the deed.

The deed of Land Deed Official in its making shall be attended by 2 (two) witnesses. The presence of 2 (two) witnesses is the formal aspect in making of the deed of Land Deed Official. If the provision is violated will make the position of the deed to be only limited deed under the hand only. The formal aspect must be fulfilled by Land Deed Official in making the deed, because it is a part of the obligation of Land Deed Official in the implementation in making the deed as mentioned in the Official Regulation of Land Deed Official.

¹⁰ Tan Thong Kie, *Studi Notariat Dan Serba Serbi Praktek Notaris*, Ichtisar Baru Van Hoeve, Jakarta, 2007, hlm. 505

The position of witness as part of the formal aspect of the deed of Land Deed Official is as a figure who is deemed to know about the event or the incident himself, i.e. the making of the deed of Land Deed Official. In that position witnesses witnessed that there has been making the deed of Land Deed Official based on the will of the parties, witnessed that the deed has been read by Land Deed Official in front of the parties, and the deed of Land Deed Official has been signed by the parties, witnesses, and Land Deed Officials or in other words that the witnesses witnessed that all formal aspects in making the deed have been fulfilled by the respective Land Deed Officials, so the deed qualifies as an authentic deed.

Witness in the deed of Land Deed Official is determined by 2 (two) persons because the testimony of a witness without other evidence is not considered as sufficient evidence. This is in accordance with the principle of *unus testus nullus testis* (one witness is not a witness). Komar Andasmita mentioned that the witnesses in an authentic deed is witness instrument (*instrumentaire getuigen*).¹¹ The presence of two witnesses is an absolute requirement that can not be avoided, so that the deed has authenticity. The presence of witnesses in making authentic deed is useful when there is a matter of coercion (*dwang*) or deception (*bedrog*) at the time of the deed.¹²

Furthermore, the signing of the deed also becomes part of the formal aspect of the deed of Land Deed Official. The deed is a letter as evidence that the signature was given, containing the event on which the basis of a right or contract, which had been originally deliberately intended for the purpose of proof. So, to be classified in the sense of deed then the letter must be signed. The necessity of signature is to distinguish one deed from another or from deed made by another. So, the signature function is none other than to characterize or to individualize a deed.

¹¹ Komar Andasmita, *Notaris I*, Sumur, Bandung, 1981, hlm. 103

¹² R. Soesanto, *Tugas, Kewajiban Dan Hak-Hak Notaris, Wakil Notaris (Sementara)*, Pradnya Paramita, Jakarta, 1978, hlm. 94

The existence of a signature is to characterize or to individualize a deed. According to Habib Adjie, the signature functions of the confronter are: a) Self-identification or self-identity of the person concerned; b) Evidence that the person concerned has faced; c) Agreement that the confronter agrees with everything contained or stated in the deed.¹³

In general, signing on a document has the following objectives: 1) at the time the signer put a signature in a special form, the text will have a relationship with the signer. 2) The signing of a document will result in the signer knowing that he/she has committed a legal action. 3) The signature symbolizes the approval of an article.

The signature on an authentic deed actually has two basic legal functions, i.e., as a sign of the signer identity and as a sign of approval of the obligations attached to the deed. Based on these two legal functions, it can be drawn a conclusion that a signature is an identity that serves as a sign of approval of the obligations attached to the deed.¹⁴

The Prudential Principle of Land Deed Official is reflected more clearly in National Land Agency No. 1 of 2016. The provisions of Article 22 on the Official Regulation of Land Deed Official are again described in National Land Agency No. 1 of 2016 which became the regulation of executor. One form of elaboration of Article 22 on the Official Regulation of Land Deed Official is in Articles 53 and 54 of National Land Agency No. 1 of 2016.

In Article 53 of National Land Agency No. 1 of 2016 it is determined that the Deed of Land Deed Official is made by filling in the form of deed which has been determined. Filling in the form of deed in the framework of making the deed of Land Deed Official should be done in accordance with the occurrence, status and correct data and supported by appropriate legislation documents.

¹³ Habib Adjie, *Penafsiran Tematik Hukum Notaris Indonesia (Berdasarkan Undang-Undang Nomor 2 Tahun 2014 Tentang Perubahan Undang-Undang Nomor 30 Tahun 2004 Tentang Jabatan Notaris)*, Refika Aditama, Bandung, 2015, hlm. 21

¹⁴ Hatta Isnaini Wahyu Utomo, "Penggunaan *Surrogate* Pada Akta Notaris", artikel dalam *Kumpulan Tesis Pascasarjana Universitas Narotama*, www.thesis.narotama.ac.id, diakses tanggal 28 Juni 2017

Furthermore, in Article 53 paragraph (3) and paragraph (4) of National Land Agency No. 1 of 2016 it is reiterated that the making of the deed of Land Deed Official is done in the presence of 2 (two) witnesses who have qualified in accordance with the legislation. The witness testified on: a) identity and capacity of the confronter; b) the presence of the parties or their proxies; c) the truth of the physical data and juridical data of the object of legal action in term of the object before it is registered; d) the existence of documents indicated in the making of the deed; e) has been implemented of such legal action by the parties concerned.

The implementation of the prudential principle of Land Deed Official in performing office duties is also reflected in Article 54 paragraph (1) of National Land Agency No. 1 of 2016 stating that before drafting the deed of Land Deed Official is required to examine the suitability/validity of certificates and other records at the local Land Agency by explaining the purpose and objectives. This provision was born to provide certainty and legal protection for the confronters of the object to be transacted, especially regarding the authenticity of the evidence of land ownership rights.

In making the deed of Land Deed Official is not allowed to contain the words "according to or according to the statements of the parties" unless supported by formal data. If there is no formal data on which the basis of the deed, Land Deed Official is authorized to reject the deed. The requirement of such formal data in addition to provide legal protection to the parties also to provide legal protection to Land Deed Official itself.

In Article 54 paragraph (4) of National Land Agency No. 1 of 2016 it is stated that Land Deed Official is not allowed to make deed on a partially registered plot of land or customary land, before it is measured by the Land Office and given Land Identification Number (NIB). It is intended to provide legal certainty regarding the exact location of the transaction object after adjusting between physical data and juridical data. Furthermore, in making of the deed, Land Deed Official shall list Land Identification Number and/or land rights number, Notice of Land and Building Tax payable (SPPT) number, the

use and utilization of land in accordance with the circumstances of the field. The provision is to ensure that land to be transacted already has Land Identification Number and has been registered as tax object, so as to provide legal certainty for the parties.

The Prudential Principle of Land Deed Official in Uncertified Land Transition

The Constitution of 1945 explicitly does not mention that individual land ownership is legitimate, but it certainly gives wide space to citizens to individually recognize the goods necessary to maintain their human dignity, develop their personal and talents and decent living for humanity.¹⁵

Land ownership was initially based solely on physical mastery through the recognition of land not owned by anyone (*res nullius*). After the enactment of Basic Agrarian Law, it is expected that the right holders register their land through the registration of land either systematically or sporadically to obtain evidence of land ownership rights in the form of land certificates, so as to ensure legal certainty of land ownership.¹⁶

Economical value of land that is increasingly makes the people less concerned about the rights attached to the land. People, especially in the countryside do not care that the land has not been certified. Although the land is still not certified but the transition is very much encountered. In this condition, in the end, the people who become vulnerable to harmed in the case of dispute of land transition, because the evidence of ownership is not the strongest evidence. Disputes arising around common land include the land status, who is entitled to the land, the rebuttal to acquisition of evidence on which the basis of ownership rights.

¹⁵ Winahyu Erwiningsih, "Pelaksanaan Pengaturan Hak Menguasai Negara Atas Tanah Menurut UUD 1945", Artikel Dalam *Jurnal Hukum*, No. Edisi Khusus Vol. 16 Oktober 2009: 118-136

¹⁶ I Made Suwitra, "Dampak Konversi Dalam UUPA Terhadap Status Tanah Adat Di Bali", Artikel Dalam *Jurnal Hukum*, No. 1 Vol. 17 Januari 2010: 103 - 118

Land ownership rights transition that has not been certified most often occurs through trading process. This can be understood because in trading process of course there is an agreed price and then must be paid in cash, so that through trading transactions are able to provide profit both for the sellers who receive cash money proceeds from the sale of land and for the buyer to acquire the land that will be an asset, because generally the land value is increasingly.

The current of land trading is based on the concept of land trading according to customary law. In the conception of customary law at the time land trading transactions has been done if the land to be bought has been paid at a price in accordance with the agreement. Character traits of land trading according to customary law, are: 1) Cash, the agreed land price may be paid in full and may also be partially paid. In the case that the agreed price is paid partially, it is assumed that there has been full payment in relation to land trading and some of the unpaid price will be regarded as a debt from the buyer to the seller. 2) Clear, land trading is done in front of Subdistrict Head (Camat) or Village Head. This process is done in order that buyers get recognition from the community concerned as new landowners and get legal protection if in the future there is lawsuit against him from the parties who consider that land trading is not legitimate.

The conception of trading as aforementioned seems increasingly gained support by the Supreme Court Jurisprudence No. 126.K/Sip/1976 on April 4, 1978 has stated that: "to legality of land trading, it is not absolute by the deed made by and in front of Land Deed Official, this is just a proof", but there is a matter to be understood that what is stated in the Jurisprudence is about the proof of trading and not the proof of land ownership.

The conception of trading according to the customary law has not guaranteed legal certainty, especially at this time that is recognized as a proof of land ownership rights is a certificate instead of other letters and changes in ownership data of such land must also be registered at the local Land Agency. Legal protection for the parties to the transaction can also be said to be vulnerable because not all Subdistrict Head or Village Head are currently

designated as Special Land Deed Official, so that rights transition is not made by authentic deed.

In such situations, the role of Land Deed Official as the official who assisting the Government in the implementation of land registration has become very influential either from the aspect of legal certainty or the aspect of legal protection. Article 37 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration (PP No. 24 of 1997) states: "Land rights transition and property rights to flat units through trading, exchange, grants, corporate income and legal action of other rights transition, except rights transition through auction may only be registered if proven by deed made by Land Deed Official authorized in accordance with the applicable legislation". The existence of the word "other rights transition" indicates that Land Deed Official is authorized to make deed of land ownership transition that has not been certified or that still use old rights proof instruments such as *Letter C, Petok D, Girik*, etc.

Furthermore, it is also stated in Article 103 paragraph (3) of the Regulation of the Minister of State Agrarian Affairs of National Land Agency Number 3 of 1997 on the Implementation of Government Regulation No. 24 of 1997 on Land Registration (National Land Agency No. 3 of 1997) that in land rights transition that has not been registered, one of the documents required for the rights transition is the deed of Land Deed Official of legal action of others rights transition concerned. Thus, it is clear that as a form of the prudential principle in land transition that has not been certified, then rights transition must be poured in the deed of Land Deed Official.

The deed of Land Deed Official is an authentic deed as evidence of a legal action. Article 1868 of Indonesian Civil Code (KUHP) states "An authentic deed is a deed made in the form prescribed by law or before the authorized public official in the place of the deed was made". The deed may be a strong basis for registration of transition and imposition of the right concerned.

The prudential principle of Land Deed Official in uncertified land transition is also mentioned in Article 39 paragraph (1) letter b of Government Regulation No. 24 of 1997. The provisions of that Article require Land Deed

Official to refuse to make the deed, concerning the area of land not yet registered if it is not submitted: 1) Proof letter of old rights or certificate of Village Head that states that the person concerned controlling the land for 20 (twenty) years. 2) Certificate stating that the land concerned that has not been certified by the Land Agency, or for land located in region far from the Land Agency, from the rights holder concerned with strengthened by Village Head.

Land Deed Official as the Official authorized to make land rights transition is expected to play a professional role capable of being a legal consultant fundamentally for the community of the service users in relation to land ownership rights transition, from the time of making the initial agreements to the making of the deed of land ownership rights transition. In the process of making the deed, Land Deed Officials should check and observe the aspects of the legality either the subject or the object, so that when formulated into a deed will have perfect authenticity as evidence and minimize the potential risk of legal relationship of trading transactions from the public who do so.¹⁷

The prudential principle which has been outlined above can be a means of preventing land disputes, especially in uncertified land transition. The implementation of prudential principles by Land Deed Official in uncertified land transition will be able to provide legal certainty for the parties and will be able to provide legal protection for the parties in the future from the possibility of dispute. Especially for Land Deed Official, the implementation of prudential principles will be able to bring Land Deed Official out of the problems that will occur as many found at this time that put Land Deed Official as a Defendant in civil disputes as well as issues that can make Land Deed Official as a party to assist the occurrence of a criminal case.

CONCLUSION

¹⁷ Pandam Nurwulan, "Aspek Hukum Transaksi Jual Beli Rumah Susun/Apartemen di Daerah Istimewa Yogyakarta Kaitannya dengan Peran Notaris-PPAT", artikel dalam *Jurnal Hukum Ius Quia Iustum*, No. 4 Vol. 22 Oktober 2015: 674 - 697

Government Regulation Number 37 of 1998 on Official Regulation of Land Deed Official juncto Government Regulation Number 24 of 2016 about the Amendment of Government Regulation Number 37 of 1998 about Official Regulation of Land Deed Official has applied the prudential principle. The form of the Prudential Principle is reflected in the obligation of Land Deed Official in making the deed: a) Read and explain the contents of the deed. The obligation to read and explain the contents of the deed is to ensure that the confronters have fully understood what is contained in the deed, so that none of the parties who feel aggrieved by the deed. b) Making a deed with two witnesses attended. Witness in the deed of Land Deed Official is determined by 2 (two) persons because the testimony of a witness without other evidence is not considered as sufficient evidence. This is in accordance with the principle of *unus testus nullus testis* (one witness is not a witness). c) The deed must be signed by the parties, witnesses and Land Deed Official. The position of the signature on an authentic deed has the function as sign of the signer's identity and as sign of approval of the signatory to the obligations attached to the deed.

Land ownership rights transition that has not been certified must be with the deed of Land Deed Official. The prudential principle of Land Deed Official in uncertified land transition is reflected in the obligation of Land Deed Official to: a) Checking the land data at the local Land Agency. b) Refusing to make the deed if there is no formal data in the form of: 1) Proof letter of old rights or certificate of Village Head that states that the person concerned controlling the land for 20 (twenty) years. 2) Certificate stating that the land concerned that has not been certified by the Land Agency, or for land located in region far from the Land Agency, from the rights holder concerned with strengthened by Village Head.

Suggestion from the author is Land Deed Official expected to understand and then apply the form of the prudential principles in the implementation of duties of his position, especially in land rights transition that has not been certified, so as to provide legal certainty for the parties who use the services and able to provide legal protection for the parties and Land Deed Official itself.

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