

## Validity of the Land Deed Signed by the Applicant While in Detention

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**ABSTRACT:** The Land Deed Official is a public official authorized to create authentic deeds related to legal acts concerning land rights or ownership rights of apartment units. This profession is important because it ensures legal certainty for the public. The Land Deed Official is also responsible for providing the legal competence of the parties involved. In practice, the Land Deed Official often faces challenges, such as when one of the parties cannot be at the office due to detention. This research aims to analyze the validity of deeds signed by a detainee during their detention. The research method used is normative. The study results conclude that a detainee is legally competent and retains the right to perform legal acts. Furthermore, the Land Deed Official can sign the deed outside the office if it complies with the applicable regulations, such as Government Regulation Number 24 of 2016 and Regulation of the Head of the Indonesian National Land Office Number 1 of 2006. Signing a deed by a detainee is valid as long as it is conducted within the Land Deed Official's jurisdiction and the detainee meets the legal competency requirements.

**KEYWORDS:** Land Deed Official, Validity, Deed, Detention

### I. INTRODUCTION

Indonesian citizens have human rights, including equal treatment before the law. This is stated in Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia: "Every person has the right to recognition, guarantees, protection, and fair legal certainty, as well as equal treatment before the law." Furthermore, the government also guarantees legal certainty for the public. Legal certainty is a condition where there is no confusion among the public regarding a legal rule, whether in terms of regulation, implementation, or enforcement of the law (Guntur, 2001).

To maintain legal certainty in society, the government has established law enforcement professions such as Judges, Prosecutors, Police, Military, Lawyers, Notaries, and Land Deed Officials (Land Deed Official). The Land Deed Official is a public official assigned and authorized with specific duties to provide services to the public by creating deeds that prove the legal act of transferring land rights, ownership rights of apartment units, and the granting of land mortgages have been carried out before them (Harsono, 2008).

Article 1 paragraph (1) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 on the Regulation of Land Deed Officials states: "A Land Deed Official, hereinafter referred to as Land Deed Official, is a public official authorized to create authentic deeds concerning certain legal acts regarding land rights or ownership rights of apartment units." The existence of the Land Deed Official profession is very important in society, as the Land Deed Official provides legal certainty by creating authentic deeds related to certain legal acts concerning land rights or ownership rights of apartment units. The Land Deed Official also plays a role in identifying whether the party appearing, in this case, the legal subject performing the legal act, has met the competence requirement. This element is crucial for the Land Deed Official in the creation of authentic deeds.

An authentic deed has high evidentiary power because it can prove matters conclusively, based on the facts contained within the deed itself. The content of an authentic deed and its existence as a physical document provide a strong foundation to support the validity and legal certainty of a legal act. Authentic deeds are regulated by law as a reliable means of evidence. (Wiharjo, W., & Isharyanto, 2022)

Legal capacity is one of the requirements for the validity of an agreement. This is regulated in Article 1320 of the Civil Code. Every person is considered capable of carrying out legal actions unless the person concerned is declared incapable of carrying out legal acts by law. Articles 330, 433, and Article 1330 of the Civil Code do not mention a person who is declared capable of carrying out legal acts. Article 330 of the Civil Code states that the category of capable is if they are 21 years old or have been married. Furthermore, Article 433 of the Civil Code explains adults who are under guardianship, namely someone who is stupid, mentally

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ill, or blind even though he is sometimes capable of using his mind, and people who are included in the wasteful category. On the other hand, Article 1330 states that the category of incapable of making agreements is people who are not adults, those under guardianship, and women in cases stipulated by law.

In practice, the Land Deed Official profession often encounters situations that deviate from the applicable regulations. The legal competence of the parties and their signatures are crucial elements because any error can result in the evidential strength of the authentic deed being reduced to a private deed, or even its annulment. For example, when a party is unable to be present at the Land Deed Official office to perform legal acts due to serving a prison sentence in a Correctional Institution. This is a real issue that occurred in Semarang, where a Land Deed Official created a deed of sale for a property owned by someone serving a prison sentence in a Correctional Institution. The Supreme Court of the Republic of Indonesia Decision Number 3641 K/Pdt/2001 canceled the deed whose party was undergoing examination at the Detention Center. However, if the related party is currently serving a sentence in the Correctional Institution, it is not yet known whether the deed will be canceled or not. In addition, the validity of the Land Deed Official deed is not yet known if the party is serving a sentence.

The theory used in this article is the theory of legal certainty. According to Mertokusumo (1999), legal certainty is a guarantee that the law must be implemented properly. Legal certainty requires efforts to regulate the law in legislation made by authorized and authoritative parties so that these rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed (Zainal, 2012). In addition, legal certainty is also a guarantee regarding the law that embodies justice. Norms that promote justice must truly function as regulations that are obeyed. According to Gustav Radbruch in Ali (2002), justice and legal certainty are integral parts of the law. Justice and legal certainty must be considered, and legal certainty must be maintained for the security and order of a country, which means that positive law must always be obeyed by the theory of legal certainty and the values to be achieved, namely the values of justice and happiness. Another theory used is the theory of legal protection. Quoting Salmond's term for legal protection theory, the law aims to integrate and coordinate various interests in society. The protection of certain interests can be achieved by limiting the interests of other parties. Legal interests involve safeguarding human rights and interests so that the law has the highest authority to determine which human interests need to be regulated and protected. Legal protection must consider the stages involved; it is born from a legal provision and encompasses all legal regulations provided by society, which are fundamentally an agreement among members to regulate behavioral relations between individuals and between individuals and the government, which is considered to represent the interests of society (Raharjo, 2000). Legal protection is a progressive effort by the state, through the government, to provide fair protection for human dignity and rights, both preventively and repressively.

Based on the background of the problem, the author is interested in raising the title of the article: "Validity of the Land Deed Signed by the Applicant While in Detention". The purpose of this study is to analyze the validity of the Land Deed Official deed signed by the applicant during the period of detention.

## **II. RESEARCH METHOD**

The approach method used in writing this article is normative juridical, namely research that focuses on studying the application of rules or norms in positive law. This research is legal research that looks at the principles of law, laws, and regulations, other binding materials called juridical, then normative, because it examines legal rules or regulations as a system building related to a legal event, to provide legal arguments as a basis for determining whether an event is right or wrong according to law (Fajar and Achmad, 2010).

Normative legal research is a process used to address legal problems through the discovery of legal principles, legal doctrines, and legal rules. (Marzuki, 2005) The research approach used is the legislative approach. The types of data and legal materials used in this article are primary legal materials in the form of related laws and regulations, namely Government Regulation number 24 of 2016 concerning the Regulation of the Position of Land Deed Makers and the Civil Code, then secondary legal materials in the form of research results or journals related to this article, the last tertiary legal materials in the form of a large dictionary or legal dictionary and electronic media. The data collection technique used is a literature study. The processing and analysis of research data uses qualitative methods. The presentation of data/legal materials in this study is a descriptive analysis.

## **III. LITERATURE REVIEW**

### **A. Overview of Authentic Deeds**

Authentic deeds have been mentioned in Article 1867 and Article 1868 of the Civil Code. Article 1867 of the Civil Code states, Proof by writing is carried out by authentic writing or by writing under the hand. Article 1868 of the Civil Code explains:

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'An authentic deed is a deed in the form prescribed by law, made by or before public servants authorized to do so at the place where the deed is made.

Authentic deeds are also regulated in Article 165 HIR which reads the same as Article 285 RBG which states that authentic deeds are all deeds made by or before officials who have been authorized to do so, this is complete evidence between the parties and their heirs and those who get the rights contained therein as notification, but this last thing is only notified by direct contact on the subject of the deed.

The meaning of an authentic deed having perfect evidentiary power implies that anyone is bound by the deed, as long as it cannot be proven otherwise based on a court decision with permanent legal force. When an authentic deed is presented in court, it is considered sufficient, and the judge is not permitted to request additional evidence in the form of another signature. (Soerodjo, 2003) explains that there are 3 (three) essential elements for the fulfillment of the formal requirements of an authentic deed, namely:

- a) In the form prescribed by law.
- b) Made by and before a Public Official.
- c) The deed is made by or before a Public Official who is authorised to do so and at the place where the deed is made.

Likewise, (Hadjon, 2001) argues that the requirements for authentic deeds, namely:

- a. In the form prescribed by law (standard form).
- b. Made by and before a public official.

The evidentiary power of an authentic deed in this case 3 (three) aspects must be considered when the deed is made, these aspects are related to the evidentiary value, namely: (Adjie, 2008):

- a. Outward (*uitwendige bewijskracht*)

A Land Deed Official's external validity is its ability to be recognised as an authentic deed. When assessed externally (at the time of creation), if it meets the legal criteria for an authentic deed, it is considered valid as an authentic deed, unless proven otherwise. In other words, it remains valid until someone provides evidence demonstrating the deed is not genuine. In such instances, the burden of proof rests with the party disputing the authenticity of the Land Deed Official's deed.

- b. Formil (*formele bewijskracht*)

An authentic deed must ensure that the events and facts outlined in the deed were carried out by the Land Deed Official or described by the parties involved at the time specified in the deed, following its procedures. Formally, to establish the truth and certainty about the day, date, month, year, time, the parties involved, the initials and signatures of the parties and witnesses, and the Land Deed Official, it must also prove what was seen, heard, and witnessed by the Land Deed Official, as well as record the information or statements provided by the parties in the deed. If the parties contest the formal aspects of the deed, the formality of the deed must be proven. This means the party disputing the deed must demonstrate the falsehood of the day, date, month, year, and time of the event, disprove the identities of those involved, and challenge the accuracy of what was seen, heard, and witnessed by the Land Deed Official. Additionally, they must prove the falsehood of the statements or information provided by the parties before the Land Deed Official, challenge the authenticity of the signatures of the parties, witnesses, and the Land Deed Official, or reveal that the procedures for creating the deed were not followed. In other words, the party disputing the deed must provide evidence to contradict the formal elements of the deed. If they fail to prove the falsehood, all parties must accept the deed.

- c. Material (*materiele bewijskracht*)

Certainty regarding the content of a deed is essential; what is stated in the deed serves as valid evidence against the parties who created it or those who acquire rights through it, and applies to the public unless proven otherwise (*tegenbewijs*). The information or statements included in the official deed (or event report), or the details provided by the parties before the Land Deed Official, must be regarded as accurate. The words recorded in the deed are to be treated as true, and any individual who appears before the Land Deed Official and whose statements are recorded in the deed is considered to have provided accurate information. If it is later found that the statements or testimonies of those involved are false, the parties are responsible.

## B. Overview of Land Deed Official

Article 1, point 24 of Government Regulation No. 24 of 1997 on Land Registration, which amends Government Regulation No. 10 of 1961, defines a Land Deed Official as a public official authorized to create specific land deeds.

Article 1, paragraph (1) of Government Regulation No. 24 of 2016, which amends Government Regulation No. 37 of 1998 concerning the Regulation of Land Deed Officials, defines a Land Deed Official as a public official with the authority to create authentic deeds. These deeds are related to specific legal actions concerning land rights or property rights over a flat unit, a responsibility that carries significant weight.

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Land Deed Officials, abbreviated as PPATs, are referred to as land deed officials in English, while in Dutch they are called land title registrars. They hold an important position and role in the life of the nation and the state, as these officials are authorized by the state to make deeds of transfer of land rights and other deeds, both within the Republic of Indonesia and abroad.

As public officials, Land Deed Officials have strong legitimacy because their role is recognized both philosophically, juridically, and sociologically. Philosophically, the existence of Land Deed Officials is to provide services to the community. Through these services, the community gains legal certainty and legal protection. Juridically, the existence of Land Deed Officials is regulated by various laws and regulations.

Sociologically, Land Deed Officials are recognized by the community because their role in assisting with the transfer or change of land rights is highly beneficial. This includes transactions such as sales, leases, grants, and other legal actions. Those who utilize the services of a Land Deed Official can perform legal actions that may improve their welfare, such as borrowing money from a bank using a mortgage as collateral. (Salim HS, 2016)

The main task of a Land Deed Official, referred to in English as principal tasks, and in Dutch as *belangrijkste taken*, is the primary obligation or duty that must be performed by the Land Deed Officials. The regulation of a Land Deed Officials' principal tasks in land registration is detailed in Article 2, paragraph (1) of Government Regulation No. 37 of 1998 concerning the Regulation of Land Deed Officials: *"The Land Deed Officials has the primary duty to carry out part of the land registration process by making a deed as evidence that certain legal acts have been performed concerning land rights or property rights over an apartment unit, which will be used as the basis for registering changes in land registration data resulting from the legal action."* Article 2 paragraph (2) of Government Regulation No. 37 of 1998 on the Regulation of the Position of Land Deed Official: 'The legal actions referred to in paragraph (1) are as follows:

- a. Sale and purchase;
- b. Exchange;
- c. Grant;
- d. Entry into the company (*inbreng*);
- e. Division of joint rights;
- f. Granting of building use rights / right of use over property;
- g. Granting of mortgage rights; and
- h. Granting the power to impose a mortgage;

The authority of the Land Deed Official, referred to as "authority" in English and "autoriteit" or "gezag" in Dutch, is the legal power granted to the Land Deed Official to create a deed. This authority is connected to: (Salim HS, 2016)

1. Transfer of land rights;
2. Transfer of ownership rights over apartment units;
3. Encumbrance of land rights; and
4. Granting a power of attorney to encumber a mortgage.

In addition, a Land Deed Official must create deeds within their designated working area. However, there is an exception to this rule. This means that a Land Deed Official can make deeds even if not all the land parcels or flat units involved in the legal action are located within their working area, as long as one of the parcels or flat units is within their jurisdiction.

This is regulated in Government Regulation No. 37 of 1998, Article 3, which outlines the authority of the Land Deed Official:

1. To carry out the primary tasks as referred to in Article 2, a Land Deed Official has the authority to make authentic deeds concerning all legal acts as specified in Article 2, paragraph (2) regarding land rights and property rights over apartment units located within their working area.
2. A special Land Deed Official is only authorized to make deeds concerning legal acts specifically mentioned in their appointment.

A Land Deed Official is a public official authorized to create authentic deeds for certain legal actions regarding land rights or property rights over a flat unit. The function of the deed made by the Land Deed Official is to serve as proof that the legal action has been carried out. Since the legal action is typically a cash transaction, the deed also serves as proof of the transfer of the land rights to the recipient. (Harsono, 2008)

### C. Overview of Prisoner

In language, the definition of a convict in the Indonesian Dictionary is a person who is subject to punishment. The definition of a convict is regulated in Article 1, point 32 of the Criminal Procedure Code, which states: *"A convict is a person who is sentenced based on a court decision that has obtained permanent legal force."*

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The definition of a convict is also regulated in Article 1, point 6 of Law Number 12 of 1995 concerning Corrections, which explains that a convict is someone who is convicted based on a court decision that has obtained permanent legal force.

The meaning of a court decision that has permanent legal force refers to a court decision at the first level that is not appealed, a court decision at the appeal level that is not appealed, or a cassation-level decision. Therefore, a convict can be defined as a defendant who is found guilty and proven to have committed a criminal offense, and who has received a criminal sanction based on a court decision with permanent legal force.

Article 7 of Law Number 12 of 1995 concerning Corrections further explains that convicts are individuals serving a sentence of loss of freedom in correctional institutions. Linguistically, a prisoner is a person who is serving a sentence for a criminal offense.

Based on the explanation above, a person who is serving a criminal sentence in a correctional institution as a result of a court decision with permanent legal force (inkrah) is referred to as an inmate.

Article 1, point 7 of Law Number 12 of 1995 concerning Corrections specifies that a convict is a person serving a sentence of loss of freedom in a detention house or correctional institution. In other words, convicts are individuals who are carrying out confinement sanctions or other sanctions according to statutory regulations.

Prisoners have obligations that they must comply with while serving sanctions in the form of confinement in correctional institutions. These obligations are regulated in Article 3 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2013 concerning the Code of Conduct of Correctional Institutions and State Detention Centers. Correctional Institutions and State Detention Centres which states that every prisoner or detainee must:

- a) obey worship in accordance with the religion and / or beliefs he adheres to and maintain religious harmony;
- b) follow all programmed activities;
- c) obey, obey, and respect the Officers;
- d) wear uniform clothing that has been determined
- e) maintain tidiness and dress in accordance with the norms of modesty;
- f) maintain personal hygiene and the residential environment and participate in activities carried out in the context of cleanliness of the residential environment; and
- g) attend room roll call conducted by Correctional Officers.

The rights of prisoners are regulated in Article 14 of Law Number 12 of 1995 concerning Corrections which explains that prisoners have the right:

- a) perform worship in accordance with their religion or belief;
- b) receive care, both spiritual and physical care;
- c) get education and teaching;
- d) get health services and proper food;
- e) submit complaints;
- f) obtain reading materials and follow other mass media broadcasts that are not prohibited;

### D. Overview of Prisons

According to the Big Indonesian Dictionary, "correctional institutions" are where individuals serve their criminal sentences. Article 1, point 3 of Law Number 12 of 1995 concerning correctional institutions is a place dedicated to rehabilitating prisoners and correctional students.

Additionally Article 1 of the Regulation of the Minister of Law and Human Rights of the Republic of Indonesia Number 6 of 2013 concerning the Code of Conduct of Correctional Institutions and State Detention Centers states that a Correctional Institution, hereinafter referred to as Lapas, is a place to carry out the rehabilitation of prisoners and correctional students. The purpose of establishing Correctional Institutions is to provide opportunities for prisoners to reintegrate into society as fully functional members through positive interactions with the values that apply in the community. (Muladi, 2004)

Correctional Institutions are independent correctional agencies. In the organizational structure of the Ministry of Law and Human Rights, they are vertically aligned under the Directorate General of Corrections, but administratively under the Regional Office of the Ministry of Law and Human Rights.

As part of the criminal justice system, Correctional Institutions share the same functions and duties as other sub-systems. As a rehabilitation agency, Correctional Institutions play a vital role in enforcing the legal system. They hold a strategic position in realizing the ultimate goal of the criminal justice system, which is the rehabilitation and resocialization of offenders, and even the prevention of future crimes. (Priyanto, 2006)

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### **IV. DISCUSSION**

#### **A. Legitimacy and Position of Land Deed Official as a Public Official Authorized to Create Authentic Deeds**

Land Deed Official as a public official has very strong legitimacy because it has received recognition both philosophically, legally and sociologically. Philosophically, the existence of Land Deed Official provides services to the community, so that the community gets legal certainty and legal protection. Legal recognition, meaning that the existence of Land Deed Official has been regulated in various laws and regulations, on the other hand, if observed sociologically, Land Deed Official receives recognition from the community because the presence of the Land Deed Official position is very much needed and helps the community in implementing the transfer of land rights (Salim HS, 2016).

A Land Deed Official is a public official entrusted with the authority to create authentic deeds regarding specific legal actions related to land rights and ownership rights over apartment units. The following is an explanation of the nature of the Land Deed Official's position according to Harsono (2008).

1. A Land Deed Official is a public official assigned special duties and authority to serve the community by creating deeds that confirm the completion of legal acts, such as transferring land rights, ownership rights to apartment units, and granting mortgage rights over land, in front of them;
2. The Land Deed Official's deeds are authentic, and only he has the right to create them;
3. The Land Deed Official is a state administrative official whose duties fall under the scope of land registration, which is an executive/state administrative activity;
4. A Land Deed Official's deed is not considered a state administrative decision, as it is a written report made by the official, stating the legal acts carried out by certain parties before him at a specific time mentioned in the deed;
5. As a state administrative official, the decision of a Land Deed Official involves either accepting or rejecting the requests of parties seeking a deed for legal actions they intend to perform before him. It is the Land Deed Official's responsibility to decide on whether to accept or reject the request. If the conditions are met, the request must be granted; if not, the request must be denied.

The function of the deed created by the Land Deed Official is to serve as proof that the legal act has been carried out, as the legal act is executed in cash, and it also validates the transfer of rights to the land in question to the recipient of those rights (Harsono, 2008). As a public official, the Land Deed Official is also responsible to the community. This responsibility involves a commitment to providing the best possible service through their profession, regardless of whether the service is paid or unpaid, and ensuring that the services delivered positively impact the community. Responsibility also entails accepting the risks associated with the service. Negligence in performing one's duties can result in harmful or detrimental consequences for both the individual and others, and can be morally wrong (Kanter, 2001).

Based on this responsibility, a Land Deed Official must truly apply the principle of caution, as the professional responsibility of a Land Deed Official applies for life, especially in identifying the parties who will become legal subjects in the creation of authentic deeds. Competence is one of the critical elements because if this element is neglected, the legal standing of the authentic deed could be reduced to a private deed, or in the event of a dispute, it could be annulled through a process in a competent court.

The role of Land Deed Official is highly significant in assessing whether the parties have met the capacity requirements or not. The existence of this element becomes crucial for Land Deed Official during the authentic deed-making stage, because a Land Deed Official's deed can be nullified or considered a private document if the requirements are not fulfilled. The legal subject's capacity is a very important element in any agreement, as explained in Article 1320 of the Civil Code. This states that an agreement is valid if there is mutual consent between the parties who are capable of binding themselves, possessing legal capacity, and having a certain matter for a lawful cause. (Hapsari and Putrijanti, 2023)

#### **B. Legal Capacity of Parties in Signing Authentic Deeds**

Legal capacity is a crucial element in the creation of authentic deeds, directly impacting the validity and legal standing of the document. The Civil Code provides a comprehensive framework for determining an individual's legal capacity to enter into legal actions.

The Civil Code in Articles 330, 433, and 1330, explains that the benchmark for legal maturity is set at a minimum age of 21 years, or below 21 years if the individual has married or been married. Furthermore, the Civil Code states that a person is deemed legally competent unless they are under guardianship due to being mentally incapacitated, insane, blind, or behaving wastefully. A person under guardianship may be placed in such a status by a competent district court upon application by any blood relative. However, if guardianship is sought on the grounds of wasteful behavior, only direct-line relatives and collateral relatives up to the fourth degree can request it.



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The Civil Code stipulates that legal capacity is determined by a minimum age of 21 or having been married. In marriage law, legal maturity is a minimum age of 21 years to marry without parental consent. However, Article 6 states that individuals aged 19 can marry with parental permission. If under 19 years of age and wishing to marry, they are still allowed to apply for a marriage dispensation, with the requirements and procedures regulated by marriage law.

The regulations mentioned only refer to the minimum limit of a person who is capable of performing legal acts. There are no regulations that explain the maximum limit of a person who is capable of performing legal acts.

A person appearing during detention is a citizen who is serving a prison sentence by a court decision that has permanent legal force. About a person appearing during detention as one of the parties in signing an authentic deed. The capacity of a person appearing during detention is linked

to the capacity to act legally as stated in Article 1330 of the Civil Code: "there is no mention that a person in a correctional institution undergoing criminal sanctions is declared incapable of acting legally". So as long as they are 18 years old or married and not under guardianship, then every person is capable of acting legally. As stipulated in Article 1 paragraph (3) of the Civil Code: "that no punishment results in civil death, or the loss of all citizenship rights".

A person who appears during detention, even though his freedom has been lost still has the rights as a citizen and these rights have been guaranteed by the state as stated in the 1945 Constitution of the Republic of Indonesia Article 28G paragraph (1) which states: "Everyone has the right to protection of themselves, their families, honor, dignity, and property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right". The competence of a person who appears during detention has also been included in jurisprudence, namely the Supreme Court decision Number 943 K/Pdt/2012, the contents of which are: "a suspect who is being detained in a state detention center is not competent to act according to the law, it is appropriate that this is so, because it avoids pressure from various parties including in the case of signing a deed before a notary, and if the suspect is unwilling to sign the deed, he is afraid that the problems he faces will be more dangerous for his life". This means that suspects who are undergoing criminal examination and are temporarily detained in state detention centers are different from convicts who are serving sentences in correctional institutions, the difference is between having been decided and not yet decided by the court. Based on this description, a prisoner who has fulfilled the elements of competence, namely being an adult or married and not under guardianship, still has the rights as a citizen whose civil rights are not lost so that they are considered competent to act in law.

A Land Deed Official must also uphold the principle of caution when carrying out their responsibilities. Generally, this principle refers to the foundation of truth, serving as the basis for thoughtful and deliberate action. The principle of caution is an extension of the prudence principle. According to Black's Law Dictionary, "prudence" is defined as: "carefulness, precaution, attentiveness, and good judgment applied to actions or care. It represents the level of care needed based on the urgency or circumstances in which it is exercised. Legally, this term is commonly linked to care and diligence, in contrast to negligence." In other words, it refers to a careful, preventive, and thoughtful approach, requiring a level of attention or skill appropriate to the situation. It is associated with carefulness and diligence, as opposed to recklessness. (Theis and Walid, 2022)

Although prisoners are considered competent to carry out legal acts, Land Deed Official must also continue to apply the principle of caution where the person appearing during the detention period can be said to be an unbalanced party because they are serving a prison term and can be considered not free to express their opinions. As stated in Article 1324 of the Civil Code: "Coercion occurs when there is an action in such a way that it gives the impression and can cause fear in a reasonable person, that he, his people, or his wealth, are threatened with great loss shortly. In considering this matter, the age, gender, and position of the person concerned must be considered". This article explains that one must still pay attention to a person's position in agreeing.

The principle of caution can be implemented by verifying the identity of the person appearing, thoroughly checking the data of both the subject and object of the person, fulfilling all the technical requirements for drafting a notarial deed, and documenting the signing process, especially if the deed is signed outside the Land Deed Official office. This principle aims to minimize potential disputes in the future. Moreover, if a dispute does arise, the Land Deed Official will have evidence to demonstrate that they fulfilled their obligations.

The principle of prudence must be rigorously applied by Land Deed Official due to the potential administrative consequences that can be imposed for violating existing regulations during the performance of their duties, which may result in termination from their held position. The dismissal of a Land Deed Official can occur as a consequence of both serious and minor violations committed during the execution of official responsibilities. Administrative sanctions applied to Land Deed Official range from written warnings to complete removal from the position, as stipulated in Article 10 of the Land Deed Official Regulations. (Adistia, 2024)

In light of the increasing prevalence of land disputes involving Land deed official, it is imperative that Land deed official exercise heightened vigilance when executing deeds by meticulously adhering to all statutory provisions and regulatory

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requirements. By maintaining professional diligence and consistently upholding the principle of prudence, Land deed official can effectively mitigate legal risks, including potentially damaging litigation that could adversely affect all parties involved as well as the integrity of the Land deed official institution itself. (Azwardi and Arum, 2022)

Based on this, a person appearing during a detention period who has fulfilled the elements of competence, namely being an adult or married and not under guardianship, still retains their civil rights as a citizen and is therefore considered legally competent to act. In addition to the competence element, the validity of an authentic deed also depends on whether the deed is made by applicable regulations.

According to regulation of the head Indonesian National Land Office number 1 of 2006, Article 1 paragraph 4, land deed made by a Land Deed Official as evidence that certain legal actions have been taken regarding land rights or Ownership Rights of Apartment Units. A Land Deed Official deed is classified as an authentic deed, as defined by Article 1868 of the Civil Code, which states: "An authentic deed is a deed in the form prescribed by law, made by or before a public official authorized to do so, in the place where the deed is created." The primary purpose of making an authentic deed is to provide strong evidence.

Evidence is the cornerstone of the entire process of examining cases in court, whether in civil or criminal matters because it forms the basis for conclusions that can influence the judge's belief in the case at hand. In civil cases, the primary form of evidence is written documentation.

### C. Evidentiary Power of Authentic Deeds and Land Deed Official's Territorial Jurisdiction

Deeds fundamentally possess various functions concerning legal actions, including: determining validity, establishing completeness or perfection (not the legitimacy of a legal action), serving as formation requirements, and functioning as evidence. From an evidentiary perspective, deeds possess complete probative value (a single piece of evidence suffices as grounds for case resolution, as authentic documents are presumed accurate, and the burden of proof falls upon the contesting party to substantiate their objection).

An authentic deed has formal evidentiary power, meaning that what is stated and included in the deed is considered true and reflects the will of the parties involved. This will is expressed in the deed before or by an authorized official in their official capacity. The formal power of this evidence rests on whether or not it is questioned by the signatories to the deed (Ibnu Sajadi, 2015). According to *Tan Thong Kie (1994)*, a signature is a declaration of the will of the person signing, signifying that by affixing their signature to a document, they intend for that document to be considered their own, legally binding them. Article 1875 of the Civil Code states that a signature on private writing, once acknowledged as valid by the individual or legally considered valid, carries full evidentiary weight equivalent to an authentic deed for the signatory, their heirs, and successors. The provisions of Article 1871 also apply to such writings.

The signing of a Land Deed Official deed may take place outside the Land Deed Official office if one of the parties is unable to attend the office, but this must be for a valid reason, and the party who cannot attend must reside within the jurisdiction of the Land Deed Official in question. This limitation arises because the Land Deed Official is only authorized to create deeds within their designated area of jurisdiction (Dhanang, 2021). Valid reasons for not attending the office include illness, advanced age preventing the party from traveling to the Land Deed Official office, or situations where the party is serving a sentence, such as appearing during a period of detention. As previously discussed, a person appearing during detention remains a legally competent subject.

In terms of authority, the Land Deed Official's jurisdiction is determined by Article 12 of Government Regulation Number 24 of 2016, which amends Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials. It explains that the Land Deed Official's jurisdiction covers one provincial area. According to regulation of the head Indonesian National Land Office Number 1 of 2006, Article 28 paragraph 4(c), a serious violation occurs when a Land Deed Official drafts a deed outside their work area, except in cases referred to in Article 4 and Article 6 paragraph (3). If a Land Deed Official violates this rule, regulation of the head Indonesian National Land Office Number 1 of 2006, Article 28 paragraph 2(a) stipulates that the Land Deed Official can be dishonorably dismissed for committing a serious breach of their duties.

In conclusion, a Land Deed Official may sign a deed outside their office as long as they do not violate the provisions outlined in Article 12 of Government Regulation Number 24 of 2016 and regulation of the head Indonesian National Land Office Number 1 of 2006, Article 28 paragraph 2(a) and Article 28 paragraph 4(c), which require that the deed be made within the Land Deed Official's jurisdiction by the relevant appointment decree.

## V. CONCLUSION

Based on the discussion of the issues above, it can be concluded that the validity of a Land Deed Official deed signed by an applicant with prisoner status is legally valid. This validity stems from the fact that prisoners are considered legally competent



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to perform legal actions according to Article 330 of the Civil Code. The legal distinction between suspects and convicted prisoners is significant in this context. While Supreme Court Decision No. 943 K/Pdt/2012 clarifies that suspects in detention centers lack legal competency to avoid potential coercion during document signing, this restriction does not extend to convicted prisoners serving their sentences in correctional facilities who have already been through due process of law.

The legal competency of prisoners is further established by examining their status as citizens who retain certain civil rights despite incarceration. A prisoner who meets the basic competency requirements—being an adult or married and not under guardianship—maintains the legal capacity to enter into transactions and agreements. This principle recognizes that imprisonment affects only specific rights as prescribed by law, but does not automatically revoke all civil rights, including the right to manage one's property and legal affairs through proper legal instruments such as Land Deed Official's deeds.

Regarding the procedural aspects of deed execution, regulations permit flexibility in certain circumstances while maintaining jurisdictional boundaries. According to Article 12 of Government Regulation No. 24 of 2016 and Regulation of the Head of the Indonesian National Land Agency No. 1 of 2006 Article 28 paragraph 4 letter c, a Land Deed Official may conduct signings outside their office in urgent situations, provided these occur within their designated jurisdiction. This accommodation allows for prisoners to execute necessary legal documents despite their confinement, ensuring that incarceration does not completely obstruct their ability to handle legitimate property transactions or other civil matters requiring notarized documentation.

Nevertheless, the Land Deed Official bears a heightened responsibility when dealing with incarcerated individuals. The principle of prudence must be rigorously applied in these scenarios because prisoners represent a potentially vulnerable party due to their detention circumstances. This calls for additional verification measures and safeguards to ensure that the prisoner's consent is genuine, informed, and free from undue influence despite their restricted environment. The Land Deed Official must thoroughly document the process, verify the prisoner's identity and intentions, and ensure all legal requirements are met with extra diligence to protect both the integrity of the legal instrument and the rights of the incarcerated individual.

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