

## The Legal Responsibilities of Officials Making Land Deeds against the Crime of Forgery of Sale and Purchase Deeds

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**Abstract.** *This study aims to identify and analyze the legal responsibility of land deed drafting officials for the crime of sale and purchase deed forgery. This study uses a normative juridical approach (normative legal research method), uses a Statute Approach and a Case Approach. The type and source of data that researchers use is secondary data, divided into primary legal materials, secondary law as well as tertiary law. The data collection method uses document study or literature study and the data analysis method uses qualitative methods. Based on the research, it was concluded that the legal responsibility of the official making the land deed who committed the criminal act of falsifying the sale and purchase deed in Decision No. 248/Pid.B/2022/Pn.Jkt.Brt., states that if the defendant F, SH.MKn and the defendant IR, SH, with imprisonment for two years and eight months each, a fine of IDR 1,000,000,000 each. The deed of sale and purchase as well as the full power of attorney made by the two PPATs are truly inauthentic or contain defects, so that the position of the deed of sale and purchase as an authentic deed can be canceled and the status of the sale and purchase agreement is degraded to an underhanded agreement. Meanwhile, the responsibility of the official making the land deed as a general official for inauthentic sales and purchase deeds, namely administrative responsibility, civil responsibility and criminal responsibility.*

**Keywords:** *Accountability; Land; Purchase.*

### 1. Introduction

Land registration acts as a prerequisite for organizing and regulating the formation, control, ownership and use/utilization of land, including dealing with various land-related issues. Land registration is aimed at providing certainty of rights, as well as providing legal protection to rights owners by proving land certificates, which are instruments for managing, controlling, and owning land,

including as controlling instruments in land use. Registration of land rights, namely guarantees obtained from the state, as well as being the most important instrument for protecting landowners. Land registration is *rechtkadaster* in nature, consisting of:

- 1.1. Measurement, mapping and bookkeeping of land;
- 1.2. Registration of rights;
- 1.3. Providing certificates of land rights as a strong means of proof.<sup>1</sup>

Regulation of the Head of the National Land Agency No. 6 of 1989 and PP No. 37 of 1998, has clarified several legal actions that are the responsibility of the PPAT, such as:

- 1.1. Regarding the truth of the events contained in the deed, for example related to the type of legal action intended by each party, related to transactions that have been made, and so on.
- 1.2. Related to the object of legal action in the form of physical data or juridical data.
- 1.3. Related to the identity of the appearer as the party carrying out the legal action.

If the official making the land deed does not personally know about the situation, then the official making the land deed can seek testimony from the required witnesses in making the deed. In Article 1457 *Burgerlijk Wetboek* which is translated by the term *Civil Code (KUHPperdata)*, buying and selling is a binding agreement/agreement between the seller and the buyer, the buyer binds himself to provide an item mutually agreed upon, and the buyer binds himself to pay the price of the item upon mutual agreement.<sup>2</sup>The buying and selling of land is also contained in Article 20 Paragraph (2), Article 28 Paragraph (3) and Article 35 Paragraph (3) of Act No. 5 of 1960 concerning Basic Agrarian Regulations, explaining that if ownership rights, building use rights can be transferred or shifted. The purpose of the legal action is an agreement to transfer land rights, giving new rights to land, it is necessary to have evidence using a deed: the making of this deed must be before the PPAT. In fact, the 1945 Constitution of the Republic of Indonesia explicitly does not state that individual land ownership is legal, but clearly provides wide space for citizens to individually claim the

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<sup>1</sup>Daliyo, JB, et al. (2001). *Agrarian Law I*. Printing 5. Jakarta: Prehallindo. p. 80.

<sup>2</sup>Khairandy, Ridwan. (2016). *Sale and purchase agreement*. Yogyakarta: FH UII Press. p. 3.

goods needed to maintain their human dignity, develop their personality and talents and live a decent life for humanity.<sup>3</sup>

The PPAT has the authority to make deeds related to land, so it is necessary to have special skills and expertise in the field of land so that the deed he makes does not cause problems in the future, considering that the deed will be a means of proving the legal action of transferring rights or canceling land rights.<sup>4</sup>The importance of the Land Deed Making Officer in applying the principle of legal certainty is because, namely, general officials who assist the head of the land office during the certification stage, especially the separation of land rights (HAT). PPAT deed as the basis for making a certificate by the Land Office. If you are unable to guarantee the accuracy of the deed, of course it can cause errors in the certificate so that the function of the certificate as proof of ownership disappears.<sup>5</sup>

Problems related to land still exist or give rise to dynamics. In each region of Indonesia, of course, there are different land problems between regions. This condition is increasingly clear and as a consequence of the basic understanding and perspective of the Indonesian people towards land. Most people assume land as a means of residence, as well as a medium for provide livelihood so that the land has a very vital function. An essential element of the formation of the state, land plays a major role for life and for supporting a nation supporting the state, especially with an agrarian style predominate: the use of land is an absolute requirement.<sup>6</sup>

The problem is related to the authenticity of a PPAT deed that is ensnared in land cases in Indonesia and has reached an inkraht court decision, namely Decision Number 248/Pid.B/2022/PN.Jkt.Brt. In accordance with the decision, Land Deed Officials F, SH, M.Kn. and IR, SH prove themselves legally and convincingly guilty of acting criminally together by falsifying authentic documents and money laundering. Land Deed Making Officer F, SH, M.Kn. and IR, SH were sentenced to serve imprisonment for two years and eight months with a fine of IDR 1,000,000,000. However, if you do not pay the fine, you can replace it with a

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<sup>3</sup>Erwiningsih, Winahyu. (2009). "Implementation of Arrangements for State Control over Land According to the 1945 Constitution". *Law Journal*. Volume 16 Special Issue Number October 2009. p. 118-136. url<https://journal.uui.ac.id/IUSTUM/article/view/3880/3458>, Retrieved March 19, 2023.

<sup>4</sup>Prawira, I Gusti Bagus Yoga. (2016). "Responsibilities of Officials Making Land Deeds Against Deeds of Sale and Purchase of Land", *Journal of IUS*, Volume IV Number 1 April 2016, p. 66. url<https://jurnalius.ac.id/ojs/index.php/jurnalIUS/issue/view/29>, Retrieved March 19, 2023.

<sup>5</sup>Sadewa, Yunianto Wahyu & Hafidz, Jawade. (2017), "The Role of PPAT in Handing Over Public Facilities and Social Facilities", *Journal of Deeds*, Volume 4 Number 2 2017, p. 159. url<https://jurnal.unissula.ac.id/index.php/akta/article/view/1778>, Accessed on 19 March 2023.

<sup>6</sup>Hutagalung, Arie Sukanti & Gunawan, Markus. (2009). *Government Authority in the Land Sector*. Jakarta: Rajawali Press. p. 1.

prison sentence of one month's imprisonment each. Actions of Officials Making Land Deeds F, SH, M.Kn. and the IR, SH has falsified 6 (six) Certificates of Property Rights in the name of the late Mrs. CI M. The PPAT deed is required to draw up in such a way as to become a solid foundation for registering the transfer of rights or the encumbrance of rights. In accordance with Government Regulation No. 24 of 1997, transferring land and objects on it, is carried out through the deed of the official making the land deed. The transfer of land from the owner to the recipient is followed by a juridical handover, namely a handover that is in accordance with the law, such as fulfilling the requirements, carried out according to the provisions, using documents, drawing up in front of the official making the land deed.<sup>7</sup>This study aims to identify and analyze the legal responsibility of land deed drafting officials for the crime of sale and purchase deed forgery.

## **2. Research Methods**

This study uses a normative juridical research approach (normative legal research method), specifications normative juridical research using 2 types of approaches, namely the Statute Approach and the Case Approach, the researcher uses secondary data sources and divides them into material primary, secondary and tertiary law, data collection methods use document studies or literature studies, and data analysis methods use qualitative methods.

## **3. Results and Discussion**

### **3.1. Legal Responsibilities of Officials Making Land Deeds Against the Crime of Forgery of Sale and Purchase Deeds**

Concrete examples that have occurred in the community, where there are buying and selling of land and buildings even though the objects of sale and purchase are traded by legal subjects who are not entitled to sell and sign the deed of sale and purchase not carried out before a notary/PPAT, and using falsified data so that the deed is called an authentic deed forgery, namely in the Decision of the West Jakarta District Court No. 248/Pid.B/2022/Pn.Jkt.Brt. In January 2016 the defendant F., SH.Mkn, knew witness RK and witness E who at that time met the defendant F.,SH.MKn as a PPAT whose address was Jl. Kabun Jeruk Ruko 3 Pilar Batu Sari West Jakarta with 6 Certificates of Property belonging to Mrs. CIM taken by witness RK and witness E without permission from the owner,

According to Hans Kelsen in his theory of legal responsibility states that a person is legally responsible for a certain action or that he bears legal responsibility, the

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<sup>7</sup>Muhammad, AbdulKadir. (1994). Property Law. Print I. Bandung: Citra Aditya Bakti. p. 55-56.

subject means that he is responsible for a sanction in the event of a conflicting act.<sup>8</sup>Based on Hans Kelsen's theory, the actions taken by the defendant F., SH, M.Kn. as a PPAT who has carried out legal actions, the PPAT must be responsible. Deeds F., SH, M.Kn. carried out consciously and understand the risks of the impact that will occur if you commit an act of fraud. According to the narrative of the defendant F., SH, M.Kn. and several witnesses related to the management of the payment of taxes on land according to the Certificate of Ownership to issuing the Sale and Purchase Deed to be on behalf of witness RK and witness E where witness RK and witness E said they did not have capital/costs, then with ideas originating from Defendant F., SH, M.Kn. as PPAT has prepared persons with/helped provide funds, namely the MMA witness (Broker) providing capital for the payment of 2 certificates of tax amounting to IDR 500,000,000; Witness RAP (Vander) provided capital amounting to IDR 650,000,000; and Witness MSA provided capital of IDR 400,000,000; Then, witness RK and witness E. came back to the defendant F., SH, M.Kn, as the PPAT to make a power of attorney for sale, arrangements to sell (full power of attorney) as evidence as if Mrs. CIM has given a power of attorney whose content is contradictory to the truth, then witness RK and witness E signed a power of attorney to sell, manage, to sell (full power of attorney). In realizing the evil intentions of witness RK and witness E, the defendant F., SH, M.Kn as PPAT whose working area is in Tangerang City met the defendant IR, SH as Notary PPAT on Jl. Meruya Ilir Raya 33A Kebun Jeruk West Jakarta in order to help witness RK and witness E to realize their intention, then invited the cooperation of fellow PPAT Notaries regarding the making of Notary Deeds and PPAT Deeds on 5 Certificates of Ownership of the family of the late Ny. CIM which was taken by witness RK and witness Edrianto without the knowledge and permission of the owner to be processed for a Sale and Purchase Deed to be made on behalf of witness RK, at the solicitation of cooperation among Notaries the defendant IR, SH as PPAT Notary agreed. It is clear that the actions of PPAT F., SH, M.Kn. has played an important role in the case of forgery of the Sale and Purchase Deed which is authentic and has caused losses to the victim, namely the heirs of the deceased. CI M. This greatly damaged the professional ethics of the PPAT which was carried out by Defendant F., SH, M.Kn. The theory of legal responsibility by Hans Kelsen which states that a person bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act. Actions from PPAT F., SH, M.Kn. should be held accountable for their actions which have harmed the victim and participated in the scenario of the crime.

Furthermore, after the fifth Certificate of Ownership of the heirs of Ny. The CIM made a sale and purchase deed to be in the name of witness RK by the

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<sup>8</sup>Kelsen, Hans. (2007). as translated by Somardi. General Theory of Law and State, General Theory of Law and State, Fundamentals of Normative Law as Empirical Descriptive Law. Jakarta: BEE Media Indonesia. p. 81.

defendant F., SH.Mkn as PPAT in collaboration with the defendant IR, SH as PPAT whose contents were not in accordance with the truth and it was made as if the owner of the certificate of ownership had come to the office. The notary defendant IR as PPAT carried out the sale and purchase process as if it were true that the parties were real and as if the deed was read out by the defendant IR, SH as PPAT in the presence of the parties when signing the deed of sale and purchase so that a deed of sale and purchase was issued by the defendant F, SH as PPAT and ratified by the defendant IR, SH on the date of legalization. Even though all of that is not true and never happened, witness RK and witness E did not spend any money to pay for some of the land, likewise the buyer never received any payment from the sale and purchase, even the owner of the certificate for which the sale and purchase deed was drawn up did not know about this. So that a criminal case arose at the West Jakarta District Court with register Number: 248/Pid.B/2022/Pn.Jkt.Brt.

Hans Kelsen states that failure to take the precautions required by law is called negligence; and oversight is usually seen as another type of wrong (*culpa*), though less violent than one that is fulfilled by anticipating and willing, with or without malicious intent, a harmful outcome. The actions of F., SH.Mkn as PPAT who have collaborated with the defendant IR, SH, for the purpose of conspiracy by falsifying material data in the preparation of the Sale and Purchase Deed based on Hans Kelsen's opinion that the two PPATs had made an oversight and mistake. It is fitting for the two PPATs to be held accountable for their actions which have damaged the professional ethics carried out by the two PPATs.

Regarding buying and selling, Boedi Harsono explained that there are two requirements: material and formal. The material requirements in determining whether or not the sale and purchase of land is legal is that the seller has the right to buy and sell it, in the sense that he controls both physically and in a juridical sense and the buyer has the right to buy, in the sense that the subject of the right who is permitted has rights to the land he buys, and there are land objects traded and not in a state of dispute.<sup>9</sup>

PPAT F., SH.Mkn and IR, SH, have injured the profession of the PPAT which should have been a mediator between the parties but instead participated in scenarios of evil deeds that harmed other people with huge losses of 17 billion rupiah. Based on the material contained in the decision, in addition to being proven legally and convincingly that there had been forgery of authentic documents and money laundering in the sale and purchase case, it had also been

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<sup>9</sup>Utomo, Hatta Isnaini Wahyu and Wanda, Hendri Dwicahyo. (2017). "The Principle of Prudence for Officials Making Land Deeds in Land Transfers That Have Not Been Certified". *Journal of Ius Quia Iustum*. Number 3 Volume 24 2017. p. 467-487, <https://journal.uui.ac.id/IUSTUM/article/view/8218>, Retrieved 20 March 2023.

revealed as a fact in court through the confessions of defendants F and IR before the court that the 6 (six) AJB had been falsified and traded. Notary/PPAT F, SH.MKn has also drafted a power of attorney dated 25 August 2018, which was then handed over to the defendant RK to be signed by Mrs. CI M. Defendant F, SH. MKn has also given an order to make a sale and purchase deed to IR, SH, Notary/PPAT in West Jakarta and from witness J's statement it is true that 5 (five) Sale and Purchase Deeds are in the name of VK, FK, NRJ, CB reversed in the name of RK. The draft Sale and Purchase Deed made by F, SH.MKn was handed over to the defendant RK to ask for the signatures of the seller and the buyer. After the 5 (five) Sale and Purchase Deeds have the signatures of the seller and the buyer then they are handed back to F, SH.MKn and then by F, SH.MKn 5 (five) Sale and Purchase Deeds are handed over to the defendant IR, SH Notary/PPAT in West Jakarta to be registered, given a number and to be signed by the defendant IR, SH.

Defendant IR, SH signed the 5 (five) Sale and Purchase Deeds with the signatures of the seller and buyer, but the seller and buyer were not present and did not appear before IR, SH at the Notary/PPAT office in West Jakarta. In fact, the reading of the deed is an obligation that must be carried out by the Notary/PPAT. The statements of the witnesses stated that they had never sold the land they owned and had never signed the Deed of Sale and Purchase and the signatures in the Deed of Sale and Purchase were not the signatures of each owner of the land above their respective SHM and in court the signatures of the witnesses were shown. is in the case file and after being matched with the signatures in the respective Sale and Purchase Deed and after further action it is concluded that the signatures are not identical.

Based on Article 184 paragraph (1) letter (a) and letter (e) of Law no. 8 of 1981 concerning the Criminal Procedure Code (KUHAP), witness statements and defendant statements are valid evidence. Thus, materially and formally, the Deed of Sale and Purchase Number 229/2017 dated 15-06-2017, Deed of Sale and Purchase Number 355/2018 dated 18-05-2018, Deed of Sale and Purchase Number 271/2019 dated 12-07-2019 , Deed of Sale and Purchase Number 228/2017 dated 15 June 2017, Deed of Sale and Purchase Number 623/2017 dated 27-12-2017 and Deed of Sale and Purchase Number 1170/2019 made by F, SH,M.Kn. and IR, SH, have been proven to contain legal defects (not authentic).

In criminal law, it recognizes the principle of legality in accordance with Article 1 of the Criminal Code, namely that an act cannot be threatened with punishment, except according to existing criminal laws. Related to criminal law, there are important elements, namely criminal, acts, and actors that are interrelated. By Simons, criminal (*straf*) is referred to as special sorrow (*bijzonder leed*). This is because criminal punishment is a more severe punishment compared to

punishment in other fields of law. Actions include doing something, while perpetrators are people who commit or have certain involvement in criminal acts, for example helping to commit.<sup>10</sup>

Legal responsibility relates to actions that violate the law. In accordance with civil law, actions that conflict with the law can be found in Article 1365 of the Indonesian Civil Code (hereinafter abbreviated as the Civil Code). Sudikno Mertokusumo explained that civil law is an interpersonal law that regulates individual rights and obligations in family and community relations, and its implementation is left to each party.<sup>11</sup>

Regarding the concept of an action that is contrary to the law, Article 1365 of the Indonesian Criminal Code reads, every act that is contrary to the law: the act is detrimental to another party, requires the party whose fault as a result of his mistake issued the loss, to compensate. In the provisions of that article, there is an element of unlawful act, namely there is an act, there is an element of error, there is a loss, and there is a causal relationship between the error and the loss. With unlawful acts, Article 1366 of the Civil Code makes it clear that each party is responsible not only for losses due to their actions, but also for their negligence.<sup>12</sup>

In administrative law, legal responsibility is in the form of administrative sanctions. Administrative sanctions are the imposition of sanctions against administrative violations or provisions of laws that are administrative in nature. In general, administrative sanctions are in the form of fines, suspensions up to revocation of certificates and/or permits, temporary suspension of administrative services to reduction of production quotas, as well as other administrative actions.<sup>13</sup>

The legal basis for PPAT that has been in force until now, namely PP No. 24 of 2016 concerning Amendments to PP No. 37 of 1998 regarding PPAT. The definition of a land deed official (PPAT) refers to Article 1 Paragraph (1) of Government Regulation No. 24 of 2016, stipulates that if a PPAT is a public official who has the authority to make authentic deeds related to certain legal actions, specifically regarding land rights or ownership rights to apartment units, certain legal action authorities include making deed:

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<sup>10</sup>Simons as quoted by Sudarto. (2013). *Criminal Law I Revised Edition*. Semarang: Sudarto Foundation. p. 82.

<sup>11</sup>S., Salim H. (2011). *Introduction to Written Civil Law (BW)*. Jakarta: Sinar Graphics. p. 5-6.

<sup>12</sup>Salim HS, *Op.Cit.*, p.100.

<sup>13</sup>Setiadi, Wicipto. (2019). "Administrative Sanctions as One of the Law Enforcement Instruments in Legislation", *Journal of Indonesian Legislation*, Volume 6 Number 4 December 2009. p. 603. <https://e-jurnal.peraturan.go.id/index.php/jli/issue/view/42>, Retrieved March 21, 2023.



- 3.1.1. Buy and sell.
- 3.1.2. Exchange.
- 3.1.3. Grant.
- 3.1.4. Entry into the company/inbreng.
- 3.1.5. Share common rights.
- 3.1.6. Granting building use rights/use rights over private land.
- 3.1.7. Provide mortgage rights.
- 3.1.8. Give the power of imposition of mortgage rights.

The PPAT's authority in making the deed is based on real evidence if the land or ownership rights to the flat unit are not located where the appearers (for example, sellers or buyers) can gather or where the domicile of the right holder or prospective right recipient is. Then, the authority of a notary in making a deed is based on the presence of an appearance at the notary's office. While appearers can visit the notary's office in person, the notary has the authority to make a deed without the need to look at the object of the agreement so that the priority is given to appearers who can come, then to the signing of the deed at the notary's office.

The PPAT's responsibilities when connected to the position have accountability according to mistakes so that in making the deed, the PPAT needs to be responsible for himself if there is an error/violation of the deed he made. It's just that, if a violation occurs because of a related party, the PPAT cannot be held responsible, considering that the PPAT only writes according to the wishes of the parties. The PPAT simply writes down something he sees and experiences according to the formal requirements for making an authentic deed. PPAT is not obliged to conduct an investigation into the truth of the identity of the appearer. Land registration raises the rights or obligations of a person/legal entity towards land ownership, so there will still be opportunities in the form of efforts by certain individuals to legalize various methods and violate regulations. As an example, falsifying ID cards, falsifying documents, and falsifying signatures. It is not possible to make minuta if there is no document (basic document for making minuta), this means if there is a report regarding an authentic deed that the PPAT made forged in the process of making a report or a complaint regarding the criminal act of PPAT *warkah*.

In fact, the PPAT is only responsible for formal validation, not for material truth in order to check in detail the authenticity of the identity that the PPAT has obtained. PPAT's responsibility formally can be in the form of:

3.1.1. Checking the certificate to the land office;

3.1.2. Examination of personal data, skills, authority between parties (according to identity cards, marriage certificates, power of attorney, husband/wife approval letters, marriage agreements, articles of association and changes to the company);

3.1.3. Taxpayer Identification Number (NPWP);

3.1.4. Attach a statement letter that is not in a dispute regarding the object of legal action physically or juridically;

3.1.5. Ask for proof of payment of VAT and BPHTB in full;

3.1.6. In order to draw up a deed for a portion of land parcels that are registered/former customary ownership rights, the land office must request a measurement from the land office, then issue an NIB (Land Plot Identification Number);

3.1.7. Each PPAT deed must contain NIB, Certificate Number and PBB SPPT.

A criminal act is an act that is prohibited and can result in sanctions. A PPAT who commits a crime will be subject to sanctions. It's just that, if the PPAT carries out its duties based on the law, it will not receive criminal sanctions. PPAT is based on the principle of not being punished if it does not experience an error "actus nonfacit reum nisi mens sit rea", it is impossible for a PPAT to get criminal sanctions if there are no errors.

If the PPAT doubles as a notary and is held accountable, it is necessary to fulfill several elements, such as:

3.1.1. There is a criminal act. If the PPAT is suspected of having committed a crime and issuing a deed as a result of a false statement, the PPAT must be held liable in accordance with the criminal law relating to forgery (Articles 263, 264, 266 of the Criminal Code);

3.1.2. There is an ability to be responsible. A PPAT who is suspected of having committed a criminal act is obliged to take responsibility for himself as a requirement for his mistakes;

3.1.3. There is intentional / negligent. Cases of false statements can be intentional/negligent, whether intentional or not;

3.1.4. There are no excuses. That way, criminal sanctions can be given to the PPAT if it violates the limits set by law, as well as fulfilling all the elements contained in the Criminal Code. The imposition of these sanctions is the strongest, as well as criminal sanctions as *ultimum remedium* or last resort.

With regard to this accountability, in the case contained in the West Jakarta District Court Decision No. 248/Pid.B/2022/Pn.Jkt.Br., found the fact that Deed of Sale and Purchase Number 229/2017 dated 15 June 2017, Deed of Sale and Purchase No.355/2018 dated 18 May 2018, Deed of Sale and Purchase No.271/2019 dated 12 July 2019, Deed of Sale and Purchase Number 228/2017 dated 15 June 2017, Deed of Sale and Purchase No. 623/2017 dated 27 December 2017 and Deed of Sale and Purchase No. 1170/2019 made by F, SH,M.Kn. and IR, SH, proven to contain legal defects (inauthentic), because:

3.1.1. Signed not in the presence of an authorized official.

3.1.2. The seller makes a Sale and Purchase Deed with fake data.

3.1.3. Objects of sale and purchase (land/building) are sold by people who are not entitled to SHM which will be traded.

Accountability is always related to mistakes, only the guilty person can be held accountable, in the above case the PPAT's mistake in the case referred to or the legal rules that the PPAT violated during the process of making a sale and purchase deed so that they can be held accountable. Legal actions that have been carried out by PPAT F, SH, M.Kn. and IR, SH is a form of error, so PPAT F, SH, M.Kn. and IR, SH must be held accountable for their actions. Forms of legal responsibility of PPAT F, SH, M.Kn. and IR, SH in accordance with the judge's decision contained in the West Jakarta District Court Decision No. 248/Pid.B/2022/Pn.Jkt.Br. This is in accordance with Hans Kelsen's explanation, if someone will be legally responsible for certain actions or assume legal responsibility.

The provisions of the law require that, in particular Article 1868 of the Civil Code states, one of the elements that is fulfilled in making an authentic deed is that it must be made by or before a public official. Article 38 paragraph 1 PP Number 24 of 1997 concerning Land Registration, states that when making a deed requires the presence of a party carrying out the legal action. In this case, based on witness testimony presented at trial and under oath, it has been stated firmly that the 6 legal products of PPAT F, SH, M.Kn. and the IR, SH have been falsified and signed not in the presence of an authorized official (PPAT).

The testimony of the witness is in accordance with the information justified by PPAT F, SH, M.Kn. and IR, SH who said that after the deed of power of attorney for sale, management, for the seller (Full Power of Attorney) dated August 25, 2015 was made by PPAT F, SH, M.Kn., then to realize the evil intentions of witness RK and witness E, then PPAT F, SH, M.Kn. as the PPAT with the working area in the City of Tangerang met the PPAT IR, SH as Notary/PPAT on Jl. Meruya Ilir Raya 33A Kebun Jeruk West Jakarta invites the cooperation of fellow Notaries and PPATs regarding the making of Notary Deeds and PPAT Deeds. Against 6 certificates of family ownership of the late Ny. CIM which has been submitted by witness RK and witness E to be processed for the sale and purchase deed to be in the name of witness RK in the amount of 5 (five) Certificates of Property Rights and 1 (one) to be in the name of witness E,

The theory of accountability put forward by Hans Kelsen that individual responsibility, that is, a person will be held accountable for the violations he/she has made.<sup>14</sup>PPAT F, SH, M.Kn. and PPAT IR, SH has individual responsibility for actions that have forged 6 deed of sale and purchase and PPAT F, SH, M.Kn. has committed another criminal act in the form of forgery of a power of attorney. The actions of the two PPATs must be individually accounted for to the extent of the mistakes that have been made by each of the PPAT defendants.

It should be in the West Jakarta District Court Decision Number 248/Pid.B/2022/Pn.Jkt.Brt. the decisions of the two PPATs are separated, this is because the violation committed by PPAT F, SH, M.Kn. and PPAT IR, SH are different. PPAT F, SH, M.Kn. has made a fatal mistake by helping to transfer land rights that are not in accordance with procedures, providing access to capital and providing assistance by contacting PPAT IR, SH. while PPAT IR, SH is limited to falsification of 6 Deeds of Sale and Purchase. Based on Hans Kelsen point 1's theory of accountability, the decision regarding PPAT F, SH, M.Kn. and PPAT IR, SH were decided separately, with PPAT F, SH, M.Kn. decided to be heavier than PPAT IR, SH

The theory of accountability put forward by Hans Kelsen above is that collective responsibility, that is, someone who wants to take responsibility for the violations that other people have committed, applies in the case of the decision of the West Jakarta District Court Number 248/Pid.B/2022/Pn.Jkt.Brt. In the facts of the trial and based on the witnesses in court that PPAT F, SH, M.Kn. has the biggest contribution in the case of forgery of Sale and Purchase Deed. From providing capital stock facilities for defendants RK and E to transferring land rights that were not their rights, then giving the idea to draw up a power of attorney and cooperate and persuade PPAT IR, SH. while PPAT IR, SH. only carry

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<sup>14</sup>Kelsen, Hans. (2006). *Pure Law Theory*, translation by Raisul Mutaqien. Bandung: Nuance & Nusamedia. p. 140.

out orders from PPAT F SH, M.Kn. make 6 deed of sale and purchase. However, in the court decision, the ruling stated that they jointly participated in forging authentic documents and money laundering. PPAT IR, SH is also considered to have jointly participated in forging authentic documents in the form of a Deed of Sale and Purchase.

The theory of accountability put forward by Hans Kelsen mentioned above is that the form of accountability that must be carried out by PPAT F, SH, M.Kn., is responsibility according to mistakes, which means that if a person is responsible for a violation that he committed intentionally with the intention of harming the party other. This matter is based on statements and court evidence if PPAT F, SH, M.Kn. has forged the Full Power of Attorney and scenariod the violation of the authentic deed. While the form of accountability that must be carried out by PPAT IR, SH is also accountability based on mistakes,

The theory of accountability put forward by Hans Kelsen above is that absolute responsibility, that is, someone who wants to take responsibility for a violation he accidentally committed/unexpectedly cannot be applied in the case of PPAT F, SH, MKn. and PPAT IR, SH because the two PPATs committed violations on purpose and were known to both of them. The two PPATs were aware and admitted that their actions constituted a violation and even an extraordinary crime because they had forged authentic deeds in the form of 6 (six) deed of sale and purchase. In the case of forgery of the Sale and Purchase Deed, it can be said that the PPAT case was in the decision of the West Jakarta District Court Number 248/Pid.B/2022/Pn.Jkt.Brt. this is an extraordinary crime and the biggest crime regarding counterfeiting of Sale and Purchase Deed.

Another mistake that the PPAT made in making the deed of sale and purchase, namely violating the PPAT's oath of office in accordance with Article 34 of the Regulation of the Head of BPN Number 1 of 2006 concerning Provisions for the Implementation of PP Number 37 of 1998 paragraph three, states that if I want to obey the rules of law in the land sector and related PPAT or other laws. The fourth paragraph reads if I want to carry out my position in an orderly, honest, thorough, conscious, responsible and fair manner.

Basically, legal responsibility can be understood as a condition that is obligatory to bear, be responsible if there is anything, can be prosecuted, blamed, prosecuted, etc. based on the rule of law. In the case of PPAT F, SH, M.Kn. and IR, SH have been legally and convincingly proven guilty of acting together as a criminal forgery of authentic documents (vide Article 264 Paragraph (1) of the Criminal Code), as well as money laundering (vide Article 3 of Law No. 8 of 2010 concerning the Crime of Money Laundering Jo Article 55 Paragraph (1) First of the Criminal Code in conjunction with Article 56 Paragraph (1) of the Criminal Code), in which the act has fulfilled all the elements of the delict that has been

charged against the two PPATs. So based on Hans Kelsen's theory of accountability, PPAT F, SH, M.Kn. and IR, SH must bear, be responsible, bear various things if there is everything that can be prosecuted, blamed, sued, etc. based on the rule of law. PPAT F, SH, M.Kn. and IR, SH also violated Article 3 letter (b), letter (f) and letter (p) of the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 112/Kep-4.1/IV/2017 concerning Ratification of the Code of Ethics of the Association of Land Deed Officials.

In accordance with Article 55 Head of BPN Regulation No. 1 of 2006 concerning Provisions for the Implementation of PP No. 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds, which was changed by Regulation of the Head of BPN No. 23 of 2009 Amendment to Regulation of the Head of BPN No. 1 of 2006 concerning Provisions for the Implementation of PP No. 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds, explains that the PPAT is personally responsible for the administration of his position and duties in each deed. This review has provided a clear picture of the existence of various legal regulations that were violated by the two PPATs regarding the making of the deed of sale and purchase in the case in question. So based on the theory of legal responsibility, both of them have an obligation to be accountable for their actions that have harmed others.

The legal regulations violated by the two PPATs are:

3.1.1. Article 1868 Civil Code,

3.1.2. Article 1320 Civil Code,

3.1.3. Article 38 Paragraph (1) PP No. 24 of 1997 concerning Land Registration,

3.1.4. Article 34 Head of BPN Regulation No. 1 of 2006 concerning Provisions for the implementation of PP No. 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds,

3.1.5. Article 55 Head of BPN Regulation No. 1 of 2006 concerning Provisions for the implementation of PP No. 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds, according to the amendment to Regulation of the Head of BPN No. 23 of 2009 Amendment to Regulation of the Head of BPN No. 1 of 2006 concerning Provisions for the Implementation of PP No. 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds,

3.1.6. Article 3 letter (b), letter (f) and letter (p) Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 112/Kep-4.1/IV/2017 concerning Ratification of the Code of Ethics of the Association of Land Deed Officials.

## **3.2. Professional Accountability and Ethics of Officials Making Land Deeds**

The responsibilities asked of the PPAT as a general official who has the authority to draw up land deeds, are not only understood as the maker of the deed, but their responsibilities during the process of making and after signing the deed. PPAT professional responsibility is divided into ethical and legal accountability. This legal responsibility is divided into:

### **3.2.1. Administration**

Basically, administrative sanctions are divided into:

- a. Reparative sanctions are intended to improve order violations, either by stopping prohibited acts, the obligation to change so that they return to their original condition, repairs for anything that is contrary to the rules.
- b. Punitive sanctions are sanctions that are punitive in nature or as an additional burden, preventive measures that create fear in the offender, such as fines or harsh reprimands.
- c. Regressive sanctions as a response to the act of revoking the right to everything that is determined by law, as if returning to the legal conditions before making a decision, for example revoking or suspending a decision.<sup>15</sup>

In accordance with Article 12 paragraph (2) of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN Regulation No. 2 of 2018, the imposition of sanctions on PPATs who violate the regulations, in accordance with Article 12 Paragraph 2, can take the form of a written warning, temporary dismissal or respectful/disrespectful discharge. Likewise the provisions of Article 6 Paragraph (1) of the Code of Ethics for the Association of Land Deed Officials, namely members who violate the code of ethics can receive sanctions in the form of warnings, reprimands, temporary dismissal, dismissal from IPPAT members, dismissal of disrespect from IPPAT.

In accordance with the provisions of Article 14 (1) Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of BPN No. 2 of 2018, the imposition of sanctions on PPATs who violate them can be in the form of a written cancellation, in accordance with Article 13 Paragraph (1) letter a, carried out by the Head of the Land Office. The imposition of sanctions for violations committed by the PPAT can be in the form of temporary dismissal in accordance with Article 13 Paragraph (1) letter b, carried out by the Head of the BPN

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<sup>15</sup>Adjie, Habib. (2014). *Knitting Thoughts in the World of Notaries and Officials Making Land Deeds*, Second Edition. Bandung: Citra Aditya Bakti. p. 106.

Regional Office. Sanctions are given to PPATs who violate the code of ethics, which can be in the form of dismissing them with norms/disrespect according to Article 13 Paragraph (1) letter c or letter d, carried out by the minister.

Article 28 Paragraph (4) Regulation of the Head of BPN No. 23 of 2009 Amendments to BPN Regulation No. 1 of 2006, states that if a serious violation is in accordance with Paragraph 2 letter (a), i.e. violating the PPAT's oath of office, the making of the PPAT deed is carried out when the relevant party is not present, the PPAT does not read the deed in front of the party, and the making of the deed in front of an unauthorized party or who are not entitled to own land and buildings. Article 34 paragraph 1 of the Head of BPN Regulation Number 23 of 2009 Amendments to the Head of BPN Regulation Number 1 of 2006, paragraphs 3 and 4 state if I want to comply with the law on land affairs or related to PPAT, and other laws. I want to carry out my position in an honest, orderly, detailed, conscious, responsible and fair manner. Referring to the provisions as above, PPAT F., SH, M.Kn.

### 3.2.2. Compensation Civil Liability

Civil liability is often associated with damages. Regarding compensation, it is contained in Article 1365 of the Civil Code, which states that any action that is against the law or that is detrimental to another party requires that person to pay compensation. The elements of unlawful acts (PMH) according to Article 1365 of the Civil Code consist of acts that are contrary to law, losses to other people, mistakes and obligations for compensation. In another part, Arest states that an action can be called an unlawful act if it violates the rights of others, opposes its own legal obligations, opposes moral norms, and opposes obligations that need to be applied in social life.<sup>16</sup>

A person or a legal object acting against the law is obliged to compensate. Article 1365 of the Civil Code also provides several possible types of claims, including compensation for losses in the form of money, in kind/returning to their original condition, a statement if the action taken is against the law, a prohibition to act, abolishing all things that are omitted, and announced the decision of all matters that have been repaired. An act against the law (onrechtmatigedaad) is the same as an act against the law (onwetmatigedaad). Acts against Indonesian law originating from continental Europe are listed in Articles 1365 to Article 1380 of the Civil Code. This article regulates liability for actions that violate the law, in the form of accountability that is not just an unlawful act carried out individually

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<sup>16</sup>Congratulations, Sri Redjeki. "Demand for Compensation in Unlawful Acts". LexJournalica. Volume 10 Number 2 August 2013. p. 111. <https://ejurnal.esaunggul.ac.id/index.php/Lex/article/view/359/327>, Accessed on May 1, 2023.



(self), but an unlawful act against the law of other people or goods under supervision. Article 1367 of the Civil Code explains that if a person is not only responsible for losses due to his own actions, but for actions that are dependents or the result of goods under supervision.

If the formulation of Article 1367 of the Civil Code above is connected with the case as in case Number: 248/Pid.B/2022/Pn.Jkt.Brt. Then the fact is obtained that the Deed of Sale and Purchase Number 229/2017 dated 15 June 2017, Deed of Sale and Purchase No.355/2018 dated 18 May 2018, Deed of Sale and Purchase No.271/2019 dated 12-07-2019, Deed of Sale and Purchase No. . 228/2017 dated 15-06-2017, Deed of Sale and Purchase No. 623/2017 dated 27-12-2017 and Deed of Sale and Purchase Number 1170/2019 dated 18-09-2019 belonging to Mrs. CIM have been falsified and traded by PPAT F, SH, M.Kn. and PPAT IR, SH. The actions of PPAT F, SH, M.Kn. and the PPAT IR, SH is clearly an act that is against the law or against the law. The actions of PPAT F, SH, M.Kn. and PPAT IR, SH is a mistake and has harmed other people,

Ruling No. 248/Pid.B/2022/Pn.Jkt.Brt., explained that the defendants F, SH.MKn and IR, SH, were proven legally and convincingly guilty of jointly committing crimes by falsifying authentic documents and money laundering. That way, it can be concluded that the deed of sale and purchase or full power of attorney drawn up by the two PPATs is truly inauthentic or flawed. According to the author, the judge should also give a verdict in the form of canceling the entire sale and purchase agreement made by F, SH.MKn and IR, SH. This is because if the making of a deed violates certain provisions, it means that the deed of evidentiary value will be degraded into a private deed, and if one of the subjective conditions is not fulfilled, it means that the agreement is said to be a flawed agreement, therefore it can be canceled by a judge through a court decision.

Compensation for violating the law, which is a form of compensation that is imposed on the party that caused the loss to the party that caused the loss. The compensation arises as a result of an error, not an agreement. The form of compensation according to civil law is divided into:

- a. General compensation, namely compensation for all cases resulting from acts against the law, such as costs, losses and interest. This compensation is stated in Article 1243 to Article 1252 BW.
- b. Specific indemnification arises only from certain engagements.<sup>17</sup>

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<sup>17</sup>Fuady, Munir. (2001). Contemporary Approach Against the Law. Bandung: Citra Aditya Bakti. p.134.

The form of goods used by PPAT F., SH, M.Kn. and IR, SH in the process of making the Deed of Sale and Purchase of 6 (six) AJBs, all documents or correspondence needed for this, such as Identity Cards, Family Cards, Death Certificates, etc., especially when making a full power of attorney. by PPAT F., SH, M.KN. which correspondence is the responsibility of the PPAT to examine it carefully before being made a condition for making a legal product in the form of a Sale and Purchase Deed. Such a legal construction brings PPAT F., SH, M.Kn. and IR, SH to take responsibility for actions that are against the law for their actions, as well as harming other people so that the PPAT deserves to be held accountable for compensation.

In accordance with Article 37 of Government Regulation no. 24 of 1997, states that transferring land rights and ownership rights to flats through buying and selling is only carried out if it is proven by a deed made by the PPAT. The making of the deed in accordance with Article 37 is with the knowledge of the parties who are undergoing legal action (vide Article 38). Facts at trial prove that the signing of the Sale and Purchase Deed was not in the presence of the parties. Thus the terms or legal provisions of Article 38 PP No. 24 of 1997 is not fulfilled. The non-fulfillment of the requirements required by Article 38 results in parties who feel they have suffered a loss and can file a claim for compensation to the PPAT (vide Article 62). In accordance with Article 62, it says that the PPAT while carrying out its duties turned out to be ignorant of the provisions of Article 38,

Degradation of an authentic deed into an underhanded deed due to containing legal defects or inauthentic as revealed in the trial facts, then based on Article 1869 of the Civil Code, confirms that an authentic deed of degradation is an underhanded deed on the grounds that the deed is a defective deed or the cancellation of the deed according to a court decision that has the force of permanent law. Legal construction Articles 37, 38 and 62 PP No. 24 of 1997, as well as Article 1869 of the Civil Code, can be used as a basis for suing the PPAT for acting against the law so that civil claims or claims for compensation can be requested.

### 3.2.3. Criminal Liability

Based on the West Jakarta District Court Decision in criminal case No. 248/Pid.B/2022/Pn.Jkt.Brt., which has permanent legal force, the judge has sentenced him to imprisonment for two years and eight months, a fine of IDR 1,000,000,000 each. However, if you do not pay the fine, you can replace it with imprisonment for 1 (one) month each against defendants F., SH.MKKn and defendants IR., SH., because F., SH.MKKn and IR. , SH, each of them has been proven guilty of committing a crime in the form of falsifying authentic documents (vide Article 264 Paragraph (1) of the Criminal Code) and money laundering (vide Article 3 of Law No. 8 of 2010 concerning the Crime of Money

Laundering Jo. Article 55 paragraph (1) firstly the Criminal Code in conjunction with Article 56 Paragraph (1) of the Criminal Code), there is no need to reconsider.

Based on the material contained in the decision, it was revealed as a fact in court if the Deed of Sale and Purchase No. 229/2017 dated 15-06-2017, Deed of Sale and Purchase No.355/2018 dated 18 May 2018, Deed of Sale and Purchase No.271/2019 dated 12 July 2019, Deed of Sale and Purchase No. 228/2017 dated 15 June 2017, Deed of Sale and Purchase No. 623/2017 dated 27 December 2017 and Deed of Sale and Purchase No. 1170/2019 dated 18 September 2019 belonging to Mrs. CIM, was also revealed as a fact in court through the confessions of defendants F and IR before the trial that the 6 (six) AJB had been forged and traded. Notary/PPAT F, SH.MKn drafted a power of attorney dated August 25 2018, then the power of attorney was handed over to the defendant RK to be signed by Mrs. CI M. Defendant F, SH.

The perpetrator's mistake was intentional or deliberate. Regarding the duties of a PPAT/notary who is tied to the provisions of a criminal act, he is conscious when carrying out a prohibited action, meaning he can be held criminally responsible according to the Criminal Code. In a criminal case related to the crime of making a PPAT deed: law enforcers want to withdraw the land deed making officer who is suspected of having committed a criminal act as a result of falsifying various documents. The crime that determines the action is stated in Articles 263, 264, 266, Jo. 55 and 56 of the Criminal Code. Based on this description, the officer making the land deed cannot escape criminal responsibility. When there is an error/negligence in making a deed that causes the loss of the other party, then the deed is null and void. Material and formal requirements of the provisions in making a PPAT deed, namely the formal aspects that must be fulfilled in making the deed of sale and purchase of land. Storage of the material and formal requirements of the provisions in making a PPAT deed needs to be seen according to the limitations of the formal aspect, which is in accordance with the PPAT law. In other words, the PPAT violated the formal aspect, meaning that the sanctions he received were civil or administrative sanctions, depending on the violation/sanction of IPPAT's code of ethics. Criminal sanctions are only given if the related PPAT is proven to be legitimate and convincing to act criminally. Clear provisions regarding the accountability of land deed making officers who violate the code of ethics, of course there are regulations in the form of punishment according to the provisions of the Criminal Code. The criminal ruling actually emphasizes that the land deed official still has the opportunity to be penalized, especially if he causes the other party to suffer losses. Criminal liability must be carried out strictly and fairly, based on Article 266 of the Criminal Code. Clarity and firmness of criminal

sanctions can create a deterrent effect so that land deed officials will be truly responsible in carrying out their duties.

According to the author, as a form of legal deviation by the land deed making officer, there is legal liability imposed on the land deed making officer, both administrative and civil or criminal liability. All of these responsibilities need to be carried out by prioritizing a professional code of ethics. The professional ethics of land deed drafting officers, namely upholding and prioritizing the interests of clients/appearers in order to create administrative order in the land sector.

The systematics of dismissing due to violations by the PPAT while carrying out their duties are specified in detail in the IPPAT code of ethics. It should be noted that the code of ethics is basically in the hands of professional organizations to administer or implement it. Codes of ethics are different from legislation. Professional experts who act contrary to the code of ethics will receive sanctions or fines from the professional organization they are a part of.<sup>18</sup> Violation of the law will be tried by the competent judicial institution.<sup>19</sup>

#### **4. Conclusion**

The legal responsibility of the Land Deed Making Officer who carried out the criminal act of falsifying the sale and purchase deed in Decision No. 248/Pid.B/2022/Pn.Jkt.Br., found the defendant F, SH.MKn and the defendant IR, SH guilty and sentenced the defendant to imprisonment for two years and eight months, a fine of IDR 1,000,000,000. The Deed of Sale and Purchase and Full Power of Attorney drawn up by the two PPATs are completely inauthentic or contain defects. That way, as an authentic deed, it can be canceled so that the status of the sale and purchase deed is degraded as a private agreement. Meanwhile, the responsibility of the Official for Making Land Deeds as a general official for sales and purchase deeds that are not authentic, namely administrative, civil and criminal responsibilities. In carrying out their duties, the Land Deed Making Officer should be guided by the law and the establishment of a professional code of ethics, and so that he remains a mediator between the interests of the parties who come before the Land Deed Making Official to make a deed. The role of the IPPAT professional organization can at least carry out the role of guidance and supervision so that Land Deed Officials can carry out their obligations and duties in a professional and responsible manner.

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<sup>18</sup>Lubis, Suhrawardi K. (2008). *Ethics of the Legal Profession*. Jakarta: Sinar Graphics. p. 14.

<sup>19</sup>*Ibid.*, p. 15.

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