

## The Juridical Review of the Position of the Deed of Sale and Purchase Signed by the Parties Not Before the PPAT

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**Abstract.** *This study aims to find out and analyze the Juridical Review of the position of the sale and purchase agreement signed by the parties not carried out before the PPAT, as well as what are the legal consequences of the sale and purchase deed signed by the parties not before the PPAT on the PPAT. The research approach method used is a normative juridical research method. The research specification used is Descriptive Analysis. The data needed includes Primary data, which consists of the 1945 Constitution of the Republic of Indonesia, Government Regulation No. 24 of 2016 amendments to Government Regulation Number 37 of 1998, Regulation of the Minister of Agrarian Affairs of the National Land Agency Number 3 of 1997 concerning provisions for implementing Government Regulation Number 24 of 1997, Civil Law, as well as secondary data containing books and other supporting documents. Collecting research data using document study techniques and library materials. Methods of data analysis using Interactive Model Qualitative Analysis. Based on the research, it was concluded that the position of the deed of sale and purchase that was signed not before the PPAT, the strength of legal evidence is degraded to legal force under the hands and the sale and purchase deed signed by the parties is not before the PPAT, the PPAT can be subject to office sanctions, namely dismissal in disrespect of his position.*

**Keywords:** Agreement; Deed; Land; Officer.

### 1. Introduction

Land is a basic human need that has a very important role for the needs of life. It is necessary to increase the guarantee of legal certainty in land tenure. In Act No. 5 of 1960 concerning Basic Agrarian Regulations (hereinafter abbreviated as UUPA) provides legal certainty for the community to utilize the functions of the

earth, water and natural resources contained therein, especially in this case the government requires every land owner to register his land.<sup>1</sup>

This is expressly regulated in Article 19 paragraph (1) of the UUPA regarding land registration to ensure legal certainty. Registration of the transfer of land rights is carried out by the Land Deed Making Officer (hereinafter abbreviated as PPAT as PP No. 24/2016).

The function of land registration is to ensure legal certainty in which the PPAT has an important role, furthermore in Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds, Article 2 states several of the following:<sup>2</sup>

a. PPAT has the main task of carrying out some of the land registration activities by making deeds as evidence that certain legal actions have been carried out regarding land rights or ownership rights over flats, which will be used as the basis for registering changes to land registration data resulting from said legal action.

b. The legal actions referred to in paragraph (1) are as follows:

1. Buy and sell;
2. Exchange;
3. Grant;
4. Entry into the company (*inbreng*);
5. Shared rights distribution;
6. Granting of building use rights/usage rights over proprietary land
7. Granting of mortgage rights
8. The power of attorney imposes a mortgage right.

The official for making land deeds is appointed by the government, in this case the National Land Agency, with strict and certain authority in order to serve the needs of the community for deed of transfer of rights over land, and deed of granting authority for imposition of mortgage rights as stipulated in the applicable laws and regulations.

In article 1 point 1 according to Government Regulation No. 24/2016 the definition of PPAT is: public officials who are authorized to make authentic deeds regarding certain unlawful acts regarding land rights or ownership rights to

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<sup>1</sup>Boedi Harsono, (2008), *Hukum Agraria Indonesia, Peraturan Pemerintah Republik Indonesia*, Djambatan, Jakarta, p.52.

<sup>2</sup>I Gusti Bagus Yoga Prawira. (2016). "Tanggung Jawab PPAT Terhadap AKta Jual Beli Tanah" in *Jurnal IUS, Volume IV No. 1 March 2016*, p. 65, url <https://core.ac.uk/download/pdf/235205355.pdf> accessed on 1 March 2023 at 16.03 WIB

apartment units.<sup>3</sup>However, in practice, the PPAT often makes a sale and purchase deed that is not in accordance with the provisions of the applicable regulations, causing losses to interested parties.

A PPAT deed is an authentic deed and as an authentic deed there are strict requirements in terms of the procedures for making, forms and formalities that must be carried out so that the deed has the right to be called an authentic deed. This is confirmed by Article 1868 of the Civil Code: "An authentic deed is a deed made in a form determined by law by or before a public official who is authorized to do so at the place where the deed was made".

Regarding the type and form of deed, the implementation and procedure for making them, are regulated by the Regulation of the State Minister for Agrarian Affairs Head of the National Land Agency Number 3 of 1997 regarding the provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, in Article 95 to Article 102.

The agency authorized to carry out land registration and issue proof of land rights is the National Land Agency and is not the duty and authority of the PPAT.<sup>4</sup>The procedures and formalities for making an authentic deed are coercive legal provisions, meaning that the procedures and procedures for making an authentic deed must be followed precisely without the slightest deviation from the procedures and procedures for making an authentic deed which will bring legal consequences to the strength of proof of the deed.

With that, it is important to know that how the deed of sale and purchase is made by a PPAT who in the process of making the deed has been carried out according to the existing rules. Where in making the deed, regarding the form, content and method of making it, as specified in PP No. 24 of 2016 concerning PPAT.<sup>5</sup>And the purpose of this study is to find out and analyze the juridical review of the position of the deed of sale and purchase signed by the parties not before the PPAT.

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<sup>3</sup>Nyoman Suta Eni, I Gusti Nyoman Agung, dan I Nyoman Mudana, "Eksistensi Akta Jual Beli Hak Milik Atas Tanah Yang Dibuat Pejabat Pembuat Akta Tanah Dikecamatan Mendoyo Kabupaten Jembrana", *Kertha Semaya*, Vol. 02, No. 04, July, 2016, p. 2, ojs.unud.ac.id, URL: <http://ojs.unud.ac.id/index.php/kerthasemaya/article/view/10278/7514>, accessed on 1 March 2023 at 15.19 WIB.

<sup>4</sup>J Kartini S, (2001), *Perjanjian Peralihan Hak Atas Tanah yang Berpotensi Konflik*. Yogyakarta, p. 69.

<sup>5</sup>Dedy Mulyana & Rika Kurniasari Abdughani, (2021), "Tanggung Jawab Notaris/PPAT Terhadap Akta Jual Beli Tanah yang Batal Demi Hukum" in *Juris and society : Jurnal Ilmiah Sosial dan Humaniora*, Vol 1 No. 1 June 2021, p. 107. url <https://journal.pppci.or.id/index.php/jurisandsociety/article/download/12/6/27> accessed on 2 March 2023 at 16.01 WIB.

## 2. Research Methods

This study uses a normative juridical approach. The research specification used is descriptive analysis. The type of data used in this research is primary data, namely the 1945 Constitution of the Republic of Indonesia, Government Regulation No. 24 of 2016 amendments to Government Regulation Number 37 of 1998, Regulation of the Minister of Agrarian Affairs of the National Land Agency Number 3 of 1997 concerning provisions for implementing Government Regulation Number 24 of 2016 1997, Civil Law Act, as well as secondary data containing books and other supporting documents. Retrieval of data with document study techniques and library materials. The data analysis method used is the interactive model qualitative analysis.

## 3. Results and Discussion

### 3.1. How is the Juridical Review of the position of the deed of sale and purchase signed by the parties not before the PPAT?

According to article 1457 of the Civil Code sale and purchase is an agreement with one party whereby one party binds himself to surrender an object and the other party pays the price that has been promised. There are two conditions in the case of an act of buying and selling land, namely material conditions and formal conditions. The material terms of buying and selling land are conditions governing the rights and obligations of the seller and the buyer by carrying out a legal act of transferring land rights where the seller hands over the land and the buyer pays the land price, then the land rights are transferred to the buyer.<sup>6</sup> The implementation must be before the competent authority, namely the PPAT. Whereas the formal conditions for buying and selling land can only be carried out when the material requirements are met, then a PPAT can make a sale and purchase deed. This sale and purchase deed is regulated in article 37 of Government Regulation Number 24 of 1997 concerning land registration.

In carrying out the sale and purchase made by the PPAT, there are things that must be considered, namely: the making of the deed must be attended by the parties involved carry out the sale and purchase or the legal power of attorney from the seller and the buyer and witnessed by two witnesses.<sup>7</sup>The PPAT deed is an authentic deed, this is confirmed by Article 1 paragraph (1) and Article 3 paragraph (1) PP No. 24/2016. As an authentic deed, provisions regarding the

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<sup>6</sup>Effendi Perangin, (1994), "*Praktik Jual Beli Tanah*", Raja Grafindo Persada, Jakarta, p. 2.

<sup>7</sup>Renhat Malianus Siki, I Gusti Nyoman Agung, dan I Nyoman Darmadha, 2014, "*Kelayakan Saksi Dalam Pembuatan Akta Jual Beli Hak Milik Atas Tanah Oleh Pejabat Pembuat Akta Tanah*", Kertha Semaya, Vol. 02, No. 02, October, p. 2, URL : <http://ois.unud.ac.id/index.php/kerthasemaya/view/10560>, accessed on 2 March 2023 at 16.55 WIB.

terms and procedures for making an authentic deed apply to the PPAT deed. The legal consequences arising from a deed that does not comply with the legal requirements are: if the subjective conditions are violated by the parties, the deed can be cancelled, and if the land conditions do not exist/the land is in dispute, the deed will be null and void by law. If an agreement is made by the parties not in the presence of an authorized official, there will be a degradation of the strength of the evidence of the authentic deed to become the strength of private evidence and the juridical defects of the authentic deed which result in the authentic deed being canceled or null and void by law. Meanwhile, the consequences for PPATs who commit violations in their duties and authorities can be honorably or dishonorably dismissed based on Article 10 paragraph (1), paragraph (2), and paragraph (3) PP No. 24/2016.

Basically, when making an authentic deed, you must fulfill the elements regulated in Article 1868 of the Indonesian Civil Code, namely:<sup>8</sup>

1. The deed must be made by or before a public official.
2. The deed must be made in the form specified in the law.
3. The public official who draws up the deed must have the authority to draw up the deed, whether the authority is based on the area (territory) of work or the time at which the deed was drawn up.
4. The written nature of an agreement set forth in a deed does not make an agreement made in writing valid and can be used as evidence at a later date, because an agreement must be able to fulfill the requirements for the validity of the agreement stipulated in Article 1320 of the Civil Code. The PPAT deed is related to the need for juridical submission (leveraging) as well as real submission (*feitelijk levering*).

In accordance with Gustav RadBruch's theory that legal certainty requires efforts to regulate law in legislation, made by the competent authority, so that these rules have a juridical aspect. This aspect can later guarantee legal certainty and function as a rule that must be obeyed, in this case the theory of legal certainty already applies to matters stating that the PPAT's actions were wrong because they violated the law. The PPAT deed has perfect evidentiary power because it is said to be an authentic deed as in Article 1868 of the Civil Code, but the PPAT violates Article 22 of Government Regulation Number 37 of 1998 which states that to fulfill the authentic nature of the deed, the reading is carried out by the PPAT himself, signed by the parties, witnesses and by the PPAT, carried out immediately after the reading of the intended deed. Therefore, the theory of

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<sup>8</sup>I Gusti Bagus Yoga Prawira, op. cit, p. 66.

legal certainty applies because legal certainty refers to the application of clear, permanent and consistent laws and judges are in accordance with the theory of legal certainty, because legal certainty is a guarantee regarding the law which contains justice, norms.

The norms in the law have legal certainty for someone who has the authority to carry it out, the PPAT's Position Regulations, but the PPAT does not carry out the reading and signing of the deed before the PPAT which causes the legal force of the deed to become a deed that is degraded to only have legal force like an underhand deed.

### **3.2. What are the legal consequences of the sale and purchase deed signed by the parties not before the PPAT on the PPAT?**

All legal actions carried out by a PPAT must have consequences that must be carried out against a PPAT who makes a deed of sale and purchase of land that contains legal defects, and is categorized as an act that abuses authority based on article 2 of the Position Regulations for the Land Deed Making Officer has been misused, so that the use of this authority ultimately not in accordance with the purpose of the authorization itself. In this case, there appears to be an abuse of authority by the PPAT because it does not carry out its authority properly. According to the author, the mistakes made by the PPAT took the form of negligence or negligence committed by the PPAT which is categorized as an abuse of authority regulated in Government Regulation Number 37 of 1998,

The PPAT's responsibility regarding intentionality, negligence or negligence in making a sale and purchase deed that deviates from the formal requirements and material requirements for the procedure for making a PPAT deed, the PPAT may be subject to administrative sanctions. Based on Perka BPN 1/2006, deviation from the formal and material requirements is a serious violation by the PPAT which can be subject to sanctions with dishonorable dismissal from his position by the Head of the Indonesian National Land Agency.

As a result of the PPAT law regarding the making of a sale and purchase deed, the signing of the deed was not carried out before the PPAT and was carried out outside the PPAT's office, and without witnesses from the PPAT employee against the PPAT, namely,

a. The PPAT can be dishonorably dismissed from his position in accordance with Article 28 paragraph (2) of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position Regulations for Officials Making Land Deeds, the PPAT is dishonorably dismissed from his position by head ba

b. and, because: a. committing a serious violation of the prohibition or obligation as a PPAT; (4) serious violations referred to in paragraph (2) letter a, among others: i, the PPAT does not read the deed in front of the parties or parties who have not or are not authorized to commit acts in accordance with the deed he made.

c. The deed degrades its evidentiary power to become a deed under the hand because it does not meet the requirements specified by law and or other regulations.

d. The deed was signed outside the PPAT's office and without the presence of witnesses, the PPAT who made the deed was subject to administrative sanctions and fines in accordance with Article 62 of Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration. A PPAT who, in carrying out his duties, ignores the provisions referred to in Article 38, Article 39 and Article 40 as well as the provisions and instructions given by the Minister or the appointed official is subject to administrative action in the form of a written warning until dismissal from his position as a PPAT, without reducing the possibility of being sued for compensation. losses by parties who suffer losses resulting from the neglect of these provisions

According to the author, the law has certainty about legal norms that are violated by the PPAT, the PPAT should carry out what is its obligation. In this case the PPAT does not carry out its position and authority properly in accordance with laws and regulations and the National Land Agency, PPAT in carrying out their duties if they do not carry out their duties in accordance with the provisions can be subject to administrative sanctions and for violating the theory of responsibility, namely sanctions in the Head of Agency Regulations National Land Affairs of the Republic of Indonesia Number 1 of 2006 concerning provisions for the implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds. And this theory of responsibility places more emphasis on the meaning of responsibility born from the provisions of the Legislation,

#### **4. Conclusion**

The conclusion from the author is that the making of a sale and purchase deed, wherein the signing of the deed is carried out by the parties not before the PPAT that formally the factors that can cause the PPAT deed to become legally flawed, if there is a deviation from the provisions of Article 95 to Article 102 Regulation of the Minister of Agrarian Affairs Head of the Land Agency National Act No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration in conjunction with Articles 1868 and 1869 of the Civil Code, an authentic deed can be degraded or degraded in

terms of proof from having perfect evidentiary power to only having evidentiary power as an underhand deed and PPAT can subject to sanctions can be dismissed with respect or dishonor based on Article 10 paragraph (1), paragraph (2) and paragraph (3) of Government Regulation Number 24 of 2016., and PPAT can be subject to a code of ethics and will receive sanctions if they violate the violations and intentional actions committed by the PPAT.

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