

# Principles Of Caution By Land Deed Officials In Preparing A Deed Of Sale And Purchase Of Land Ownership Rights

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**ABSTRACT:** The purpose of this research is to determine the principle of caution for land Deed officials in Making Deeds of sale and purchase of land ownership rights. The research method used in writing this thesis is using normative legal research methods and it can be concluded that: 1) The authority of a LDO to make authentic Deeds regarding all legal acts of transition and imposition of rights concerning land and ownership rights. to apartment units located within work area. LDO in Making authentic Deeds is obliged to use the precautionary principle based on regulations relating to LDO and land rights. 2) The legal consequences of the LDO Deed if you do not use the precautionary principle in the process of binding the sale and purchase of land as an embodiment of legal certainty is that the LDO Deed can be canceled and null and void by law because it is not in accordance with article 22 of GR No.37 th.1998 that the LDO Deed must be read aloud. or the contents are explained to the parties in the presence of at least two witnesses to the Deed.

**KEYWORDS:** LDO Authority, Precautionary Principle, Deed Of Sale And Purchase

## I. INTRODUCTION

The transfer of land rights refers to the event or legal act through which ownership of land rights is transferred from one party to another.<sup>1</sup> This process, governed by statutory regulations, involves a legal transition from the previous rights holder to the new rights holder. The Land Deed Making Officer (LDO) is the official authorized to execute the Deed of land transfer. The legal framework for the LDO's

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<sup>1</sup> Dani Ramdani Sukirman, Uyan Wiryadi and Anwar Budiman, 'Transfer of Rights To Individual Owned Land To the Company' (2025) 6(2) *JILPR Journal Indonesia Law and Policy Review* 217.

authority is outlined in Article 37, Paragraph 1 of GR Number 24 of 1997, which concerns land registration. This article specifies that transfers of land rights—whether through sale, exchange, donation, corporate income, or other legal means—must be substantiated by a Deed created by an authorized LDO and comply with existing laws; however, transfers via auction are exempt from this requirement.<sup>2</sup>

According to the Basic Agrarian Law (UUPA), which serves as the foundational legislation of national land law, land ownership rights are considered to be hereditary, as well as the strongest and most comprehensive rights an individual can hold over land, while also recognizing the social function of all land rights.<sup>3</sup> Article 20, Paragraph 1 of the UUPA reiterates that “Ownership rights are hereditary, the strongest, and the most complete rights that can belong to an individual in relation to land, subject to the stipulations outlined in Article 6. ” Once the involved parties sign the agreement, it is recognized as binding, becoming a Deed that carries the authority and duties of the LDO. In transactions involving the sale and purchase of land, there are two primary participants: the seller and the buyer. Each party possesses distinct obligations and rights, with each occasionally acting as a party obligated to perform or as one holding rights, reflecting the reciprocal nature of the sales agreement.<sup>4</sup> Moreover, the UUPA mandates that any transfer, deletion, or encumbrance of rights must be registered in accordance with Article 19, Paragraph 1. This registration serves as strong evidence for the cancellation of ownership rights and establishes the legal legitimacy surrounding the transfer and encumbrance of consumer rights within the community.

The sale and purchase agreement outlines commitments that one or more parties must fulfill prior to finalizing the main agreement, which is the ultimate objective of the transaction. When it comes to

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<sup>2</sup> Mulyanto Nugrahani, Linda, Albertus Sentot Sudarwanto, ‘Transfer of Land Rights Due to Debt Receivable Agreement’ (2023) 28(3) *International Journal of Business, Economics and Law* 10.

<sup>3</sup> Sugina Hidayanti, Indra Koswara and Yopie Gunawan, ‘The Land Legal System in Indonesia and Land Rights According to the Basic Agrarian Law (UUPA)’ (2021) 11(1) *Legal Brief* 366 <[www.legal.isha.or.id/index.php/legal](http://www.legal.isha.or.id/index.php/legal)>.

<sup>4</sup> Rafi Hidayatullah Pakaya et al, ‘Analysis of the Dispute of Unlawful Acts in the Land Sale and Purchase Agreement’ (2021) 1(2) *Interdisciplinary Social Studies* 138.

land sales, these transactions must be conducted in the presence of an authorized official known as the Land Deed Officer (LDO), who is responsible for drafting the Deed of Sale and Purchase (AJB).<sup>5</sup> This Deed serves as proof that the legal action of buying and selling land has occurred, thereby establishing the buyer as the new owner.

It's important to note that transactions conducted at the LDO are confidential, meaning that the legal effects of the sale and purchase bind only the parties involved and their heirs. As such, the LDO's Deed is crucial in evidencing that the legal transaction has taken place. As a public official with the authority to create land-related Deeds, the LDO must possess specialized knowledge and skills in land matters to prevent future issues, as the Deeds they draft hold significant legal weight and can be used as evidence.<sup>6</sup> Problems may arise in the sale and purchase Deed of certified land due to mistakes made in drafting the agreement or errors in the signing process, often stemming from a lack of diligence during the Deed's creation.

LDO in carrying out his duties, authority and obligations as a public official, There are instances where mistakes can occur in drafting a Deed of sale and purchase. This is evident in the case documented in Decision Number 10 / Pdt. G / 2019 / PNDps, which involved a Land Deed Making Officer (LDO) on Jalan Tukad Melangit, during a transaction concerning land located at Jalan Sekar Tunjung XX A No. 4 in Kesiman Kertalangu Village, East Denpasar District, East Denpasar City.

In this case, the borrower met with the donor, who was accompanied by an LDO official, and they came to an agreement regarding a loan. However, since individual non-bank loans cannot be formalized into a Credit Binding Deed, the Notary/LDO in Denpasar created a Deed of Debt-Receivables in the form of a Sale and Purchase

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<sup>5</sup> Taufik Hidayat Lubis and Rahmat Ramadhani, 'The Legal Strength of the Deed of Power to Sell as the Basis for Transfer of Land Rights' (2021) 2(3) *International Journal Reglement & Society (IJRS)* 149.

<sup>6</sup> Oris Suprianja, Erniyanti Erniyanti and M Tartib, 'Juridical Review of the Responsibilities of Land Deed Officials in Making Land Sale and Purchase Deeds' (2024) 3(2) *JETISH: Journal of Education Technology Information Social Sciences and Health* 1368.

Agreement, which ultimately resulted in an unintended Deed of sale and purchase (AJB). The borrower, unfamiliar with the legal intricacies, trusted the LDO official's understanding of the law and therefore signed the Deed while handing over their Ownership Certificate. Evidence indicated that a sale and purchase agreement had been established between the Borrower and the Donor before a Notary, supported by signed documents including a power of attorney to sell, the selling agreement, and a Deed of vacating agreement.

It is crucial for the Land Deed Making Officer (LDO) to ensure legal certainty and fairness when handling transactions involving both parties. A lack of diligence can lead to significant losses, not only for the immediate parties involved, but also for any third parties affected by the Deed. As such, the injured party has the right to seek compensation from the LDO through legal means. However, in this particular case, the judge concluded that there was insufficient evidence to hold the LDO accountable, resulting in a verdict of not guilty. This outcome poses a risk of financial loss to the concerned parties.

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It is crucial for the Land Deed Making Officer (LDO) to ensure legal certainty and fairness when handling transactions involving both parties. A lack of diligence can lead to significant losses, not only for the immediate parties involved, but also for any third parties affected by the Deed. As such, the injured party has the right to seek compensation from the LDO through legal means. However, in this particular case, the judge concluded that there was insufficient evidence to hold the LDO accountable, resulting in a verdict of not guilty. This outcome poses a risk of financial loss to the concerned parties. The cause of the problem can arise directly due to the negligence of the LDO, Issues can sometimes arise indirectly when actions are taken by others. If the source of the problem stems from the negligence—whether intentional or unintentional—of the LDO, the resulting Deed may have limited validity, functioning merely as a private Deed or potentially being subject to cancellation (*vernietigbaar*). This limitation occurs because the necessary subjective requirements are not fulfilled, providing grounds for the injured party to seek compensation from the LDO.

In performing legal actions, the LDO must always exercise due diligence. Before executing a Deed, the LDO should thoroughly review all relevant facts in accordance with applicable laws and regulations. This involves verifying the completeness and validity of the evidence or documents presented, as well as considering the statements from the involved parties, which should serve as the basis for the considerations reflected in the Deed. Should the LDO fail to meticulously examine these critical details, it indicates a lack of care in their duties. The principle of caution for the LDO is outlined in Article 22 of GR No.37 th.1998, which stipulates that the LDO must read and explain the Deed to the parties in the presence of at least two witnesses prior to the signing. Throughout this process, the LDO not only ensures that the parties are present for the reading and explanation of the Deed but, by adhering to the principle of caution, actively seeks to avoid potential

errors that could lead to complications in the creation of authentic Deeds.

Land title certificates are issued by the BPN and the BPN is a state administrative body or official., In the event of a dispute that escalates to court, measures can be taken to challenge the validity of land rights. If an individual believes there has been an administrative error in the issuance of a land certificate, they can refer to Article 106, paragraph (1) in conjunction with Article 119 of the Agrarian/BPN Regulation 9/1999. According to these provisions, the cancellation of land rights due to such defects can be initiated either through a formal application by the concerned party or by an authorized official acting without an application. This process ensures that anyone who feels adversely affected by the issuance of a land rights certificate, due to perceived administrative flaws, has a pathway to seek redress through the appropriate authorities., One can seek to cancel the determination of land rights through a formal process. A Deed of Sale and Purchase inherently embodies the principle of legal certainty, ensuring that both parties involved in the agreement possess legal protection. This means that if disputes arise during the execution of the agreement, a judge can mandate the breaching party to fulfill their obligations as stipulated.

According to Article 107 of the Agrarian Ministerial Regulation/BPN 9/1999, several factors can lead to administrative legal defects, including procedural errors; misapplications of laws; inaccuracies regarding the subject or object of rights; mistakes in the type of rights; incorrect area calculations; overlapping land rights; or inaccuracies in legal or physical data. In instances where the buyer does not physically occupy or control the land, it becomes essential to provide robust evidence to validate the authenticity of the Deed of Sale and Purchase supporting the claim of land ownership.

In other scenarios, issues may not stem from the errors or negligence of the Land Deed Official (LDO) but rather from the client's dishonesty about the accuracy of the administrative requirements underlying the creation of the Deed. Such dishonesty could render the Deed null and void (*nietigheid van rechtswege*) due to the failure to

meet objective requirements. Consequently, in such cases, the LDO can be held accountable when a Deed of Sale and Purchase is annulled or declared void by a court decision due to identified legal defects in its formulation, either administratively or civilly, particularly if the LDO is found culpable in the Deed's creation process.

With this context in mind, the author is motivated to conduct research on "The Principle of Caution of Land Deed Officials in Drafting Deeds of Sale and Purchase of Land Ownership Rights. "

Building on this premise, the following questions emerge for exploration within this study:

1. What obligations does the Land Deed Making Officer have when drafting a Deed of sale and purchase regarding land ownership rights?
2. What are the legal consequences for the Deed executed by the Land Deed Making Officers must exercise caution throughout the process of buying and selling land ownership rights, and failure to do so could result in significant consequences?

## II. METHODS

This normative research focuses on the study of legal systematics. The normative legal approach involves examining core legal materials, including theories, concepts, legal principles, statutes, and case law pertinent to the research.<sup>7</sup> Literature reviews are conducted through reading, studying, and analyzing legal texts. The analysis is carried out descriptively and qualitatively, whereby the gathered legal facts are elaborately described and connected to relevant positive legal norms.

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<sup>7</sup> T Ansari and S Negara, 'Normative Legal Research in Indonesia: Its Origin and Approaches' (2023) 4 *ACLJ* 1.

### III. RESULT AND DISCUSSION

#### I. The Role of Authority in Creating Land Deeds During Land Transactions

Authority represents the inherent power granted to individuals or entities recognized under statutory regulations. The authority and primary responsibilities of Land Deed Officials (LDO) are outlined in Article 2 of GR (PP) No. 37 th.1998 concerning LDOs, which specifies that:

- 1) LDOs play a crucial role in conducting land recording activities by creating Deeds that serve as proof of legal actions taken with regard to land rights or ownership, including those of apartment units. These Deeds act as the foundation for updating land recording data affected by such legal actions.
- 2) The legal actions referred to in paragraph (1) encompass a variety of transactions, including:
  - a. Sale and purchase
  - b. Exchange
  - c. Grants
  - d. Contributions to a company (inbreng)
  - e. Division of joint assets
  - f. Granting Building Use Rights or Usage Rights over freehold land
  - g. Granting Mortgage Rights
  - h. Assigning power of attorney for imposing mortgage rights

As stated in the article, while executing their primary responsibilities, LDOs are authorized to draft authentic Deeds based on all relevant legal proceedings, as interpreted in Article 2, paragraph (2) concerning land rights.<sup>8</sup> As public officials, the Deeds they create are recognized as authentic. Article 4 of PP No. 37 th.1998 further clarifies this position:

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<sup>8</sup> Ilva Yuniarsi Maruf Aslan Noor, Muhammad Yusuf, Kusmiadi, Karin Veronica Wijaya, 'Responsibilities and Legal Consequences of Land Deed Drafting Officials ( PPAT ) for Deeds They Make That Give Rise to Double Certificates' (2024) 14(01) 178.



- 1) LDOs are empowered solely to draft Deeds related to land rights and ownership rights for apartment units situated within their designated work areas.
- 2) Deeds related to exchanges, company contributions, and divisions of joint rights pertaining to multiple rights to land and apartment ownership, which do not wholly lie within an LDO's jurisdiction, may still be prepared by an LDO who covers the area where the land or apartment unit involved in the legal action is located.

According to PP No. 24 of 1997, LDOs are public officials tasked with the preparation of special land Deeds. Given that land transactions necessitate a sale and purchase Deed, this process builds upon Article 1, paragraph (1) of the Basic Agrarian Law (UUPA). In response to this requirement, the government introduced PP No. 24 of 1997 on Land Registration, effectively replacing PP No. 10 of 1961.<sup>9</sup> This regulation serves as the implementing guideline for Article 19 of the UUPA. As per Article 37, paragraph (1) of PP No. 24 of 1997, the transfer of rights related to land and ownership rights pertaining to apartment units through sales, exchanges, grants, contributions to companies, and other rights transfers—excluding those executed via auction—may only be recorded if supported by a Deed prepared by an LDO who holds the appropriate authority under the current law., which is to ensure compliance with land administration. The responsibilities of the LDO are intricately linked to the management and maintenance of land registration data, which includes the following key activities:

1. When preparing a Deed for the transfer or encumbrance of land rights or ownership rights for apartment units, the LDO must first verify the conformity of the relevant certificated
2. The LDO is authorized to sign the Deed of transfer of land rights or ownership rights for apartment units only after the taxpayer presents

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<sup>9</sup> Benny Djaja and Christian Wahyu Putra, 'Responsibilities of Substitute Sale Deed Official in Deed Cancellation of Not Registered Land (Study of Supreme Court Decision Number 681 K / PDT / 2017)' (2020) 478(Ticash) 157.

proof of tax payment, specifically the Land and Building Acquisition Fee Payment Letter.

3. The LDO is required to furnish a Statement Letter to the prospective recipient of rights, confirming that:
  - a) The transfer of rights does not result in the landowner exceeding the maximum ownership limits established by relevant laws and regulations;
  - b) The transfer of rights does not involve absentee land ownership (guntai) as defined by applicable laws;
  - c) The recipient acknowledges that any inaccuracies in statements a and b could lead to surplus or absentee land being subject to land reform;
  - d) The recipient agrees to bear responsibility for any legal consequences arising from incorrect statements a and b.
4. The LDO must ensure that the Deed aligns with the interests of various stakeholders and obtain a detailed understanding of the contents and objectives of the Deed, as well as the subsequent recording steps mandated by existing regulations.
5. The LDO is obligated to submit the Deed and any other necessary documents for registration to the local City Land Office within seven working days from the signing of the respective Deed.

These responsibilities are grounded in Article 1 of GR No. 37 th.1998, which specifies that:

1. The LDO is a public official authorized to prepare authentic Deeds concerning legal actions, particularly related to land rights and ownership rights for apartment units.
2. A Temporary LDO is selected from government officials to fulfill LDO duties in areas with a shortage of LDO officers.
3. A Special LDO is a BPN (National Land Agency) official assigned to prepare specific LDO Deeds, particularly in connection with the implementation of government programs or tasks.

The land registration process necessitates a Deed of sale and purchase, which serves as official proof of the transfer of land ownership rights during the sale and purchase stages, as well as at subsequent steps. The legal validity of this Deed is crucial; in the event

of a dispute or rejection from one party, the Deed acts as conclusive evidence of the transfer. The Land Deed Official (LDO), who holds this Deed, occupies a pivotal role, as they are responsible for formalizing the sale and purchase or any other transfer of land.<sup>10</sup> This responsibility entails a significant legal accountability for the Deeds they issue, requiring strict adherence to the procedures laid out by law and various GRs pertaining to land ownership transfer and registration. Such adherence ensures that the rights transfer Deed issued by the LDO is recognized as lawful. Any deviation from the established LDO procedures in preparing a Deed can jeopardize the certainty of land rights that arise or are recorded based on that Deed.

The LDO plays a crucial role in transforming land rights by supporting the KKP (Land Activity Computerization) initiative, which aims to facilitate land registration activities. This is achieved through the creation of Deeds that serve as authentic evidence of legal actions related to land rights. As these Deeds hold legal significance, it is essential for them to adhere to the procedural requirements outlined in relevant laws and regulations. A failure to comply with these procedures could result in the Deed being legally annulled, potentially causing significant losses for one of the parties involved. In the process of buying and selling land, both the seller and the buyer have specific rights and obligations to fulfill<sup>11</sup> :

#### 1. Seller's Obligations

The seller warrants that their legal status as the seller is fully established, ensuring the lawful transfer of ownership rights to the goods. This means that the seller is inDeed the sole and complete owner of the sales object or the land rights being transferred. Should any disputes arise in the future from parties who believe they have a claim, the seller will take responsibility for addressing these issues at their own expense, ensuring that the buyer remains

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<sup>10</sup> Lorraine Anggi Taruli Hutagalung and R Rahaditya, 'Land Deed Officials Responsibility for Sale and Purchase Deeds That Made Unlawfully (Review Decision of Wonogiri State Court Number 13/PDT.G/2021/PN Wng)' (2023) 3(7) *Eduvest - Journal of Universal Studies* 1195.

<sup>11</sup> Sekar Rizqi Triroosa Putri, Afifah Kusumadara and R Imam Rahmat Sjafi'i, 'Notary's Responsibility for Making Deed of Statement Related to Sale and Purchase Deed Containing Nominee Element' (2024) 4(2) *NEGRI: Academic Journal of Law and Governance* 163.

free and secure from any claims. The seller is also responsible for delivering the goods and guaranteeing that the buyer can enjoy them without concern, which includes addressing any hidden defects. Additionally, the seller ensures that the object of the sale is under safe and peaceful control, is free of disputes, and has not been pledged to any third parties.

## 2. Buyer's Obligations

The buyer is obligated to pay the full price of the land or property as stipulated in the agreement. They must not accept any lawsuits or claims, in any form, from anyone regarding the purchase or transfer of rights to the object, thus ensuring that the transaction is safe and legally certain. The buyer agrees to accept the transfer of goods or rights to the land from the seller.

## 3. Considerations for LDO

When preparing the Deed of sale and purchase, the Land Deed Official (LDO) must carefully check the completeness of the documents as part of their responsibilities within the land sector. This includes verifying the identities of the parties involved (both seller and buyer) and validating the legal basis for their actions. The LDO must also confirm that the rights to the land being sold have not expired, as expired rights revert to state control. Additionally, the sale price must be paid in full prior to the signing of the Deed, and there should be no outstanding Land and Building Tax (PBB).

Finally, the land in question must fall within the LDO's designated working area. The Deed is to be executed at the relevant LDO office, in the presence of the parties or their representatives. However, if either party or their attorney is unable to attend the office, the LDO may prepare the Deed outside of their office, as they are only authorized to draft Deeds within their jurisdiction.

To assess the completeness of the letters necessary for executing a Deed of sale and purchase in this case, it is adequate to review the information of both the seller and the buyer, without needing to reference previous Deeds. The documentation pertaining to this legal transaction should reflect the status and identity of the involved parties.

Once the LDO prepares the Deed of sale and purchase, it is required to be registered within seven working days. The documents submitted to the land office are essential for this process.:

- a) Documents/letters (original certificates)
- b) Deed of sale (original)
- c) Request letter from the buyer to record the buyer's name (reverse name)
- d) Power of attorney if the person taking care of it is LDO

At the land office, the files are processed by first assessing the completeness of the submitted documents. Once confirmed, the seller's name is crossed out on page 3 of the land book and replaced with the buyer's name. Finally, the certificate is issued to the buyer through the Land Development Office (LDO).

Sustainable national development hinges on fostering legal certainty within the land sector, which underpins the government's commitment to conducting land registration activities. The responsibility for implementing these registrations lies with the government, specifically through the Head of the Office, who is supported by Land Deed Officials (LDOs) and other designated staff assigned to facilitate various tasks related to land registration.

One of the main responsibilities of the LDOs is to carry out essential tasks related to land registration. They do this by creating Deeds, which serve as legal proof for various land rights activities, including ownership rights for apartment units. These Deeds are fundamental for documenting any changes in land registration data that result from legal transactions, such as buying, selling, or exchanging property, granting rights, incorporating land into a company, sharing joint rights, transferring building use rights, establishing mortgage rights, and delegating authority to secure those rights.<sup>12</sup>

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<sup>12</sup> Intan Hanisa, I Gusti Ketut Ayu Rachmi Handayani and Lego Karjoko, 'Land Policy Reconstruction from the Notary Authority Perspective: Optimization Efforts for Electronic Land Registration System' (2025) 2(4) *Greenation International Journal of Law and Social Sciences* 290.

Given that an LDO's signature can effectuate the transfer of rights, it is imperative for them to approach their duties with utmost care and diligence. As an official entrusted with the authority to draft these important legal documents, the LDO must adhere strictly to the stipulated LDO Job Regulations. While there is only one specific article that explicitly outlines the principle of caution in the LDO Job Regulations—namely, Article 22—it conveys essential norms that must be comprehended in their entirety.

Article 22 requires LDOs to exercise caution in their duties, specifying that "The LDO Deed must be read or explained to the parties in the presence of at least two witnesses before all parties, witnesses, and the LDO sign it. "

A closer look at this provision reveals the following requirements for the LDO Deed:

- a) It must be read or explained,
- b) It must include the presence of at least two witnesses,
- c) It must be signed by the parties involved, the witnesses, and the LDO.

The requirement to read and clarify the contents of the Deed is designed to ensure that all parties have a complete understanding of the legal implications and details it encompasses. As mentioned, by R. Soegondo Notodisoerjo, this reading should be conducted clearly to facilitate comprehension for both the parties and the witnesses involved.

Tan Thong Kie identifies three key benefits of reviewing the Deed before finalization:

- 1) At the crucial moment of formalizing the Deed, the authorized official has the chance to rectify any previously unnoticed writing errors.
- 2) The parties involved are afforded the opportunity to seek clarification on any aspects they find unclear before signing the Deed.

3) This process allows both the authorized official and the parties to take a final moment to reflect, raise questions, and, if necessary, amend the language of the Deed.

The author emphasizes the importance of having the LDO read and explain the contents of the Deed, as not all parties attending the LDO possess the ability to read or fully understand the document they are about to sign. By ensuring that the Deed is both read and clarified, the LDO facilitates a better understanding among the parties involved, fostering a sense of fairness by clearly outlining their respective rights and obligations. This process aims to prevent future disputes stemming from differing interpretations of the Deed's content.

Furthermore, the creation of an LDO Deed necessitates the presence of two witnesses. This requirement serves a formal role in the Deed's establishment; if it is disregarded, the document's status is relegated to that of a private Deed. Adhering to this formal obligation is essential for the LDO, as stipulated in the LDO Job Regulations.

The witnesses hold a significant role in this formal process, as they are individuals who have firsthand knowledge of the events surrounding the creation of the LDO Deed. Their presence confirms that the Deed was produced in accordance with the parties' wishes, that it was read aloud by the LDO to all parties present, and that it was duly signed by the parties, witnesses, and the LDO itself. In essence, the witnesses attest to the fulfillment of all formal requirements in crafting the Deed, thereby ensuring its validity as an authentic document.

In the context of an LDO Deed, it is essential to have two witnesses. The testimony of a single witness, without additional supporting evidence, is deemed inadequate under the principle of *\*unus testis, nullus testis\** (one witness is no witness). Komar Andasmita emphasizes that in an authentic Deed, witnesses serve as instrument witnesses (*\*instrumentaire getuigen\**). The presence of two witnesses is an indispensable requirement for the Deed to possess authentic status. Their role becomes particularly significant if disputes arise concerning coercion or fraud during the creation of the Deed.

When preparing a Deed, the LDO is prohibited from using the phrases "in accordance with" or "according to the statements of the parties" unless there is formal data to substantiate these claims. In the absence of such formal data, the LDO has the authority to deny the creation of the Deed. The requirement for formal data not only protects the interests of the parties but also safeguards the LDO itself.

Article 54, paragraph (4) of Perkebunan No. 1 of 2016 stipulates that Land Deed Officials (LDOs) are prohibited from creating Deeds for portions of registered land plots or customary lands until these have been accurately measured by the Land Office and assigned a Land Plot Identification Number (NIB). This measure aims to ensure legal certainty regarding the precise location of the transaction object by aligning both physical and legal data.

When drafting a Deed, the LDO is also mandated to include the NIB and/or land title number, the Tax Payable Notification Letter (SPPT) number for property tax (PBB), as well as information on the use and utilization of the land as it exists in reality.

These provisions embody the principle of caution, ensuring that any land transaction involves plots that have been officially assigned a Plot Identification Number (NIB) and registered as tax objects. This process provides legal certainty for all parties involved. It is crucial for the LDO to possess detailed knowledge of the property being transferred, as unregistered lands lack a Measurement Letter, complicating the transaction.

### **The Principle of Prudence in the Regulations on the Position of Land Deed Making Officials**

Sustainable national development hinges on fostering legal certainty within the land sector, which underpins the government's commitment to conducting land registration activities. The responsibility for implementing these registrations lies with the government, specifically through the Head of the Office, who is supported by Land Deed Officials (LDOs) and other designated staff assigned to facilitate various tasks related to land registration.



Given that an LDO's signature can effectuate the transfer of rights, it is imperative for them to approach their duties with utmost care and diligence. As an official entrusted with the authority to draft these important legal documents, the LDO must adhere strictly to the stipulated LDO Job Regulations. While there is only one specific article that explicitly outlines the principle of caution in the LDO Job Regulations—namely, Article 22—it conveys essential norms that must be comprehended in their entirety.

Article 22 mandates that LDOs exercise caution in their responsibilities, stipulating that “The LDO Deed must be read or explained to the parties in the presence of at least two witnesses before being signed by all parties, witnesses, and the LDO. ”

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The obligation to read and explain the contents of the Deed aims to ensure that all parties fully understand the legal implications and details contained therein. As noted by R. Soegondo Notodisoerjo, this reading should be conducted clearly to facilitate comprehension for both the parties and the witnesses involved.

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The author emphasizes the importance of having the LDO read and explain the contents of the Deed, as not all parties attending the LDO possess the ability to read or fully understand the document they are about to sign. By ensuring that the Deed is both read and clarified, the LDO facilitates a better understanding among the parties involved, fostering a sense of fairness by clearly outlining their respective rights and obligations. This process aims to prevent future disputes stemming from differing interpretations of the Deed's content.

Furthermore, the creation of an LDO Deed necessitates the presence of two witnesses. This requirement serves a formal role in the Deed's establishment; if it is disregarded, the document's status is relegated to that of a private Deed. Adhering to this formal obligation is essential for the LDO, as stipulated in the LDO Job Regulations.

The witnesses hold a significant role in this formal process, as they are individuals who have firsthand knowledge of the events surrounding the creation of the LDO Deed. Their presence confirms that the Deed was produced in accordance with the parties' wishes, that it was read aloud by the LDO to all parties present, and that it was duly signed by the parties, witnesses, and the LDO itself. In essence, the witnesses attest to the fulfillment of all formal requirements in crafting the Deed, thereby ensuring its validity as an authentic document.

In the context of an LDO Deed, it is essential to have two witnesses. The testimony of a single witness, without additional supporting evidence, is deemed inadequate under the principle of *\*unus testis, nullus testis\** (one witness is no witness). Komar Andasmita emphasizes that in an authentic Deed, witnesses serve as instrument witnesses (*\*instrumentaire getuigen\**). The presence of two witnesses is an indispensable requirement for the Deed to possess authentic status. Their role becomes particularly significant if disputes arise concerning coercion or fraud during the creation of the Deed.

Moreover, the signing of the Deed is also a critical formal aspect of the LDO Deed. A Deed is a written document that evidences an event forming the basis of a right or obligation, deliberately created for the purpose of proof. To meet the definition of a Deed, this document

must be signed. The necessity for a signature serves to differentiate one Deed from another or from Deeds executed by others, thus providing a unique characteristic to the document.

The principle of caution adhered to by the LDO in fulfilling its official duties is reflected in Article 54, paragraph (1) of Perkaban No. 1 of 2016. This article mandates that prior to drafting a Deed, the LDO must verify the accuracy and validity of the certificate and related records at the local Land Office, while explaining the intent and purpose behind the transaction. This provision is designed to ensure certainty and legal protection for all parties involved, particularly regarding the authenticity of land ownership evidence.

The requirement for the LDO to check the conformity and validity of certificates is commonly referred to as "checking. " This obligation is integral to the LDO's official responsibilities, aimed at confirming the formal accuracy of the transaction data provided by the parties. Its purpose is to afford legal certainty to those involved in the Deed creation process.

When preparing a Deed, the LDO is prohibited from using the phrases "in accordance with" or "according to the statements of the parties" unless there is formal data to substantiate these claims. In the absence of such formal data, the LDO has the authority to deny the creation of the Deed. The requirement for formal data not only protects the interests of the parties but also safeguards the LDO itself.

Article 54, paragraph (4) of Perkaban No. 1 of 2016 stipulates that Land Deed Officials (LDOs) are prohibited from creating Deeds for portions of registered land plots or customary lands until these have been accurately measured by the Land Office and assigned a Land Plot Identification Number (NIB). This measure aims to ensure legal certainty regarding the precise location of the transaction object by aligning both physical and legal data.

When drafting a Deed, the LDO is also mandated to include the NIB and/or land title number, the Tax Payable Notification Letter

(SPPT) number for property tax (PBB), as well as information on the use and utilization of the land as it exists in reality.

These provisions embody the principle of caution, ensuring that any land transaction involves plots that have been officially assigned a Plot Identification Number (NIB) and registered as tax objects. This process provides legal certainty for all parties involved. It is crucial for the LDO to possess detailed knowledge of the property being transferred, as unregistered lands lack a Measurement Letter, complicating the transaction.

## **II. Legal Implications for Land Deed Officials Who Neglect Caution in the Buying and Selling of Land Ownership Rights**

The process of buying and selling land ownership rights is often conducted without the involvement of a public official authorized to validate these transactions—specifically, the Land Deed Making Official (LDO). This lack of adherence is concerning, especially given that the role of the LDO is well-established in various laws and regulations. For example, the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 clearly defines the responsibilities of the LDO. It states that the LDO is a public official with the authority to create authentic Deeds for specific legal actions concerning land rights and ownership of apartments.

Additionally, Law No. 4 of 1996 emphasizes the LDO's role by designating them as the public official responsible for incorporating records related to the transfer of land rights, encumbrance of land rights, and granting power of attorney related to mortgage rights, in accordance with existing regulations.

According to Article 2 of The Regulation issued by the Head of the National Land Agency No. 1 of 2006, which elaborates on GR No. 37 th.1998 as well as GR No. 24 of 1997 concerning land registration, the LDO's primary duties include facilitating land registration by preparing Deeds that serve as evidence of specific legal actions related to

land rights and ownership. These Deeds form the foundation for registering and updating land registration information.

The eight types of Deeds prepared by the LDO, which serve as essential documentation for changing land registration data, are detailed in Article 95, paragraph 1 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997, in conjunction with Article 2, paragraph 2 of the Regulation of the Head of the National Land Agency Number 1 of 2006. These Deeds include:

1. Deed of Sale and Purchase
2. Deed of Exchange
3. Deed of Grant
4. Deed of Entry into the Company (Inbreng)
5. Joint Distribution Deed
6. Deed of Granting Building Use Rights/Use Rights on Freehold Land
7. Deed of Granting Mortgage Rights
8. Deed of Power of Attorney for Imposing Mortgage Rights

The principle of caution that LDOs must uphold is summarized in Article 22 of GR No. 37 th.1998, which mandates that the contents of the LDO Deed must be read or explained to the parties involved, in the presence of at least two witnesses, before being signed immediately by the parties, witnesses, and the LDO.

1. The Deeds executed by the Land Deed Official (LDO) may be subject to cancellation if these procedures are not observed.

The creation of authentic Deeds is mandated by laws and regulations to ensure legal certainty, order, and protection. The Land Deed Making Officer (LDO) is a public official authorized to draft these authentic Deeds, which pertain to legal transactions involving land rights or the ownership of apartment units. This includes the establishment of mortgage rights and the granting of new rights that must be documented in an authentic Deed, thus providing clarity regarding the date of the transaction. The LDO is responsible for maintaining detailed records of

these Deeds and supplying copies or extracts as needed, as long as the responsibility for creating such Deeds has not been assigned to or excluded from other public officials.

According to Article 1, number 1 of GR No.37 th.1998, which pertains to PJLDO, the LDO is defined as a public official empowered to create authentic Deeds related to specific legal acts regarding land rights or apartment ownership. This definition highlights that the LDO's role is primarily focused on the transfer of land rights. The types of Deeds within the LDO's jurisdiction include Sale and Purchase, Exchange, Grant, Inbreng, Distribution of Joint Rights, granting of HGB (Right to Cultivate) or Ownership Rights, APHT (Akte Pemberian Hak Tanggungan), and the Granting of Power of Attorney to Encumber Mortgage Rights. Thus, it is evident that the LDO's authority is confined to handling eight specific types of Deeds that govern the registration of rights transfers and encumbrances.

LDO has a very important position and role in the life of the nation and state because this official is given the authority by the state to make Deeds of transfer of land rights and other Deeds, one of which is a Deed of sale and purchase. In the process, the position of a LDO is to provide legal certainty services in the form of Making authentic Deeds related to land rights or ownership rights to apartment units. This then produces the main function of the role of LDO in community life, namely being able to provide legal certainty in every binding and ratification of legal acts carried out. In addition, with the existence of a form of legal certainty in the transfer of land rights, it can also provide peace and security to the community for the rights they have. The requirements to be appointed as a LDO include being a graduate of a notary specialist education program or a special LDO education program organized by a higher education institution.

An authentic Deed is one of the strongest and most complete evidence in civil procedural law. "The existence of an authentic Deed can be caused by legal provisions that require evidence for certain legal acts and can also be because the interested parties want their legal acts

to be stated and realized in the form of an authentic Deed. The Civil Code (KUHPerdata) regulates the types of evidence in civil procedural law. Article 1866 of the Civil Code mentions five forms of evidence, one of which is written evidence. An authentic Deed as one of the written evidence, as regulated in Article 1868 of the Civil Code is stated as "a Deed in the form determined by law, made by or before a public official authorized for that purpose at the place where the Deed was made."

As a state official, a Notary/LDO is given the authority to issue a Deed that has perfect evidentiary power. This is then protected by the UUJN and the Notary Code of Ethics and PJDLO along with its implementation considering that the work of a public official is very vulnerable to temptation and abuse of power for personal interests so that the creation of these regulations is expected to be able to supervise and anticipate against unlawful acts or deviations by irresponsible Notaries/LDOs. However, in practice, there are still many LDOs who are negligent in Making a Deed of Sale and Purchase without checking the certificate first so that this negligent act can be categorized as an unlawful act because it harms the parties related to the Deed. In Making a Deed of Sale and Purchase.

## 2. The Deed of the Land Deed Official (LDO) is void by law

A Deed is a writing that is intentionally made to be used as evidence if an event occurs and is signed. According to the provisions of Article 1868 of the Civil Code, "the definition of an authentic Deed is a Deed in a form determined by law, made by or before authorized public officials for that purpose at the place where the Deed is made."

In order for a Deed to receive an official stamp—typically associated with authentic Deeds—it must comply with the requirements set forth in Article 1868 of the Civil Code. Specifically, the Deed must fulfill the following criteria:

1. It should be executed "by" (door) or "before" (ten overstaan) a public official.
2. It must adhere to the form specified by law.

3. The public official involved in the execution of the Deed must possess the legal authority to do so.

The actions taken by the Land Deed Official (LDO) must adhere to specific regulations; their format and content are governed by the Minister of Home Affairs. According to Decree No. 104/DJA/1977, the LDO's Deed format is based on the revised guidelines set forth in PMA No. 11 of 1961. The registered Deeds involved in the transfer of rights include sale and purchase agreements, grants, and exchanges. However, it is possible for an individual to rescind what they have given to another due to unfulfilled obligations. Similarly, grants and sale and purchase agreements may be revoked if rights have been transferred to someone else, including their own child. In this context, revoking and withdrawing refers to the cancellation of those grants or agreements.

Every legal action carries consequences, and this is especially true for the creation of an LDO Deed that does not comply with the relevant regulations. Such a Deed could be declared null and void—either legally void *ab initio* or subject to cancellation, resulting in sanctions for the violators. If an LDO is found to have made an error in their duties, they face consequences as outlined in Article 62 of GR Number 24 of 1997. This article states that an LDO who neglects their responsibilities, as set forth in Articles 38, 39, and 40, as well as directives from the Minister or designated Officials, may face administrative penalties ranging from written warnings to termination, along with potential civil liabilities for any resulting damages incurred by affected parties.

Such scenarios can create significant losses for clients, justifying the imposition of both criminal and administrative sanctions on the LDO. However, if the fault lies with the client, the LDO cannot be held accountable as they merely document the legal actions undertaken by the parties involved. As outlined in Article 2, paragraph (1) of GR No. 37 th.1998, it is essential for an LDO planning to transfer land rights to verify the legitimacy of the ownership rights and the capacity of those involved in the transaction. The principal duty of an LDO is to facilitate land registration activities through the creation of Deeds, which serve as official documentation for legal acts concerning land



rights and ownership of apartment units, ultimately leading to the updating of land registration data. Therefore, the LDO must exercise meticulous attention in executing their responsibilities, as their role is fundamentally about recording legal actions accurately.

## VI. CONCLUSION

The Local Development Officer (LDO) is responsible for creating authentic Deeds for legal acts related to the transfer and encumbrance of land and apartment ownership rights. They must follow regulations and exercise caution in drafting these Deeds to ensure legal certainty. Failure to do so may result in the Deed being declared null and void, as per Article 22 of GR No. 37 th.1998. The contents of the LDO Deed must be read or explained to all parties involved, with at least two witnesses present. This process is crucial for ensuring that the Deed is legally valid and binding.

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