

## THE LEGAL STRENGTH OF GRANT STATEMENT ACCORDING TO POSITIVE LAW

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**Abstract:** *The purpose of this study is to analyse the grant procedure according to the positive Law. And to analyse the validity of the grant statement according to the positive Law.*

*The type of research used by the authors is the type of normative research by making field data as complementary data. Normative legal research is a legal research that lays law as a norm system building. The norm system is about principles, norms, rules of law, court decisions, agreements and doctrines (teachings), by making field data as complementary data. The research approaches used by the authors in this research are: Statutory Approach, and Conceptual Approach.*

*The results of the study that the Land Grant Procedure should be poured in a deed made by PPAT, which is a deed of grant. Thus, if a person wishes to grant land and buildings to family members, a mandate deed must be made by PPAT. In addition, the grant was attended by at least two witnesses. Whereas the validity or verdict of proof of grant statement or grant deed under the hand, pursuant to Article 1682 of the Civil Code of the grant shall be by notarial / authentic deed, but in most people only make the deed of grant under the hand, while Article 1857 Civil Code if a deed under the hand is not denied by the parties, it means that they acknowledge and not deny the truth of what is written on the deed under the hand, then the deed under the hand obtains the same proof power with an Authentic Deed.*

**Keywords:** *grants, letters of statements, positive law*

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### I. INTRODUCTION

Land issues are a very complex issue, one of which concerns the transition of land rights arising from inheritance and grants. The transfer of land rights arising from an inheritance under customary law according to Iman Sudiyat: “Customary inheritance law includes rules and legal decrees relating to the process of transmigration/transfer and transfer/immaterial and material possessions from generation to generation”<sup>1</sup> in the sense that the inheritance may be before death

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<sup>1</sup> Iman Sudiyat, 1981, *Hukum Adat Sketsa Asas*, Liberty, Yogyakarta, p. 151

so that it is different from the Islamic inheritance law and the Civil Code of Inheritance can occur at the time of the heir's death to his children.

Islamic inheritance law if applied in accordance with the provisions of the classical fiqh books still cause various problems when faced with the social reality of Indonesian society, among others, the tendency of some Indonesian people who do not want to distinguish the inheritance rights of boys with girls, non-Muslim heirs do not become heirs of the heirs of Muslims so will not get inheritance, as well as adopted children and adoptive parents do not inherit each other because it does not have a kinship relationship.<sup>2</sup> As one way to prevent the occurrence of disputes in the division of inheritance is considered unfair, then not infrequently a parent (heirs) during his life has set, distribute or grant property to his children.<sup>3</sup>

Article 210 paragraph (1) The Compilation of Islamic Law determines the terms and restrictions of grants by stipulating that “a 21-year-old, sensible and non-coercive person may grant as much as one-third (1/3) of his property to another person or institution in front of two witnesses to have.” Furthermore, according to Article 211 of the Compilation of Islamic Law stated that grants from parents can be counted as inheritance.

The use of this grant is used as an engineering to reject the law of Islamic Inheritance, especially with issues that clash with the habits of Indonesian society. The ritual is done when the donor is alive, with the aim of avoiding the conflicts that will occur among his children when he dies. It may also occur as a result of the donor's concern, since the mother of her children is a connecting mother or stepmother, or also because among her children there is an adopted child who may be denied membership as an heir.<sup>4</sup>

Grants have been largely undertaken by communities, especially land grants. Grants are classified under a one-sided agreement; this is different from the grant of wills (*legaat*). According to Herlien Budiono Grant occurs at the time of his life of the parties, whereas the Grant of Wills due to the law is valid only after the grant maker has passed away and the object granted by Wills is handed over by the executor of the will with the right of *bezit* or by all heirs of the donor grant to the legatee.

All legal events and acts have legal consequences, in order to avoid the possibility of future problems in a statement and agreement, the state has been Wills accommodated through rules or laws. One of them to ensure legal certainty by pouring statement or agreement in the form of authentic deed. However, many people in their social life still do not realize that they prefer to make a statement of grant under the hands, especially the people who live in the village more often make agreements under this hand on the basis of trust and without considering the ways that have been regulated in the legislation. As defined in Article 165 of the HIR, the notion of a deed under the hand is a deed signed under the hand and made not by the mediation of a public official, such as the deed of sale and purchase, lease, inheritance, accounts payable, grants and so forth. Intermediary of general officials.<sup>5</sup>

<sup>2</sup> Beni Ahmad Saebani dan H. Syamsul Falah, *Hukum Perdata Islam di Indonesia*, Cetakan Pertama, CV. Pustaka Setia, Bandung, 2011, p. 243

<sup>3</sup> Faizah Bafadhal, *Analisis Tentang Hibah dan Kolerasinya dengan Kewarisan dan Pembatalan Hibah Menurut Peraturan Perundang-undangan di Indonesia*, dalam Jurnal Ilmu Hukum, Universitas Jambi 2010), <https://online-journal.unja.ac.id/index.php/jih/%20article/view/1967>.

<sup>4</sup> Tamakiran S dalam Abdul Manan, 1, *Aneka Masalah Hukum Perdata Islam di Indonesia*, Prenada Media Group, Jakarta, 2008, p. 132

<sup>5</sup> RIB/HIR (*Reglemen Indonesia yang Diperbaharui*), Pustaka Buana, cet. 1, Bandung, 2014, p. 124

In fact, many grant statements, or grant statements under the hand that were canceled by the Religious court for not meeting the requirements or pillars according to the Compilation of Islamic Law, although it is clear that the grant maker has signed the grant statement. Likewise, the Religious Courts still win a lot because, although the form is a grant statement, it is in accordance with the provisions of the Law, especially the Compilation of Islamic Law.

In some cases not infrequently also met by parents who only grant all their inheritance to one of the children just by making a statement of grant. While the child or other legitimate heirs have absolutely no share whatsoever. The division of such inheritance often leads to disputes, because apart from not conforming to the provisions of Islamic law, granting the entire wealth to one of the children without thinking of the rights of other heirs is very unwise and does not fulfill justice. As a result, the parties who feel aggrieved to take legal path (court) to get their rights.

The purpose of this study is to analyze the grant procedure according to the positive Law. And to analyze the validity of the grant statement according to the positive Law.

## II. RESEARCH METHOD

The type of research used by the authors is the type of normative research by making field data as complementary data. Normative legal research is a legal research that lays law as a norm system building. The system of norms is about the principles, norms, rules of legislation, court decisions, agreements and doctrines (teachings),<sup>6</sup> the research approach used by the authors in this research are: Statutory Approach and Conceptual Approach.

## III. RESULT AND DISCUSSION

### 3.1 Grant Procedure under Positive Law

#### 3.1.1 Grants According to Islamic Law Compilation (KHI)

One form of transfer of property in Islamic law is by way of grant. To grant an object means to exit something from the *wahib* (grant) and to move into the *mahwub* property (which receives the grant),<sup>7</sup> so there is a legal relationship between the two. Associated with legal action, grant is a unilateral legal relationship. The grantee voluntarily assigns the right to the beneficiary without any obligation from the recipient to return the property to the first owner.<sup>8</sup>

According to Islamic law, grants have different definitions. This is due to differences of opinion between the people of the religious sciences and Islamic jurists.

Understanding of grants in Encyclopedia of Islamic Law is a voluntary gift in approaching Allah SWT without expecting any reward.<sup>9</sup>

In the *syara'*, grant means the contract which is the principal issue of giving one's property to another in his life, without any reward. If a person gives his property to others for use but is not granted to him the right of ownership, then it is called *i'arah* (loan).<sup>10</sup>

<sup>6</sup> Mukti Fajar ND dan Yulianto Ahmad, *Dualisme Penelitian Hukum Normatif & Empiris*, Pustaka Pelajar, Yogyakarta, 2013, p. 184.

<sup>7</sup> Satria Effendi M.Zein, *Problematika Hukum Keluarga Islam Kontemporer, Analisis Yurisprudensi dengan Pendekatan Ushuliyah*, (Jakarta: Prenada Media: 2004), p.471.

<sup>8</sup> Helmi Karim, *Fiqh Muamalah*, (Jakarta : PT Raja Grafindo Persada, 1993), p. 74

<sup>9</sup> Abdul Aziz Dahlan, et.al., *Ensiklopedi Hukum Islam*, Jakarta: PT Ihtiar van Hoeve, 1996, p. 540

<sup>10</sup> Sayyid Sabiq, *Fikih Sunnah*, Jilid 14 (*Terjemah*), Jakarta:Pena Pundi Aksara, 1997, Prints. 9, p. 167

Compilation of Islamic Law (KHI Article 171 letter g), the grant is the giving of an object voluntarily and without reward from someone to another living person to have.<sup>11</sup>

### 3.1.2 Grants According to Positive Law

#### a. Definitions of Grant Deed

It is clear that the definition and definition of a grant in civil law is a thing that is given free of charge without expecting a reward, and it is done when the grantee and grantee are still alive.<sup>12</sup>

A grant is a unilateral legal act, whereby the recipient receives only what is granted to him i.e. grants are granted free of charge.

According to the international popular scientific dictionary the grant is a gift, alms, transfer of rights.<sup>13</sup>

From some sense, a grant can be concluded an agreement in which a party is based on generosity, the covenant in its life imparts the ownership of a good to a second party in a useless and irrevocable manner, while the second receives this grant. While the deed of grant in positive law is a deed made by the signed grantee, made to be used as a proof of grant and for the purposes of the grant made.

#### b. Basic Law of Grant Deed<sup>14</sup>

The legal basis of the grant according to positive law is regulated in the Civil Code; the grant is regulated in Article 1666 namely:

“A grant is an agreement with which the grantee, in his or her lifetime, free of charge and irrevocably, surrenders something for the purpose of the grantee receiving the surrender.

The law does not recognize other grants among the living.”<sup>15</sup> The grant procedure shall be notary to the Notary in accordance with Article 1682, which is: “No grant, except as provided for in article 1687, may on the offense of nullity, be performed in addition to a notarial deed, originally held by the notary”<sup>16</sup>

The grant then binds and has legal effect if on the day of grantee with firm words has been declared accepted by the grantee, or by an authentic deed has been authorized to another person. In Article 1683 Civil Code states:

“No grant binds the grantee, nor publishes any consequence whatsoever, other than the grant day beginning with the express word received by the grantee himself or by a person who by an authentic deed by the grantee has been authorized to receive grants that have been granted to the grantee or will be given to him in the future.

If such acceptance has not been made within the grant itself, then it shall be done in a later authentic deed, originally to be kept, provided that it is done at the time the benefactor is

<sup>11</sup> Tim Redaksi Fokusmedia, *Kompilasi Hukum Islam*, Bandung: Fokusmedia, 2007, Prints. II, p. 56

<sup>12</sup> [https://eprints.walisongo.ac.id/2072/3/72111013\\_Bab2.pdf](https://eprints.walisongo.ac.id/2072/3/72111013_Bab2.pdf), accessed on June 19, 2018 at 11:00 pm

<sup>13</sup> Budiono, *Kamus Ilmiah Populer Internasional*, Surabaya : Alumni, 2005, p. 217

<sup>14</sup> Op.cit. [https://eprints.walisongo.ac.id/2072/3/72111013\\_Bab2.pdf](https://eprints.walisongo.ac.id/2072/3/72111013_Bab2.pdf)

<sup>15</sup> R. Subekti dan R. Tjitrosudibio, *Kitab Undang-undang Hukum Perdata*, Jakarta : Pradnya Paramita, 1995., p. 436

<sup>16</sup> *Ibid*, p. 438

alive; in which case the grant, against the latter, shall be effective only from the day of receipt to him.”<sup>17</sup>

### 3.1.3 Grant Procedure

Every grant of land and building shall be made by the Deed of the Land Deed Official (“PPAT”), which is a deed of grant. So, if a brother wants to grant the land and the building to his siblings, the grant must be made a certificate of grant by PPAT. In addition, the grant was attended by at least two witnesses.<sup>18</sup>

In the positive law, the grant is regulated in Article 1666 - Article 1693 of the Civil Code (“Civil Code”). The definition of the grant is contained in Article 1666 of the Civil Code, namely an agreement with which a grantee delivers a good for free, without being able to withdraw it, for the benefit of a person who receives the delivery of that good. The law only recognizes grants among the living.

Terms, Procedures, and Deed of Grant under the Civil Code:

1. All persons may grant and receive grants unless those who are otherwise deemed incapable of it. Minors also should not grant anything except in matters specified in the seventh chapter of the book to one Civil Code;<sup>19</sup>
2. A grant shall be made by a notarial deed originally held by a notary;<sup>20</sup>
3. A grant binds a grant or publishes a result from grant with firm words received by the grantee;<sup>21</sup>
4. Suppression to an immature person under the authority of a parent shall be accepted by the person exercising the authority of the parent. Grants to minors under the guardianship or to persons under the competence shall be accepted by their guardian or auxiliary who has been duly authorized by the District Court.<sup>22</sup>

Prior to the issuance of Government Regulation Number 24 of 1997 on Land Registration (“PP 24/1997”), for those subject to the Civil Code, the deed of grant shall be made in writing from the Notary as we mentioned above. However, after the birth of PP 24/1997, every grant of land and building must be made by the Deed of the Land Deed Official (“PPAT”).

This is in accordance with the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration:

”The transfer of rights to land and property rights to apartment units through sale and purchase, exchange, grant, income in company and other legal transfer rights, except the transfer of rights through auction can only be registered if evidenced by a deed made by PPAT authorized by provisions of applicable legislation “.

The making of this deed is attended by the parties conducting the relevant legal acts and witnessed by at least 2 (two) witnesses who are eligible to act as witnesses in the legal act.<sup>23</sup>

<sup>17</sup> *Ibid*, p. 438-439

<sup>18</sup> <http://www.hukumonline.com/klinik/detail/lt51e582b1ad14c/prosedur-hibah-tanah-dan-bangunan-kepada-keluarga>

<sup>19</sup> See Article 1677 Civil Code

<sup>20</sup> See Article 1682 of the Civil Code

<sup>21</sup> See Article 1683 of the Civil Code

<sup>22</sup> See Article 1685 of the Civil Code

<sup>23</sup> See Article 38 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration

From the above provision it can be seen that the grant of the land should be poured in a deed made by PPAT, which is a deed of grant. Thus, if a person wishes to grant land and buildings to family members, a mandate deed must be made by PPAT. In addition, the grant was attended by at least two witnesses.

Regarding the form, content and manner of making PPAT deeds (including deed of grant) is contained in Regulation of State Minister of Agrarian Affairs / Head of BPN Number 3 Year 1997 concerning Provisions on Implementation of Government Regulation Number 24 Year 1997 concerning Land Registration as amended by Regulation of Head of National Land Agency Republic of Indonesia Number 8 Year 2012 on Amendment to Regulation of the Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 concerning Provisions on Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

### 3.2 *Validity of Grant Statement According to Positive Law*

#### 3.2.1 *Various kinds of written evidence*<sup>24</sup>

In order to get a final decision there needs to be material on facts. Given the material that concerns the facts it will be known and taken conclusions about the existence of evidence. We know that in every science is known about the existence of proof.

In this case there are several tools in civil cases that can be used as evidence, among others:

- a. Proof by letter
- b. Evidence with witnesses
- c. Suspects
- d. Oath

From several kinds of evidence above, in accordance with the problems the authors will examine the strength of the statute letter of statement or written evidence or letters. Written proof or letter is anything that contains signs of reading intended to pour out your heart or to convey the thoughts of a person and used as evidence. The letter as a written instrument of proof can be distinguished in a deed and letter not a deed, while the notion of deed is a letter as a signature of evidence, containing the event on which a right or commitment is established originally intended to prove.<sup>25</sup>

As Sudikno pointed out in the certificate of entry in the category of evidence with a letter in HIR Article 165 stated that:

“Legitimate Letter, is a letter so as done by or in the presence of a ruling public official to make it a sufficient proof for both parties and their heirs and all who are entitled to it, of all things mentioned in the letter and also about what is in the letter only as a notice, in the latter case only if it is directly related to the letter (deed).<sup>26</sup>”

Then the deed can still be distinguished again in authentic deeds, deeds under hand and letter not deed. So in the law of proof known at least three types of letters, namely:

<sup>24</sup> Loc.cit. [https://eprints.walisongo.ac.id/2072/3/72111013\\_Bab2.pdf](https://eprints.walisongo.ac.id/2072/3/72111013_Bab2.pdf)

<sup>25</sup> Sudikno Mertokusumo, *Hukum Acara Perdata Indonesia*, Yogyakarta: Liberty Yogyakarta, 2006, p. 149

<sup>26</sup> *Ropau Rambe, Hukum Acara Perdata Lengkap*, Jakarta: Sinar Grafika, 2006, p. 255

## 1. Authentic deed

In the Civil Code Article 1868 the definition of authentic deed is:

“An authentic deed is a deed which, in the form prescribed by law, is made by or before the ruling public officials for it in the place where the deed is made.”<sup>27</sup>

Based on Article 1868 can be concluded elements of authentic deed namely:

- (a) That the deed is made and formalized (Verleden) in legal form;
- (b) That the deed is made by or in the presence of a public official;
- (c) That the deed is made by or in the presence of the competent authority to make it where the deed is made, so the deed shall be the place of authority of the official who made it.

And in Article 186

“A deed which, due to the non-competent or incompetent employee referred to above, or because of a defect in its form, shall not be treated as an authentic deed, but shall have the power of writing under his hand if he is signed by the parties.”<sup>28</sup>

It can be concluded that the authentic deed is a letter made by or in the presence of a public official who has the authority to produce the letter, with the intention to make the letter as evidence. The general official in question is notary, civil registry officer, bailiff, court clerk and so on.

## 2. Deed under the hands

Deed under the hand is a deed made purposely for proof by the parties without the help of an official.<sup>29</sup>

There is a special provision concerning the deed under the hand, that of a deed under the hand containing a one-sided debt, to pay a sum of cash or to hand over an object, to be written entirely by hand by the undersigned, an explanation to corroborate the number or magnitude or number of which must be met, with the letters entirely.

This description is more famous for “bon pour cent florins”. Otherwise, the deed under the hand can only be accepted as the beginning of written proof (Ps 4 S 1867 No. 29, 1871 BW, 291 Rbg). Book of the Civil Code in Article 1874 which in paragraph one says:

“As the writings under the hands are deemed deeds signed under the hands, letters, registers, letters of domestic affairs and other writings made without the intercession of a civil servant.”<sup>30</sup>

Whereas according to the provisions of Article 1878 Civil Code there is a specialty of the deed under the hand, that is, the deed must be entirely written by the hand of the signer himself, or at least, other than the signature, to be written by his hand the signer is a reference to the amount or amount or money owed. If the provisions are not met, then the deed is only as a beginning of proof with the writing.<sup>31</sup>

<sup>27</sup> Loc.Cit. R. Subekti dan R. Tjitrosudibio, p. 475

<sup>28</sup> *Ibid*, p. 475

<sup>29</sup> Sudikno Mertokusumo, *Op. Cit*, p. 105

<sup>30</sup> Subekti dan R.Tjitrosudibio, *Op.Cit*, p. 476

<sup>31</sup> Teguh Samudera, *Hukum Pembuktian dalam Acara Perdata*, Jakarta:Alumni, 1992, p. 45

### 3. Letter not deed

For the evidentiary power of non-certificates in the HIR as well as the Civil Code is not expressly defined. Although the letters are not deeds are intentionally made by the concerned, but in principle not intended as a means of proof in the future. Therefore such letters can be regarded as guidance in the direction of proof.

What is meant as a guide to the proof here is that the letters can be used as additional evidence or may be disregarded and even totally unreliable.

Thus, the letter is not deed in order to have the power of proof, wholly dependent on the judge's judgment as provided for in Article 1881 (2) of the Civil Code.

Article 1881 paragraph one of the Civil Code determines as follows:

“a domestic affair registers and letters do not provide proof for the benefit of the author; are the registers and the letters are the verification of the creator:

- 1e. in all cases where the letters expressly state a payment that has been received;
- 2e. when the letters expressly state that the record that has been made is to correct a deficiency in any cause of the right of a person for the benefit of whom the letter mentions an engagement.

Article 1883 paragraph one of the Civil Code determines as follows:

“The record that a debtor put on a base of rights which he forever holds must be trusted, even if neither signed nor dated, if what is written is a waiver of the debtor.”

Therefore I can conclude that although the letters which are not deeds are a free evidentiary means of the value of the proof of power as described above, but there are also letters which are not deeds which have complete proof of power, among other letters specified in Article

1881 and Article 1883 Civil Code.

Whereas the deed of grant according to positive law in civil law written evidence or letter is contained in Article 138,165,167 HIR / Article 164, 285-305 R.bg and Article 1867-1894 BW and Article 138-147 RV. In principle in the civil matter (grant), the evidence in the form of writing is the preferred proof or the number one evidence when compared to other evidences.<sup>32</sup>

Thus, the Proof of mail is the first and foremost evidence. It is said firstly because the first gradation proof material is compared with other means of evidence while it is said to be prime because in the civil law (grant) sought is formal truth. So the letter proof tool was deliberately made to be used as the main proof tool.

#### 3.2.2 *Function of Grant Deed*

In law, deeds have various functions. The functions of such deed may be, among others:<sup>33</sup>

- a) Conditions to declare a legal act.

<sup>32</sup> Teguh Samudera, p. 36

<sup>33</sup> Op.cit [https://eprints.walisongo.ac.id/2072/3/72111013\\_Bab2.pdf](https://eprints.walisongo.ac.id/2072/3/72111013_Bab2.pdf)

A deed meant to have a function as a condition for declaring a legal act is that in the absence or absence of a deed, it means that the act of law does not occur. In this case the example is specified in Articles 1681, 1682, 1683 (on how to grant), 1945 Civil Code (on oath before the judge) for authentic deeds; while for deeds under the same hand as in Article 1610 (on employment), Article 1767 (concerning borrowing money with interest), Article 1851 Civil Code (on peace).

Thus, the deed here means to be used for the fullness of a legal act.

b) As a means of proof

The function of a deed as a means of proof means that in the absence or absence of a deed, it means that such legal act cannot be proven. In this case an example can be taken in article 1681, 1682, 1683 (on how to grant). So here the deed is indeed made for later evidentiary tools.<sup>34</sup>

From the definition that has been presented upfront it is clear that the deed was made from the original with deliberate for future proof. The written nature of an agreement in the form of the deed does not make it valid but only so that it can be used as evidence in the future.<sup>35</sup>

As mentioned above, the most important deed function in the law is deed as a means of proof, then “the power of proof or the power of proof of deed will be distinguished into three kinds”<sup>36</sup> that is:

1) The Power of Proof of Birth (third party)

What is meant by the power of proof of birth is the power of proof based on the state of birth, what appears in the birth: that the apparent (from birth) letter as deed, is considered (having power) as the deed is not proven otherwise. So the letter should be treated like a deed, unless the inauthenticity of the deed can be proven by the other party. For example it can be proven that the signatures in the deed are forged. Thus means the proof is sourced from reality.<sup>37</sup>

2) Formative Strength of Proof

This formative strength of proof is based on whether or not a question has actually been asked by the undersigned under the deed. The strength of this proof provides assurance about the event that the officials and the parties declare and do what is contained in the deed.

For example between A and B that do the grant, recognize that the signature contained in the deed is true so the recognition of the contents of the statement. Or in this case concerning the question, “is it true that there are statements of the parties signing”?<sup>38</sup>

This means that the proof is sourced from the customs in society, that people sign a letter to explain that the things listed on the signature are his statement.<sup>39</sup>

3) Material Proof Strength

<sup>34</sup> *Ibid*, p. 46-47

<sup>35</sup> Sudikno Mertokusumo, *Op. Cit*, p. 160.

<sup>36</sup> A Pitlo, *Pembuktian dan Daluwarsa*, Cetakan Pertama, Jakarta: PT Intermasa, 1978, p. 56-57

<sup>37</sup> Teguh Samudera, *Op. Cit*, p. 48

<sup>38</sup> *Op.cit* [https://eprints.walisongo.ac.id/2072/3/72111013\\_Bab2.pdf](https://eprints.walisongo.ac.id/2072/3/72111013_Bab2.pdf)

<sup>39</sup> *Ibid*, p. 48

The power of material proof is strength of proof based on the true or not of the content of the statement signed in the deed, that the legal event stated in the deed actually took place. So give certainty about the deed material.

For example A and B recognize that the true grant (legal event) has occurred.

This means that the proof is sourced from the desire for others to assume the content of the testimony and for whom the contents of the information apply, as true and aimed at making evidence for him. Therefore, from the point of view of the substantiation of the material, a deed only provides evidence against the signatory. Just as a reciprocal letter also proves to itself from each of the signatories.

### 3.2.3 *Authenticity authentication power*

In Article 165 HIR (Articles 1870 and 1871 Civil Code) it is argued that the authentic deed is a perfect evidentiary means) to parties and their heirs as well as all those who are entitled to it of what is contained in the deed. An authentic deed which is a complete proof (binding) means that the truth of the things written in the deed must be acknowledged by the judge, i.e. the deed is deemed to be true; as long as the truth is that no other party can prove otherwise.

#### a. The power of proof was born authentic deed

The power of proof is born from the deed, namely that a letter that looks like an authentic deed, is accepted/deemed like a deed and is treated as an authentic deed to everyone as long as it is not proven otherwise.

#### b. The strength of formal authentication of authentic deeds

The power of proof is born from the deed, namely that usually people sign a letter to explain that the things mentioned above the signature is true information.

Because it is not the duty of the civil servant (notary) to investigate the truth of the statements of the constituents written in the deed. So in an authentic deed in the form of a deed of the parties, if the signatures of the signatories have been acknowledged to be true, it means that the things written and explained on the signature of the parties are to prove to everyone. And also in the authentic deed in the form of the official report deed, that the statement of the public official (notary) is the only information given and signed. So in this case what is certain is the date and place of the deed is made and the authenticity of the signature, which applies to everyone. Thus, both deeds have formal evidentiary power.

#### c. The authenticity of authentic deed material

The power of material proof of the deed, i.e. the desire for others to assume that what the contents of the information and for whom the content of the deed apply as true and aims to provide evidence for himself.

In other words, the desire for others to assume that the legal event stated in the deed is true has occurred. So in the authentic deed in the form of a deed of the parties, the contents of the information contained in the deed shall only apply to the person giving the testimony and for the benefit of the person, for whose benefit the deed is granted. While the other side of the information is a free proof of power in the sense that the strength of proof is left to judge's consideration. As for the authentic deed in the form of the deed of the minutes, because the deed contains the information given exactly by the public official (based on what happened, seen and

heard), it is considered true the contents of the information, and then it applies to everyone. Thus, this deed has the material proof power.<sup>40</sup>

### 3.2.4 *Validity or Strength of Proof of Deed is Below*

In Indonesia there are already rules on the making of deeds conducted in front of notaries or authorized officials, but people in their social life prefer to make the deed under the hands, especially the people who live in the village more often make agreements under this hand on the basis of trust and without consider the ways that have been set in the legislation. As explained in Article 165 HIR, the notion of a deed under the hands is a deed signed under the hands and made not by the mediation of public officials, such as Grants, deeds of sale, lease, accounts payable, etc. made without intermediaries general officials.

According to the provisions of Article 1875 of the Civil Code, if the deed under the hand of his signature is acknowledged by the person to whom the article is to be used, then the deed may be a complete evidentiary instrument (such as authentication power in an authentic deed) to the signatories as well as the experts his inheritance and those who get his rights.

Regarding the signature recognition when presented before the judge, according to Wirjono Prodjodikoro the acknowledgment reads: "This signature is true my signature and the contents of the writing are true".

#### a. The power of proof was born deed under the hand<sup>41</sup>

According to Article 1876 of the Civil Code of a person against whom a deed is filed under the hand, it is required to recognize or deny his or her signature. While the heirs simply by explaining that he did not recognize the writing or signature. If the signature is denied or not acknowledged by the heirs, then according to Article 1877 Civil Code of the judge shall order that the veracity of the deed shall be examined before the court. On the other hand, if the signature is to be used, the deed may have a complete evidentiary instrument to the parties concerned, but to the other party, the evidentiary power is free, in the sense of relying on the judge's judgment.

With the recognition of the signature means that the certificate of deed listed above the signature is also recognized. This we can understand, because usually someone who signs something to explain that the information listed on the signature is true. Since it is possible that the signature in the deed under the hand is not recognized or denied, the deed under the hand has no strength of evidence of birth.

#### b. Strength of formal proof of deed under the hand

As has been explained to the strength of the outside proof of the deed under the hand, that is, if the signature on the deed is acknowledged to mean that the statement contained on the signature is acknowledged, it must be made clear to everyone that the statement on the signature is the statement of the signatory.

Thus the deed under the hand has a formal evidentiary power.

#### c. Strength of material proof of deed under the hands<sup>42</sup>

<sup>40</sup> Op.Cit. [https://eprints.walisongo.ac.id/2072/3/72111013\\_Bab2.pdf](https://eprints.walisongo.ac.id/2072/3/72111013_Bab2.pdf)

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

Here also concerning the provisions of Article 1875 Civil Code which has been stated above and briefly it can be said that the recognition of the signature on the deed under the hand means the deed has complete evidentiary power. So it means that the contents of the deed also apply as true to the author and to whom the statement was made. Thus the deed under the hand only provides sufficient material proof against the person for whom the statement is given (to whom the signatory of the deed is about to provide evidence). On the other hand, the strength of the proof is dependent on the judge's judgment (free evidence).

Article 1682 The Civil Code of Statutory Grant shall be by notarial deed/authentic, but most of the people only make the deed of grant under the hand, while Article 1857 Civil Code if a deed under the hand is not denied by the parties, it means they acknowledge and not deny the truth what written on the deed under the hand, then the deed under the hand obtains the same proof power as an Authentic Deed.

The function of the deed of grant is as a condition to state the existence of a legal act, as a means of verification and as the only means of proof.<sup>43</sup> A deed of grant can fulfill at once more than one function (as said earlier there are three functions). A deed under the hand or a *formalitatatis causa* deed (as a principal condition) has also a proving power, and a deed of grant designated as the only means of grant proof of course has proven power.

#### IV. CONCLUSION

The land grant procedure shall be set forth in a deed made by PPAT, which is a deed of grant. Thus, if a person wishes to grant land and buildings to family members, a mandate deed must be made by PPAT. In addition, the grant was attended by at least two witnesses.

The validity or justification of proof of grant statement or grant deed under the hand, pursuant to Article 1682 of the Civil Code of the grant shall be by notarial/authentic deed, but in most communities only make the deed of grant under the hand, while Article 1857 Civil Code if a deed is under the hand not denied by the parties, it means that they acknowledge and not deny the truth of what is written on the deed under the hand, then the deed under the hand obtains the same proof power with an Authentic Act.

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