

## The Role of PPAT in the Registration Process for the Transfer of Land Rights based on Buying and Selling Transaction

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**Abstract.** *This study aims to determine and analyze about the role of PPAT in the registration process for the transfer of land rights based on buying and selling in Pati Regency. The research approach method used in this thesis is a sociological juridical approach. The specification of this research is analytical descriptive, a study that tries to describe the problems that occur in practice in the field associated with other provisions and then analyzed to obtain supporting facts and inhibiting factors of the problems studied. The data sources of this research consist of primary data and secondary data. Methods of collecting data using interviews, document studies, field studies. The data obtained from both field studies and document studies are basically data that were analyzed descriptively qualitatively. The results showed that the deed made by PPAT acts as an authentic deed, one of which is the deed of sale and purchase (AJB), which is a deed made when someone wants to sell their land to someone else. AJB functions to take care of the letters of transition from the old owner to the new owner. Before making the AJB, PPAT checks the authenticity of the certificate to the land office. The making of AJB is attended by sellers, prospective buyers, and at least two witnesses. AJB is made if the sale and purchase transaction has been paid off. According to the Decree of the State Minister of Public Housing Number 9 of 1995 concerning Guidelines for Binding the Sale and Purchase of Houses; AJB must be signed by the buyer and seller before the PPAT if the buyer has paid the entire land price along with taxes and other costs related to the sale and purchase transaction.*

*Keywords: Buying; Deed; PPAT; Purchase; Sale.*

### 1. Introduction

Basically, philosophically, land has not been given to individuals from the start. So it is not true that people selling land means selling their property, the truth is that they only sell services to maintain and protect the land as long as it is under their control.<sup>1</sup>

One of the material rights to land as regulated in Article 16 paragraph (1) of the UUPA is the strongest and most complete land ownership right full power means that property rights give authority to the owner in terms of unlimited uses.<sup>2</sup>

In article 20 paragraph (2) of the UUPA it is determined that property rights can be transferred and transferred. "Switching means that it occurs not because of a legal act (intentional) but because of a legal event (not intentional), for example inherited there is a legal action against the property rights.

One of the legal acts of transferring ownership rights to land is by buying and selling land. In the current practice of buying and selling land, it is hoped that there will be legal certainty that can guarantee the continuity of these activities through the name of the certificate of land rights. Transfer of title to land title certificates carried out by way of buying and selling is another legal act of transferring rights, except that the transfer of rights through auction can only be registered if it is proven by a deed made by the authorized PPAT.

Thus, it means that any transfer of ownership rights to land, which is carried out in the form of buying and selling, exchanging or grants must be made before the PPAT. The deed of sale and purchase of land rights carried out in the presence of the Land Deed Maker Official (PPAT) is one of the requirements for registering the transfer of land rights at the Land Office, this will have implications for legal certainty regarding the status of the land.<sup>3</sup>

The transfer of land rights in Indonesia, which is more commonly carried out by the community, is by buying and selling. The concept of buying and selling land cannot be separated from the concept of buying and selling in general which is regulated in civil law (privaatrecht). The Civil Law Law (Burgerlijk Wetboek) in book III on Engagement in Chapter Five provides the concept of buying and selling. According to Article 1457 of the Civil Code "sale and purchase is an agreement, whereby one party binds himself to surrender an object, and the other party pays for and receives goods. On the other hand, the seller is the recipient of the money and the buyer is the recipient of the goods in accordance with what has been agreed or mutually agreed. Thus, each party, namely the seller and the buyer, is

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<sup>1</sup> Soedharyo Soimin, (1993), *Hak dan Pembebasan Tanah*, Jakarta : Sinar Grafika, p. 82.

<sup>2</sup> Effendi Perangin, (1994), *Hukum Agraria di Indonesia, Suatu Telaah dari Sudut Pandang Praktisi Hukum*, Jakarta : PT. Raja Grafindo Persada, p. 237.

<sup>3</sup> Wantjik Saleh, (1982), *Hak Anda Atas Tanah*, Jakarta : Ghalia, p. 30.

required to fulfill the rights and obligations.<sup>4</sup>

The deed of sale and purchase of land rights carried out before the Land Deed Making Officer (PPAT) is one of the requirements for registering the transfer of land rights at the Land Office, this will have implications for legal certainty regarding the status of the land. Thus, it means that the transfer of land rights, and in particular the ownership rights to the land, can be carried out correctly, then a PPAT who will make applicable laws and regulations. The buyer who has had the transfer of land rights must ensure the truth about the land rights, and regarding the skills and authority to act of those who will transfer and accept the transfer of rights to the land. The name of the certificate of land rights as a result of the sale and purchase of land according to customary law in practice is usually only made a letter which says that the seller has handed over the land and received the money, but it is not proven by the existence of a deed of sale and purchase of land made before the Land Deed Maker Official. (PPAT) which has been determined by the deed of sale and purchase made by PPAT, as required by Article 1 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official Making the Land Certificate, which states that PPAT is a deed made by PPAT as evidence that certain legal actions have been carried out regarding land rights. Therefore, the buyer is legally the owner and can immediately register the land at the local Land Office. Given the importance of legal certainty in any transfer of land rights as a result of the sale and purchase transaction of land, this will result in a person not getting a title transfer certificate, even though the sale and purchase is legal. PPAT has an increasingly important role because PPAT assists the Head of the Land Office in carrying out registration and making land titles in the sale and purchase of land ownership rights. Given the importance of legal certainty in any transfer of land rights as a result of a land sale and purchase transaction, this will result in a person not getting a title transfer certificate, even though the sale and purchase is legal according to law. PPAT has an increasingly important role because PPAT assists the Head of the Land Office in carrying out registration and making land titles in the sale and purchase of land ownership rights.

Based on the provisions of the prevailing laws and regulations in Indonesia, every implementation of the transfer of rights to land and/or buildings is an object of tax. As a tax object, the transfer of land and/or building rights is subject to tax from both sides, namely from the side of the seller and the buyer. For the seller is subject to Income Tax (hereinafter abbreviated as PPh) obtained from the sale of land and/or buildings. Meanwhile, the buyer is subject to tax in the form of Customs for the Acquisition of Land and/or Building Rights (hereinafter abbreviated as BPHTB). Payment of taxes relating to PPH and BPHTB is the sale

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<sup>4</sup> J. Andy Hartanto, (2009), *Problematika Hukum Jual Beli Tanah Belum Bersertifikat*, Cetakan Pertama, Laksbang Mediatama, Yogyakarta, p.46.

and purchase of land with rights.

Taxes are people's contributions to the state treasury based on the law (which can be enforced) by not receiving reciprocal services (contra-achievements) that can be directly addressed, and which are used to pay general expenses. There are two tax functions, namely, the source of state finance and the regulating function.<sup>5</sup>

The application of BPHTB (Bea for the Acquisition of Rights on Land and Buildings) of 2.5 percent in Pati Regency is still the lowest compared to other surrounding districts. This was conveyed by the former Head of BPKAD (Regional Cash and Asset Receipt Agency) Pati Regency, Ir. Turi Atmoko as contained in Act No. 28 of 2009 concerning Regional Taxes and Regional Levies as well as the Pati Regency Regional Regulation (Regulation) Number 8 of 2017 Amendments to Regional Regulation Number 1/2011 concerning Customs for Acquisition of Rights on Land and Buildings (12-09- 2019).<sup>6</sup>

Income Tax (PPH) is a tax from land sales that must be paid by the land seller. Land sales tax PPh must be paid by the seller before getting the Sale and Purchase Deed (AJB). This is done to prevent disputes over the land in the future. Based on Government Regulation No. 34 of 2016 regarding the New Final PPh Rate on Land and Building Sales Tax, the tax amount for PPh is 2.5% on each transaction.

## 2. Research Methods

The approach that the author uses in this research is a sociological juridical approach. The Sociological Juridical Approach is emphasizing research that aims to obtain legal knowledge empirically by going directly to the object.<sup>15</sup> Sociological Juridical Research is legal research using secondary data as initial data, which is then continued with primary data in the field or on the community, examining the effectiveness of a Ministerial Regulation and research seeking to find relationship (correlation) between various symptoms or variables, as a data collection tool consisting of document studies or library materials and interviews (questionnaires).<sup>7</sup>

## 3. Results and Discussion

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<sup>5</sup> Abdul Muthallib, "Pengaruh Sertifikat Hak atas Tanah sebagai Alat Bukti dalam Mencapai Kepastian Hukum" (2020) 12:1 *Jurisprudensi J Ilmu Syariah, Perundang- undangan, dan Ekon Islam* 21–43 at 39.

<sup>6</sup> Yulia Amborowati, "Kekuatan Hukum Perjanjian Terhadap Perjanjian Pengikatan Jual Beli Hak atas Tanah dan Bangunan yang Belum Terdaftar" (2020) 18:1 *Al Qodiri J Pendidikan, Sos Dan Keagamaan* 302–319 at 311.

<sup>7</sup> Ayu Larasati & Raffles Raffles, "Peralihan Hak atas Tanah dengan Perjanjian Jual Beli Menurut Hukum Pertanahan Indonesia" (2020) 1:1 *Zaaken J Civ Bus Law* 127–144 at 143.

### 3.1. What is the role of PPAT in the registration process for the transfer of land rights based on buying and selling in Pati Regency?

According to the general explanation of Government Regulation No. 24/1997 on Land Registration (PP No. 24/1997), the guarantee of legal certainty in the land sector for all Indonesian people can be realized through two efforts. First, it requires written, complete, and clear legal instruments that are implemented consistently in accordance with the spirit and content of its provisions; so it is necessary to make laws and regulations ordered by Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) which is in accordance with the spirit and principles of the UUPA<sup>8</sup>. Second, to deal with concrete cases in the land sector, the provision of legal certainty guarantees cannot be realized only with the availability of legal instruments that meet the requirements. However, it is also necessary to carry out land registration which allows the holders of land rights to easily prove their rights to the land they control, and facilitate economic activities such as buying and selling, the buyer will easily find out the information needed regarding the land that will be the object of the legal action carried out. Therefore, the information is stored in the land office as the executor of land registration and is open to the public as well as for the government to implement land policies.<sup>9</sup>

The LoGA is a land law instrument as the foundation and foundation of both national law and legal certainty in politics and the national land system. It is expressly stated in the Elucidation of the LoGA that the State, as an organization of power for all the people, acts as the governing body so that it is appropriate that the earth, water and natural resources contained therein are at the highest level controlled by the State.

The government can give rights to the land it controls to citizens in connection with the right to control by the state. The granting of this right must be in accordance with the applicable laws and regulations. Legal actions for granting this right can be done, among others, by way of buying and selling, grants, and others. This legal act results in the transfer of land rights from the land owner to another party who will receive the rights to the land.<sup>10</sup>

The transfer of land rights must be before the competent authority, in accordance with Article 37(1) PP No. 24/1997 which reads:

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<sup>8</sup> Mardansyah, "Analisis Prosedur Administrasi Peralihan Hak atas Tanah Hibah pada Kementerian Agraria dan Tata Ruang / Badan Pertanahan Nasional Kabupaten Bungo Provinsi Jambi" (2020) 5:1 *Dialekt Publik J Adm Negara Univ Puter Batam* 50–59 at 56.

<sup>9</sup> Made Emy Andayani Citra & I Made Sudirga, "Eksistensi Program Pendaftaran Tanah Sistematis Lengkap (Ptsl) dalam Mencegah Terbitnya Sertipikat Ganda Di Kantor Pertanahan Kota Denpasar" (2020) 2:1 *J Huk Sar* 1–15 at 13.

<sup>10</sup> *Ibid.*

*"The transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed made by the PPAT which authorized according to the applicable laws and regulations."*

According to AA Andi Prajitno,<sup>11</sup> Land Deed Making Officials (PPAT) are officials appointed by a government decree in this case by the Head of the National Land Agency (BPN) to represent the state; namely making a deed or document required by the state related to controlling the implementation of land regulations and registering state assets (wealth) in the form of land in serving the needs of the community (public service) in the field of civil law with land objects as stated in the UUPA. Therefore, it can be concluded that PPAT has an important role in its authority to produce evidence regarding certain legal actions regarding transfers; imposition of land rights which is used as the basis for registration of land rights at the Directorate General of Agrarian Affairs which is now at the BPN of the Republic of Indonesia.<sup>12</sup>

According to the explanation of GATOT SUGIARTO, SH as a Notary/PPAT for the Pati Regency Work Area, The role of PPAT is to carry out some land registration activities by making a land deed as evidence that certain legal actions have been taken regarding land rights or property rights to flat units, which will be used as the basis for registering changes to land registration data, as stated in Article 2(1) Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Maker of Land Deeds (PP No. 37/1998). The legal action according to Article 2 (1) PP No. 37/1998 includes: buying and selling, exchanging, grants, income in the company, sharing of joint rights, granting building rights/use rights over land with property rights, granting mortgage rights, and granting power of attorney to encumber mortgage rights.<sup>13</sup>

The deed itself is in the form of an authentic deed and a private deed.<sup>14</sup> An authentic deed is a deed in the form determined by law, drawn up by or before public officials who have the power to do so; at the place where the deed part of the task was made. This is based on the provisions of Article 1868 of the Civil Code (KUHPer).

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<sup>11</sup> Dwina Natania, Lastuti Abubakar & Nanda A Lubis, "Penyampaian Akta Pemberian Hak Tanggungan oleh Pejabat Pembuat Akta Tanah setelah Diberlakukannya Peraturan Menteri ATR/KPBN Nomor 5 Tahun 2020 Tentang Pelayanan Hak Tanggungan Terintegrasi Secara Elektronik" (2020) 3:2 Acta Diurnal J Ilmu Huk Kenotariaatan 273–291 at 287.

<sup>12</sup> Imam Surya Saputra, Ilyas Ismail & Darmawan Darmawan, "Akibat Hukum Terhadap Akta Jual Beli yang Cacat Hukum" (2020) 8:2 J IUS Kaji Huk dan Keadilan 283.

<sup>13</sup> Irfan Iryadi, "Kedudukan Akta Otentik dalam Hubungannya dengan Hak Konstitusional Warga Negara" (2019) 15:4 J Konstitusi 796.

<sup>14</sup> Op.cit

Meanwhile, the private deed is a written document signed without an intermediary from a public official. Authentic deeds are the most accurate and valuable evidence and play an important role in every legal relationship in public life, in various business relationships, banking activities, land affairs, social activities, and others. The need for written evidence in the form of authentic deeds is increasing in line with the growing demands of society for legal certainty in various economic and social relations.

Through this authentic deed, rights and obligations can be clearly determined, guarantee legal certainty, and at the same time it is hoped that disputes can be avoided.<sup>15</sup> Disputes can arise due to inconsistencies in the interests of the parties, so that with the existence of this authentic deed it is hoped that it can be used as the most accurate written evidence. in resolving disputes. Meanwhile, if a legal act is only carried out with an underhand deed, then the deed has no definite legal force, because the deed is only made by the party giving and the party receiving and signed by both parties without any connection with the public official who can prove the truth of the deed.

The deed made by PPAT acts as an authentic deed, one of which is the deed of sale and purchase (AJB), which is a deed made when someone wants to sell their land to someone else. AJB functions to take care of the letters of transition from the old owner to the new owner. Before making the AJB, PPAT checks the authenticity of the certificate to the land office. The making of AJB is attended by the seller, prospective buyer, and a minimum of two witnesses.<sup>17</sup> AJB is made if the sale and purchase transaction has been paid off. According to the Decree of the State Minister of Public Housing Number 9 of 1995 concerning Guidelines for Binding the Sale and Purchase of Houses; AJB must be signed by the buyer and seller before the PPAT if the buyer has paid the entire land price along with taxes and other costs related to the sale and purchase transaction.

The making of the AJB must be carried out in accordance with the correct incident, status, and data as well as in accordance with the laws and regulations and supported by documents that are required to exist and according to the relevant PPAT research is correct. The standard form of the PPAT deed has been determined by BPN in the form of a blank deed; different from the notarial deed made by the notary himself depending on the need for the deed and legal actions to be carried out by the client. Whether or not the PPAT deed can be processed by the land office depends on the deed provided with the supporting documents. This is because the PPAT deed will be used as authentic evidence regarding legal actions that result in changes to the juridical data on land registration.

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<sup>15</sup> Ibid.



According to the explanation of Gatot Sugiarto, SH as a Notary/PPAT for the Pati Regency Work Area, PPAT activities in land registration are the making of certain land deeds as referred to in the laws and regulations concerning land registration. The deed serves as a source of data needed in order to maintain the data stored in the land office so that the data in the land office is the latest data. In fact, there are still many people who do not fully understand the meaning of PPAT's role in making AJB land.

There are still many people who buy and sell land through private deeds. Although the making of an underhand deed can only be done for land that has never been registered at the BPN, it can still lead to disputes in the future.

Often there are two parties claiming to be the owners of the registered land. This is because the community does not know the role of PPAT in relation to the transfer of land rights due to buying and selling. On the other hand, the laws and regulations governing the sale and purchase of land are potentially irrelevant to the current situation; thus making the role of PPAT in the process of transferring the sale and purchase of land rights is still debated, especially regarding how big the role of the PPAT is. For this reason, this paper will discuss the role of PPAT in the process of transferring land rights due to buying and selling.

#### **4. Conclusion**

Based on the results of research in the discussion of this thesis entitled "The Role of Land Deed Officials in the Registration Process of Transfer of Rights and Payment of BPHTB Tax on the Sale and Purchase of Land in Pati Regency ", the authors can convey as follows: The LoGA is a land law instrument as the foundation and foundation of both national law and legal certainty in politics and the land system national. It is expressly stated in the Elucidation of the LoGA that the State, as an organization of power for all the people, acts as the governing body so that it is appropriate that the earth, water and natural resources contained therein are at the highest level controlled by the State. The role of PPAT is to carry out some land registration activities by making a land deed as evidence that certain legal actions have been carried out regarding land rights or property rights over flat units, which will be used as the basis for the registration of changes to land registration data, as stated in Article 2(1) of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Maker (PP No. 37/1998). The legal action according to Article 2 (1) PP No. 37/1998 includes: buying and selling, exchanging, grants, income in the company, sharing of joint rights, granting building rights/use rights over land with property rights, granting mortgage rights, and granting power of attorney to encumber mortgage rights. The deed made by PPAT acts as an authentic deed, one of which is the deed of sale and purchase (AJB), which is a deed made when someone wants to sell their land to someone else. AJB functions to take care of



the letters of transition from the old owner to the new owner. Before creating AJB, PPAT conducts an examination of the authenticity of the certificate to the land office. The making of AJB is attended by the seller, prospective buyers, and a minimum of two witnesses.<sup>10</sup> AJB is made if the sale and purchase transaction has been paid off. According to the Decree of the State Minister of Public Housing Number 9 of 1995 concerning Guidelines for Binding the Sale and Purchase of Houses; AJB must be signed by the buyer and seller before the PPAT if the buyer has paid the entire land price along with taxes and other costs related to the sale and purchase transaction.

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