

## The Accountability of Officials Making Land Deeds (PPAT) Against Land Rights Grant Deeds Canceled by Courts

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**Abstract.** *This study aims to find out and analyze the accountability of the official who made the land deed (PPAT) for the grant deed which was canceled by the court. The research approach method used in this journal is the sociological juridical method. The specification of this research is using descriptive analysis, which is research that describes a situation or event and also draws general conclusions from the problems discussed. The type of data used in this research is primary data covering the 1945 Constitution; Basic Agrarian Act No. 5 of 1960 Government Regulation Number 37 of 1998, Government Regulation Number 24 of 1997, Land Agency Agency Regulation Number 1 of 2006, as well as secondary data containing books and other supporting documents. Methods of data analysis obtained from the results of library research, field research will be analyzed using qualitative descriptive research. Based on the research, it was concluded that the results of the research show that First: The responsibility of the Officer who made the land deed for the Grant Deed which was canceled by the case study court Case Number: 0362/Pdt.G/2016/PA.Kng is in the form of responsibility for the obligation to make the deed regulated in Per ka BPN Number 1 of 2006, PP number 37 of 1998, PP Number 24 of 1997 accountability can be civil, administrative or criminal.*

**Keywords:** *Accountability; Canceled; Court; Grants.*

### 1. Introduction

Law as a rule or social norm is inseparable from the values prevailing in society.<sup>1</sup> Law and society have a reciprocal or two-way relationship, the law of its existence regulates the procedures for social life in order to achieve the goals of law, namely order and balance in the social order. The family is the smallest part of society, which teaches positive rules and values for provision in a wider life. rules and norms become social controls in social life, the most important rules

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<sup>1</sup>Soerjono soekanto, 2003, Principles of Sociology of Law, PT Raja Grafindo, JAKARTA, page 1

and norms in society are legal rules in addition to religious rules, decency and decency. Legal rules and norms have specific characteristics, namely the desire to protect, regulate, provide a balance in maintaining the public interest.<sup>2</sup> We often encounter in social life problems - problems both with the closest family and with the surrounding environment, the existence of the rule of law becomes protection and certainty in society both protection between individuals and individuals, individuals with groups and individuals with the government. The legal rules that we often encounter are inheritance and grants, although both of them can be referred to as the transfer of rights to an object, both of them have different mechanisms, the grant itself is in the Criminal Code and is not included in the material of inheritance law, but is included in the material of the engagement.

Grants are regulated in Article 1666 (KUHPerd) which states that: "Grants are an agreement whereby the grantor, at the time of his life, freely and irrevocably surrenders an object for the purposes of the recipient of the grant who receives the delivery." as the gift of an object voluntarily and without compensation from someone to another person who is still alive to be owned<sup>3</sup>.KHI (Compilation of Islamic Law) Article 171 letter (g) explains that a grant is a gift voluntarily and without compensation from a person to another person who is still alive to be owned, from the description above it can be concluded that a grant can occur when the grantor and grantee are still life. In principle, grants cannot be withdrawn or canceled except for parental gifts to their children as stipulated in Article 212 KHI.

Article 210 KHI states "(1) a person who has aged at least 21 years of good sense without coercion may donate as much as 1/3 of his property to another person or institution in the presence of two witnesses to be owned". Implementation of grants in the form of immovable objects, the implementation must use an authentic deed made by an authorized official.<sup>4</sup>But in practice this is not the case, many people donate without using an authentic deed, this is very contrary to the laws and regulations governing grants and contrary to the Compilation of Islamic Law (KHI). If in the implementation of the grant only uses a private deed, the transfer of rights does not have binding legal force.

Article 1682 KUHperd states that no grant except as referred to in Article 1687 KHUPerd can be made with a notarial deed which minut (original text) must be kept at a notary and if this is not done then the grant is invalid. but with regard to land grants after the enactment of government regulation No. 24 of 1997

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<sup>2</sup>R. Abdoel Djamali, 2003, Introduction to Indonesian Law, PT. Raja Grafindo, Jakarta, p.5

<sup>3</sup>Anshori, Abdul Ghofur, Philosophy of grant and will law in Indonesia, Yogyakarta: Gajah Mada University Press. Thing. 92

<sup>4</sup>Civil Code Article 1682

concerning land registration, each grantor of land and buildings must be carried out with the Official Deed of Making Land Deeds (PPAT). Based on Article 38 paragraph 1 PP24/1997 the making of the Deed was attended by the parties who committed the legal action in question witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the legal action.<sup>5</sup>

The transfer of rights through grants can be proven by a deed drawn up by an authorized official. The land title grant deed must be made by the Land Deed Making Officer (PPAT) as the official in question. PPAT is an official authorized to carry out the main task of carrying out some land registration activities by making a deed as proof that certain legal actions have been taken regarding land rights or ownership rights to apartment units, which will be used as the basis for registering changes to land registration data caused by legal actions. that.<sup>6</sup>As a PPAT general official who is responsible for the deeds he has made including the deed of grants, a PPAT must have a good personality, be thorough, careful, independent, honest and impartial in order to guarantee legal certainty as set forth in a deed. Problems often arise when a grant deed made by the Land Deed Making Officer (PPAT) is faced with a lawsuit by the grantor or the heir who feels disadvantaged on the basis of the transfer of rights, cases of cancellation of grants often occur among the community. This could be because the recipient of the grant did not meet the requirements in carrying out the grant given, or in making the deed, the PPAT did not pay attention to the formal and material requirements in the deed. Under the law, grants that have been given cannot be withdrawn.

As a research guideline, a case was used with case number 0362/Pdt.G/2016/PA.Kng, where the grantee in the process he was carrying out was legally disabled and legally it should have been declared null and void, because it was done in ways that not in accordance with the provisions of the Law, thus the grant deed with Number: 23/2012 dated March 2, 2012 made by the defendant becomes invalid. Because it does not meet the requirements as described in the Compilation of Islamic Law (KHI) and National Land Agency Regulation No. 1 of 2006, Government Regulation No. 37 of 1998 concerning implementing provisions of government regulation No. 24 of 1997 concerning land registration.

## **2. Research Methods**

The research method used by the author is a sociological juridical writing approach, namely data processing based on the results of field studies which are

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<sup>5</sup>PP No. 24 of 1997

<sup>6</sup>Hatta Isnaini Wahyu Utomo, Understanding the Position Regulations for Officials Making Land Deeds, 2020 Kencana, Jakarta, page 21

then combined with data obtained from literature studies, so that later accurate data is obtained.<sup>7</sup>The specification of this research uses descriptive analysis, which is research that describes a situation or event and also draws general conclusions from the problems discussed. Data collection using interview techniques and document studies or library materials.

### **3. Results and Discussion**

#### **3.1. Accountability of the Land Deed Official for the Grant Deed which was canceled by the court (case study Case Number: 0362/Pdt.G/2016/PA.Kng)**

In carrying out his position as the PPAT as the Land Deed Making Officer who is given the authority to make deeds regarding land rights and ownership rights to flats located within his working area, in making a PPAT deed, he is obliged to carry out the following matters:

1. The PPAT in carrying out its duties to make authentic deeds must be in his office in the presence of the parties or their proxies in carrying out the relevant legal actions in accordance with statutory regulations. This is regulated in Article 52 paragraph 1 of the Regulation of the Head of the National Land Agency Number 1 of 2006.
2. The PPAT can make a deed outside his office if one of the parties to the legal action or his attorney cannot come to the PPAT's office for a valid reason, provided that in making the deed the parties must be present before the PPAT at the place of the agreed deed. This is regulated in Article 52 paragraph 2 of Regulation of the Head of the National Land Agency Number 1 of 2006.
3. The PPAT is required to read and explain the contents of the deed to the parties or their proxies who carry out the legal action in the presence of at least two witnesses. This is regulated in Article 22 of Government Regulation Number 37 of 1998 in conjunction with Article 53 paragraph 3 of Regulation of the Head of the National Land Agency Number 1 of 2006.
4. A PPAT is prohibited from making deeds for himself, his husband/wife, blood relatives or relatives, in a straight line without degree restrictions and in a lateral line to the second degree, being a party to the legal action concerned either by acting alone or through his power of attorney or as a proxy other

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<sup>7</sup>Ronny Hanitijo Soemitro. 1988. Legal Research Methodology and Jurimetry. Ghalia Indonesia, Jakarta, p. 11

parties. This has been regulated in Article 23 paragraph 1 of Government Regulation Number 37 of 1998.

5. PPAT before making a deed regarding legal acts of buying and selling, swapping, grants, entry into the company (inbrenng), distribution of joint rights, granting building use rights/usage over property rights, granting mortgage rights, and granting power of attorney to impose mortgage rights, The PPAT is obliged to carry out certificate adjustments at the land office. This is regulated in Article 54 paragraph 1 of Regulation of the Head of the National Land Agency Number 1 of 2006.

6. PPAT in making deed regarding legal acts of sale and purchase, exchange, grants, entry into the company (inbrenng), granting building use rights/usage rights over property rights, distribution of joint rights, granting mortgage rights, granting power of attorney to impose mortgage rights, not allowed to contain the word "according to or according to the statement of the parties" unless supported by formal data. This is regulated in Article 54 paragraph 2 of the National Land Agency Regulation No. 1 of 2006.

7. PPAT has the authority to refuse the making of a deed that is not based on formal data. This is regulated in Article 54 paragraph 3 of Regulation of the Head of the National Land Agency Number 1 of 2006.

8. PPAT is not allowed to make buying and selling, exchange, grants, income into the company (inbrenng), sharing joint rights, granting building use rights / usufructuary rights over property rights, granting mortgage rights, and granting power of attorney to impose mortgage rights on some of the registered land parcels or land with customary ownership rights, before being measured by the land office (BPN) and given a field identification number (NIB) and in making a PPAT deed it is mandatory to include the land parcel identification number (NIB), land title number, number of tax payable notification letter (SPPT) Land Tax and Building (UN). This is regulated in Article 54 paragraphs 4 and 5 of the Regulation of the Head of the National Land Agency Number 1 of 2006.

9. The PPAT is required to make a list of deeds using 1 (one) book of lists of deeds for all types of deeds it makes, in which all the words written in the work diary are listed sequentially and closed at the end of each working day with the ink line initialed by the PPAT in the last column below. cover line. Regulated in Article 56 paragraphs 1 and 2 of Regulation of the Head of the National Land Agency number 1 of 2006.

10. The PPAT is obliged to send or submit the PPAT deed and documents/other documents required for the registration of the deed of legal

action made or for land registration to the local district/city land office no later than 7 (seven) working days from the signing of the PPAT deed concerned. This is regulated in Article 40 paragraph 1 of government regulation number 24 of 1997 in conjunction with Article 57 of Regulation of the head of the National Land Agency Number 1 of 2006.

11. The PPAT is required to submit written notification regarding the delivery of warkah / other documents needed for the purpose of registering the deed to the party concerned, this is regulated in Article 40 paragraph 2 of government regulation Number 24 of 1997.

Regarding the PPAT to refuse to make a deed, it is explained in detail, this is regulated in Article 36 of Government Regulation Number 24 of 1997 concerning land registration.

1. The PPAT refuses to make a deed if:

a. Regarding land parcels that have been registered or ownership rights or ownership rights to apartment units, the original certificates of the rights in question have not been delivered to them or the certificates submitted are not in accordance with the registers at the land office; or

b. Regarding land parcels that have not been registered, they are not conveyed to them;

1) Letter of proof of rights as referred to in Article 24 paragraph 1 or a statement letter from the village/kelurahan head stating that the person concerned controls the land parcel as referred to in Article 24 paragraph 2 and:

2) A statement stating that the land parcel in question has not been certified by the land office, or for land located in an area far from the position of the land office, from the right holder concerned, confirmed by the village/kelurahan head or;

c. One or the parties who will carry out the legal action in question or one of the witnesses referred to in Article 38 is not entitled or does not meet the requirements to act in this way or;

d. One of the parties or the parties acts on the basis of an absolute power of attorney which essentially contains a legal act of transferring rights; or

- e. For the legal action to be carried out, permission from the official or authorized agency has not been obtained, if the permit is required according to the applicable laws and regulations; or
- f. The object of the legal action in question is currently in dispute regarding the physical data and/or juridical data or
- g. Other requirements are not met or the prohibitions specified in the relevant laws and regulations are violated.

2. The refusal to make the deed is notified in writing to the parties concerned along with the reasons.<sup>8</sup>

Regarding the PPAT having the obligation to refuse is also regulated in Ministerial Regulation Number 3 of 1997 Article 100, stating:

"The PPAT refuses to make a PPAT deed regarding the right to legal rights or ownership rights to the apartment unit if he receives written notification that the land rights or ownership rights to the apartment unit which are the object of the transaction are being disputed from the person or legal entity that is a party to the transaction. the dispute is accompanied by a report document to the authorities, a lawsuit against the court or by taking into account the provisions of Article 32 paragraph 2 of Government Regulation Number 24 of 1997, an objection letter to the right holder and other documents proving the existence of the dispute.<sup>9</sup>

Based on the description above, the PPAT expressly carries out its position as an official who makes authentic deeds regarding land rights or flat unit rights located within the territory of his office, then the PPAT in making the deed has obligations that have been determined according to the procedures in force. . If in carrying out their duties a PPAT is not based on applicable regulations or procedures, a PPAT is considered to have committed an offense or mistake in carrying out his duties and position.

### **3.2. Analysis of the decision of the Kuningan Religious Court Number:0362/Pdt.G/2016/PA.Kng.**

The case that the author will analyze in this case is regarding a civil lawsuit, regarding a grant case which was canceled by the Kuningan religious court with Decision Number Number 0362/Pdt.G/2016/PA.Kng.. the case matter:

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<sup>8</sup>PP Number 24 of 1997

<sup>9</sup>PP number 37 of 1998

- Whereas because the Plaintiff worked abroad as a migrant worker, the Plaintiff did not bring the Certificate of Property Rights Number 102/Desa, but entrusted it to Defendant II/ACCUSED II, who at that time was still legally the wife of the Plaintiff;
  
- then around June 2012, Defendant II filed for divorce unilaterally, at the Kuningan Religious Court, based on Excerpt of Divorce Deed Number: 1243/AC/2012/PA.Kng, dated 29 June 2012;
  
- Whereas when the divorce lawsuit was filed by Defendant II at the Kuningan Religious Court, the Plaintiff did not know at all and never received notification from Defendant II, nor an official notification from the Kuningan Religious Court office, so that the Plaintiff could not exercise his rights until the decision of the Religious Court No. : 1001/Pdr.G/2012/PA.Kng. June 12, 2012 until the decision has permanent legal force (Ikracht)
  
- Whereas the Plaintiff only found out about the divorce when the Plaintiff returned to Kuningan after finishing working abroad, the Plaintiff tried to find the truth of the divorce by visiting the Kuningan Religious Court Office, the Plaintiff came to the Kuningan Religious Court Registrar on January 12 2015, which explained that the Plaintiff with Defendant II is divorced;
  
- Whereas then the Plaintiff came to Defendant II, with the intention of requesting back the Property Rights Certificate Number: 102/Desa --- which was entrusted by the Plaintiff to Defendant II, however, Defendant II, explained that the certificate was already in the hands of Defendant II's child, namely ACCUSED I (Defendant I) and the name has been changed from the name of the PLAINTIFF (Plaintiff) to ACCUSED I (Defendant 1) on the basis of the Deed of Grant Number: 23/2012 dated March 2, 2012 which was made before the District Head/PPAT District --- which at that time was held by Mr. . ACCUSED IV (Defendant IV) which was known by ACCUSED III (Defendant III);
  
- Whereas the Plaintiff never granted the land and never gave permission to anyone to grant the Plaintiff's land to Defendant I and after the Plaintiff traced that it turned out that the Deed of Grant was legally flawed because it was made based on false information and letters made by Defendant II (ACCUSED II ) together with Defendant I (ACCUSED I) and Plaintiff never came to --- to sign the Deed of Grant Number: 23/2012 dated March 2, 2012;
  
- That in order to prevent undesirable things from happening to the Plaintiff's land, the Plaintiff then submitted a request for blocking to the Co-Defendant, and the Co-Defendant issued a letter dated 2 April 2015



Number: 288/300-32.08/IV/2015 concerning: Blocking of Certificates Property Rights Number 102/---;

- With the actions of Defendant I, Defendant II falsified the identity of the Plaintiff, made fake papers and false circumstances so that the issuance of the Grant Deed Number: 23/2012 dated March 2, 2012 made by Defendant IV and known by Defendant III, this matter has also been reported by the Plaintiff to the Kuningan Resort Police, based on the Letter of Evidence Reporting Number; LP/B/87/IX/2015/JBR/RES KNG, September 5, on the basis of the report "Ordered to place false information in an authentic deed";

- That for the actions of Defendant I, Defendant II, Defendant III, Defendant IV, issued Deed of Grant Number: 23/2012 dated 2 March 2012, on the basis of false statements and letters, without the permission and knowledge of the Plaintiff as the legal owner of a plot of land with an area of 1,440 m<sup>2</sup> (one thousand four hundred and forty square meters) located in Kuningan Regency SHM Number: 102/---, is clearly an unlawful act and is very detrimental to the Plaintiff, so it is fitting that the Deed of Grant Number: 23/2012 dated March 2 2012 must be declared null and void by law;

- Whereas because the Deed of Grant Number: 23/2012 dated March 2 2012 was cancelled, the transfer of title to the Property Rights Certificate Number: 102/Desa --- from the PLAINTIFF to the name DEFENDANT I must be declared invalid and must be returned to the name of the original owner, namely the PLAINTIFF;

From the case above the religious court decided Declare that the Grant Deed Number: 23/2012 dated March 2, 2012 made by the District Head --- Kuningan Regency is null and void; There are PPAT mistakes that carry responsibility for themselves, in carrying out their positions these mistakes refer to the obligations of the PPAT which are regulated in making the deed, namely:

- In making the grant deed, the PPAT was not careful and thorough in matching identity as a general requirement whether the parties have the authority to act, whether the object of the grant is the absolute right of the grantor.

- In making the sub-district grant deed as PPATS, the parties who carried out the legal action in question were not present

- The deed was not read/explained to the parties in the presence of at least two witnesses before it was signed at that time.

PPAT in carrying out their duties and positions as public officials authorized to make authentic deeds is responsible for their actions. This responsibility is as a willingness to carry out its obligations which include the material truth of the deed that has been made. PPAT is responsible for negligence, errors in the contents of the deed that has been made before him, but PPAT is responsible for the formal form of an authentic deed. As stipulated in the law. Responsibility for material truth, namely:

1. The responsibility of the Notary/PPAT in civil terms for the material truth of the deed he made. The juridical constructs used incivil responsibility for the material truth of the deed made is the construction of an unlawful act.
2. The notary/PPAT is criminally responsible for the material truth in the deed he made. Regarding criminal provisions, it is not regulated in the Notary Office Law or in the Regulations for the Position of Officials for Making Land Deeds, however, the responsibility of a Notary/PPAT is criminally imposed if the Notary/PPAT commits a criminal act that violates the law. The Law on the Position of Notary and the Regulations for the Position of Officials for making Land Deeds only regulate sanctions for violations committed and these sanctions can be in the form of deeds made by a Notary/PPAT which do not have authentic strength or only have the power as an underhand deed or even the deed is legally annulled by the Court.

The consequences of a null and void deed certainly bring accountability, basically an authentic deed is a perfect proof because the deed contains several pieces of evidence, namely outward proof, formal proof and material proof. The material truth of the deed made before the PPAT as a partij deed of the PPAT deed cannot be held criminally responsible unless the PPAT is proven to have committed fraud, intentionally changing or falsifying the contents of the deed so that it can cause losses to the parties who have used the PPAT's services. The PPAT is also not responsible civilly for the material truth in the partij deed made before him, unless the PPAT has committed a violation (for example, taking sides with one of the parties).<sup>10</sup>

In this case the Camat acting as PPATS regarding the transfer of land rights in the form of a grant which was made without the knowledge of the land owner, the grant deed he made was legally flawed. The existence of a legal defect causes the purpose of the legal action to become invalid. Legal actions may contain defects, the nature of these defects may vary. With the existence of different

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<sup>10</sup>Mulyoto, Agreement; Techniques, Methods of Making, and Legal Agreements that Must be Mastered, Revised Edition, Cakrawala Media, Yogyakarta, 2012

defects cause different sanctions. The main difference regarding cancellation is null and void (*van rechtswege nietig*) and revocable (*vernietigbaar*).<sup>11</sup>

Grants made by the PPAT which are only based on a certificate that is not the right of the grantor, the PPAT is deemed to have violated the provisions of Government Regulation number 24 of 1997 article 38 paragraph 1 "The making of the deed as referred to in Article 37 paragraph (1) was attended by the parties making the the legal action concerned and witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in the legal action" then in Article 39 letter c the PPAT can refuse if ". one or the parties who will carry out the legal action in question or one of the witnesses as referred to in Article 38 is not entitled or does not meet the requirements to act in this way; "Regarding the reading of the deed that is not carried out by the PPAT, it violates the obligation where the PPAT is obliged to read and explain the contents of the deed to the parties or their proxies who carry out legal actions in the presence of at least two witnesses. This is regulated in Article 22 of Government Regulation Number 37 of 1998 in conjunction with Article 53 paragraph 3 of Regulation of the Head of the National Land Agency Number 1 of 2006.

Article 28 Regulation of the Head of the National Land Agency Number 1 of 2006 PPAT can be dishonorably dismissed from his position by the head of the land agency, one of which is a serious violation of the prohibition or obligation as a PPAT. Article 28 paragraph 4 of the Regulation of the Head of the National Land Agency for serious violations as referred to, one of which is "making a PPAT deed which is carried out, while it is known by the PPAT concerned that the parties authorized to carry out legal actions or their proxies in accordance with statutory regulations are not present before him". Article 6 of the PPAT Code of Ethics states that sanctions that can be imposed on IPPAT members if proven to have violated the Code of Ethics can be in the form of reprimands, warnings, suspension (temporary dismissal) from IPPAT membership,

#### **4. Conclusion**

The responsibility of a land deed official (PPAT) who makes a mistake in making a deed that is not in accordance with the procedures and procedures for making a deed based on Government Regulation No. implementing provisions of Government Regulation Number 37 of 1998 concerning the Position of Making Land Deeds, namely that the PPAT is responsible for non-fulfillment of obligations as a Land Deed Making Officer, which has an impact on professional,

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<sup>11</sup>Herlien Budiono, Cancellation in the Field of Notary Affairs, Paper presented at the Up Grading Refreshing Course, Indonesian Notary Association in Jakarta, 25-26 January 2006/CANCELLATION OF DEED OF PURCHASE AND SELLING AGREEMENT AND LEGAL CONSEQUENCES GEDE SUMANTRA SWASTYAYANA

civil, administrative, and criminal ethical accountability. Officials who make land deeds (PPAT) as public officials should have good morals, character and personality and in carrying out their duties and positions must be able to act decisively and must have the courage to refuse if there is a wish from a client or appearers that is contrary to laws and regulations, where one day the deed will cause problems and bring losses to both parties.

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