

## **The Implementation of Making Land Deed Done by Subdistrict Head as The Temporary Land Deed Officials in Bulakamba Subdistrict, Brebes Regency**

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**Abstract.** The implementation of Land Registration Services by the Subdistrict Head as Temporary PPAT is referred to PP No 24 year 1997 on land registration, and PP No. 24 year 2016 concerning Land Deed Officials.

The purpose of this study was to analyze the making of land deed by the Subdistrict Head in his position and function as Temporary PPAT in Bulakamba District, Brebes Regency, as well as to find out the legal consequences if an error occurred in its implementation.

This research is a juridical-empirical approach. Data analysis techniques used qualitative data analysis. The juridical approach was based on a normative approach that analyzed various laws and regulations in the land sector, while the empirical approach is used to analyze normative laws.

The results showed that, the temporary PPAT are more likely to only make a sale and purchase deed, because the Subdistrict Head itself is less active, due to busyness with government affairs in his area. The Subdistrict Head, as Temporary PPAT, has not yet installed the nameplate (Article 20 paragraph 2) PP No. 24 year 2016. The delay in submitting the deed and the documents in the land registration process conducted by the temporary PPAT Sub-District Head does not result in the cancellation of the deed that has been made.

Suggestions to the Land Office in Brebes Regency is, they should work together with the PPAT Association (IPAT) and must routinely conduct guidance and supervision of the Land Deed Officials (PPAT), especially temporary PPAT in order to minimize mistakes.

**Keywords:** Subdistrict Head, Temporary PPAT, Land Deed

### **1. Introduction**

Juridically, the land is the surface of the earth, while the right to land is the right of certain parts of the earth's surface. It is limited, has a dimension of two with a length and width, so that the land rights are the land, in the sense of a certain part of the earth's surface. However, sometimes the authority to use is derived from this right, it is extended to include the use of part of the earth's body which is underground and water and the space above it.

With respect to these land rights, Article 1 point 24 of Government Regulation Number 24 year 1997 concerning Land Registration states that the Land Deed Officials are as a Public Officer who is given the authority to form certain deeds as stipulated in the relevant legislation, namely the transfer deed and imposition of land rights and ownership rights on units of flats and deed of authorization to impose mortgage rights. The Land Deed Officials as a Public Officer is also affirmed in Article 1 paragraph (4) of Law Number 4 year 1996 concerning Underwriting Rights to Land along with land-related objects. In Article 1 paragraph (4) of Act Number 4 year 1996, it is stated that

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the Land Deed Officials, hereinafter referred to as PPAT, is a Public Officer who is authorized to make a deed of transfer of land rights, deed of land rights, and deed of authorization. He/she is underwriting rights according to the prevailing laws and regulations.

General provisions regarding the position of PPAT are more specific, complete and detailed as stipulated in Government Regulation Number 37 year 1998 concerning the Regulation of the Position of the Land Deed Making Officer and there has been a change in Government Regulation Number 24 of 2016 which essentially contains provisions of the code of ethics and juridical basis for PPAT.

The presence of the Subdistrict Head as Temporary PPAT is because of his position, actually he/she has a noble purpose. He/she has to serve the community in the making of PPAT deed in the area where there is not enough PPAT and to assist in the implementation of land registration in the subdistrict. Besides, the community knows the Head of the District as well as Temporary PPAT is also as government leaders at the sub-district level, so that the function and position are still needed by the community.

Problems arising in the creation of land rights transfer certificates at Temporary PPAT can be caused by several factors. It is caused by mistakes in implementation or lack of mastery of the prevailing laws and regulations, such as not checking the original certificate in the Land Office and mistakes making parts of the deed in the form of authentic deed. The authentic deed sometimes does not match and violate the provisions outlined by Government Regulation No. 24 year 1997 and Government Regulation No. 37 year 1998. Thus, in the end it causes legal consequences that harm the parties and PPAT itself. As is well known, the temporary PPAT has a big role, especially in regions that still have a small number of PPAT Notaries, especially in the Bulakamba sub-district of Brebes Regency. Therefore, it is interesting to be further investigated in this research with the title "the Implementation of Land Deed by the Sub-District Head in the Position as Temporary PPAT in Bulakamba District, Brebes Regency".

The formulation of the problem is about how to implement the subdistrict head as a temporary PPAT in making land deed in the district of Bulakamba, Brebes district and what legal consequences arise from the mistake of the subdistrict head as a temporary PPAT in making land certificates?

### **Research methods**

In this writing, the specification of the research used was descriptive analytical, namely research intended for humans, other circumstances/symptoms.<sup>4</sup> This type of research is normative legal research. The conceptual approach in this study referred to legal principles. Scientific accountability means that research was done to express and to explain something that exists and maybe as a truth with fortified empirical evidence or that can be accepted by human reason<sup>5</sup>. This study used a type of secondary data sources, namely: data that supports information or supports the completeness of primary data obtained from the library and the author's personal library collection conducted by literature.

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<sup>4</sup> Bambang Sunggono 1977 *Metodologi Penelitian Hukum* Rajawali Press Jakarta p. 36

<sup>5</sup> H. Hadari Nawawi 2000 *Penelitian Terapan* Gajah Mada University Press Yogyakarta p.9

## 2. Discussion

### 2.1. Implementation of Land Deed Making by the Sub-District Head as Temporary PPAT in Bulakamba District, Brebes Regency

Bulakamba sub-district of Brebes Regency as it is known is an area with a fairly large amount of land and the number of people experiencing an increase per year. This condition can lead to increased demand for land deeds. Even though, the number of PPAT in Bulakamba Brebes sub-district is very limited. Therefore, the Subdistrict Head needs to be appointed as an official who carries out the function, namely as a Temporary PPAT.<sup>6</sup>

The function of the Subdistrict Head as Temporary PPAT is to make a land deed. This function was created because the job title was carried out, namely as the sub-district head. As a Temporary PPAT, the implementation of the transfer of land rights by the Subdistrict Head is the same as the other PPAT. The implementation of the transfer of land deed rights includes checking the completeness of documents by the parties, proof of tax payment, witnessing the signing of the parties, registration of the deed to National Land Agency.<sup>7</sup>

The appointment of the Subdistrict Head as Temporary PPAT must fulfill the conditions specified in accordance with Article 5 paragraph (3) PP No. 37 year 1998. Article 5 paragraph (3) PP No. 37 of 1998 became the legal basis of the Subdistrict Head as a Temporary PPAT states that, the Minister could appoint certain officials to serve the public in making Land Deed in areas where there is not enough PPAT.<sup>8</sup>

Based on the provisions of Article 5 of Government Regulation No. 24 year 1997 concerning Land Registration, which reads and regulates the following issues:

- Land registration is held by the National Land Agency.
- In carrying out land registration, the Head of the Land Office is assisted by PPAT and other Officials according to this Government Regulation and the relevant legislation.

In connection with the above provisions, it is clear that the organizer of government affairs in the land sector is the National Land Agency of the Republic of Indonesia, but in its implementation National Land Agency is assisted by PPAT and other Officials assigned based on existing and applicable legislation, including the CATS Subdistrict Head.<sup>9</sup>

The appointment of the Village Head as a Temporary PPAT is carried out by the Minister after conducting research on its needs based on the very remote location of the village and the number of plots of land that have been registered in the village area.<sup>10</sup>

A Subdistrict Head is appointed as a Temporary PPAT as long as the Subdistrict Head is serving as a Subdistrict Head not as long as the PPAT formation is suddenly closed or

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<sup>6</sup> Interview with Edy Sudarmanto Subdistrict head Bulakamba Brebes Regency on 31 May 2018

<sup>7</sup> Interview with Imam Djauhari Staff at Subdistrict head Bulakamba Brebes Regency on 31 May 2018

<sup>8</sup> Interview with Edy Sudarmanto Subdistrict head Bulakamba Brebes Regency on 31 May 2018

<sup>9</sup> Interview with Ahmad Asyafi Staff at BPN Brebes Regency on 03 June 2018

<sup>10</sup> Interview with Ani Sulistiani PPAT Brebes Regency on 02 June 2018

fulfilled, as soon as the Subdistrict Head is appointed, he is a Subdistrict Head he may act as Temporary PPAT. In general, the office of the National Land Agency (BPN) never socializes the temporary PPAT formation, so that the subdistrict head must be proactive to register as temporary PPAT.<sup>11</sup>

The number of Notary Land Deed Making Officials (PPAT) in the Bulakamba sub-District area is currently very limited, it is still felt insufficient considering the extent of Bulakamba subdistrict. Based on the preliminary data obtained, it was seen that the importance of the Acting Maker (PPAT) is temporarily attached to the position of a Subdistrict Head as the head of the region, as seen from several statements from the residents. They said that they have difficulty in managing their land registration.

From the results of research in the field, the role of the sub-district head is still needed by the people of Bulakamba Subdistrict, it is due to several reasons:

- The location of the Bulakamba subdistrict office is strategically classified so that it is easily accessible to all residents.
- Sub-district Head of Bulakamba often socializes and fosters good relations with residents, so that residents are no longer reluctant and afraid to ask for help with the Bulakamba subdistrict Head.
- People assume, if one day their land is in trouble then it can be settled in a family because Subdistrict Head as the Land Deed Officials (PPAT) is also a highly respected person.

Although the role or obligation must be the same and equal between the temporary Land Deed Officials (PPAT) and the Land Deed Officials (PPAT) Notary and Special PPAT, as already regulated and determined in Government Regulation No. 37 year 1998. This regulation has changed into PP No. No. 24 year 2016, but in reality there are still irregularities, including:

- Installation of Nameplate as Temporary Land Deed Official

In Bulakamba Subdistrict, the temporary PPAT signboard was provided by BPN (National Land Agency) Brebes, but the sub-district head was still reluctant to install it. It is because the signboard was considered not an important problem<sup>12</sup>. Nameplate installation is one of the obligations as described in Article 20 paragraph (2) of Government Regulation Number 24 year 2016 concerning the Regulation of the Position of the Land Deed Officials. This means that there are no specific provisions that differentiate between Subdistrict Head as temporary PPAT and PPAT notaries. According to Edy Sudarmanto, he also did not install the nameplate. The reason why he did not install the nameplate as PPAT was because the temporary PPAT is only additional duties for the subdistrict head. The main task is as executor of delegation tasks from the Regent, and it was not possible to prioritize the task only on the transfer of land rights, but there were many community service tasks to be carried out.<sup>13</sup>

According to the author, not installing a signboard for the Subdistrict Head as the temporary PPAT will impact to the community. They will not know whether their

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<sup>11</sup> Interview with Ahmad Asyafi Staff at BPN Brebes Regency on 03 June 2018

<sup>12</sup> Interview with Edy Sudarmanto Subdistrict head Bulakamba Brebes Regency on 31 May 2018

<sup>13</sup> Interview with Edy Sudarmanto Subdistrict head Bulakamba Brebes Regency on 31 May 2018

subdistrict head was as temporary PPAT or not. The community will know the subdistrict head as a temporary PPAT if the signboard is installed.

- Making Land Deed

In the process of making the Land Deed, it is known that there are a number of irregularities occurring in the field. Deviations occur at the time of signing the deed, where the proof of payment of Land and Building Rights Acquisition Fees (Article 24 paragraph (1) of Law Number 21 year 1997 concerning Land and Building Rights Acquisition Fees) is 5% of the selling price after deducting Rp. 60,000,000, - which is not taxable and PPh (Income Tax) on sales that must be paid by the seller at 5% of the selling price (Law Number 36 of 2008) has not been submitted to the Head of District as Acting Land Deed Officer (PPAT) . The signing of the sale and purchase deed was also not carried out before the Land Deed Official, in which Article 1868 of the Civil Code states that the signing of the sale and purchase deed must be done before PPAT (Notary).

The deviation occurred because the Subdistrict Head placed full trust and confidence in the parties. The proof of the Land and Building Rights Acquisition Fees (BPHTB) would be submitted following, in which case the buyer did not have sufficient payment amount. The parties to the transaction prioritize signing first. Only one or two days later, the buyer goes to the appointed Bank to deposit the Land and Building Rights (BPHTB). Even in its implementation the parties requested assistance from the District Office Employees to deposit BPHTB or PPh in return for a sum of money. <sup>14</sup>

According to the author's observation, the deeds made by the subdistrict head are more about making a sale and purchase deed, because the Subdistrict Head himself is less active, due to the business of government affairs in his area. The Subdistrict Head forgets that there are other tasks waiting for him. Even because of the business, the task in the field of PPAT tends to be handed over to his staff. The staffs work only on the basis of experience.

- Land Deed Officials Monthly Report

It has been explained above, with the appointment of the Subdistrict Head as Temporary Land Deed Officials, the function of Subdistrict Head are the same as the Land Deed Officials (PPAT). Likewise, in the case of making monthly reports, this must be done every month, even though in the current month there are no transactions. This monthly report serves as a control tool for the National Land Agency.

As a temporary PPAT, he/she should continue to submit reports related to the deed-making transaction, and if there is no custom deed-making transaction, the Subdistrict Head as the temporary PPAT must also make a report to the Office of the National Land Agency. <sup>15</sup>

In practice, the Subdistrict Head is as temporary Land Deed Officials (PPAT), if there is already an oral message from the land office, he and his staff will make the report and send it to the National Land Agency. So this sanction, according to the author, is not effective and does not apply forcefully, because even though there are sanctions, the reality in the field still has violations.

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<sup>14</sup> Interview with Putra Carik Desa Bangsri KeSubdistrict headan Bulakamba Brebes Regency on 27 May 2018

<sup>15</sup> Interview with Ahmad Asyafi Staff at BPN Brebes Regency tanggal 03 June 2018

The implementations of the deed made by the subdistrict head as a temporary PPAT are:

- Before the transaction occurs, the sub-district head must check the certificate at the National Land Agency office ("clean or not" certificate)
- The parties face the subdistrict head as a temporary PPAT with the completeness of the documents (original certificate, ID Card, Family Card, marriage certificate, etc.).
- The parties submit proof of tax payment (BPHTB & PPh)
- The parties sign the deed of transfer of land rights
- After becoming a deed (the deed has been given a number, day and date and year) then it is registered at the Regency Land Office by the sub-district head

In the implementation, mistakes often occur, where there are parties who want to register the deed to District Land Office by himself after the deed is made. Because they feel that they have relatives there, friends or neighbors of the District Land Office who are able to provide services more quickly than if they are registered by a temporary Subdistrict Head/PPAT.

In connection with the position and function of the Subdistrict Head as Temporary PPAT the most widely done are:

- The Subdistrict Head as Temporary PPAT is more often processing/making a deed of transfer of land rights that has something to do with the inheritance process (inheritance distribution). This process requires the Inheritance Certificate (SKW) issued by the village government and must be known by the Subdistrict Head as head of the region. Thus, in making the deed of transfer of land rights, it is automatically directed to the Head of Subdistrict as Temporary PPAT.
- The subdistrict head processes more of the land rights transfer certificate for land that has not been certified, usually a land that is directly sold, because the subdistrict head has more control over the supporting documents.

## **2.2. Land Registration Services and Constraints experienced by the Subdistrict Head as Temporary PPAT in the Making of the Land Deed**

Based on the results of the research, in general, it can be concluded that the theory taken is based on the service standards contained in the Decree of the Minister of State Apparatus Empowerment and Bureaucratic Reform No. 36 year 2012 concerning Technical Guidelines for Preparing and Implementing Service Standards. There are many shortcomings and still do not meet the existing provisions due to limited facilities and infrastructure as well as Human Resources who support in carrying out the registration services of the Land.

The obstacles faced by the Subdistrict Head as the temporary Land Deed Officials are:

- The number of tasks in the field of government or in his position as head of district, so that temporary Land Deed Officials is only a side duty. Consequently, all the affairs as temporary Land Deed Officials tends to be left to employees or staff at the sub-district office in full or even to sign a deed entrusted to the village apparatus. In fact, the deed actually must be made in front of the PPAT. In fact, the deed has been made and signed when taken to the District office, as a result the deed has become null and void.

- Lack of counseling from the Land Agency of Brebes Regency means the importance of land registration to the community, resulting in the increase of Subdistrict Head duties. The subdistrict head also has to carry out counseling among other tasks that have been waiting a lot.<sup>16</sup> Counseling conducted by the District Land Office is only conducted once a year.

From the results of research in the field, it is also known that, the obstacles that arise are also due to the coming of the community, so inevitably will also result in the role of the Subdistrict Head as the temporary Land Deed Officials in the Land Registration process, namely:

- When visited to the location of the land, many of these lands have not been given boundary signs so that the deed products made cannot immediately be completed;
- The requirements for completeness of the document are not appropriate or incomplete, so that they should be registered at that time must be suspended;
- Due to lack of counseling, many people do not know the procedures and do not know the official costs of land registration, as a result they consider it to be costly, take a long time and complicated procedures so that they are reluctant to register their land ;
- Usually the land to be registered is only a small size and the cost for that is not proportional to the size.

### **2.3. The Legal Impact of the Legal Status of Land Deed Made by the Subdistrict Head as Temporary PPAT**

The results showed that the legal position of the land deed made by the Head of District as Temporary PPAT legally is legal, because there is a legal basis for issuing land deeds, namely Government Regulation Number 24 year 1997 concerning Land Registration. However, the deed made by the Subdistrict Head as Temporary PPAT becomes invalid if the sale and purchase of land is not accompanied by the relevant certificate or the Subdistrict Head changes the procedure for making the deed of transfer of land rights in the form specified which is not in accordance with the provisions of Government Regulation Number 24 year 1997 on Land Registration. The legal consequences of the land deed made by the Subdistrict Head as Temporary PPAT is, if it is carried out in accordance with Government Regulation Number 24 year 1997 concerning Land Registration, the deed made by the Subdistrict Head is valid and has strong and firm legal force.

### **3. Conclusion**

- Basically, in the making of the Subdistrict Head rights transfer deed, it has been guided by the applicable provisions, namely Government Regulation Number 24 year 1997 concerning Land Registration, such as holding certificate checks at the Land office, checking the completeness of the parties' documents, including PPH and BPHTB tax payment documents.
- The Head of Sub-district as temporary Land Deed Officials has not installed the nameplate is one of the obligations as described in Article 20 paragraph (2) of Government Regulation Number 24 year 2016 concerning the Regulation of the Position of the temporary Land Deed Officials. This means that there is no specific

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<sup>16</sup> Edy Sudarmanto *Ibid*

provision that distinguishes between Subdistrict Head as temporary Land Deed Officials with PPAT notary.

- Temporary Land Deed Officials is more inclined to make a sale and purchase certificate only, because the Subdistrict Head itself is less active, due to the business with government affairs in his area. The Subdistrict Head forgets there is another task waiting. Even because of the business, the task in the field of PPAT tends to be handed over to his staff who works only on the basis of experience. The delay in submitting the deed and the files in the land registration process carried out by the Subdistrict Head as the temporary Land Deed Officials does not result in the cancellation of the deed made.

The Land Office of Brebes Regency should work together with the PPAT Association (IPAT) to conduct routine guidance and supervision of the Land Deed Officials (PPAT), especially temporary Land Deed Officials in his working area. In addition, the Land Office of Brebes Regency can provide strict sanctions against Land Deed Officials who do not comply with the rules. Head of Sub-district as temporary Land Deed Officials must always improve their knowledge and education, both permanent education and training in the field of land in order to reduce constraints in the field and minimize errors that arise.

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