

Responsibility of Land Deed Making Officials (PPAT) for Sale and Purchase Deeds Made Without Checking the Certificate at the Land Office

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Abstract. *The purpose of this study is to analyze the Legal Responsibility of Land Deed Making Officials for Sale and Purchase Deeds Made in Their Presence Without Conducting a Certificate Check at the Semarang Regency Land Office, to analyze the Legal Consequences of Sale and Purchase Deeds Made by Land Deed Making Officials Without Conducting a Certificate Check at the Land Office. This research is a legal research sociological juridical, which is supported by empirical research with a descriptive research type. The problem approach used is a Qualitative approach. The data used are primary and secondary data consisting of primary legal materials, secondary legal materials, Data collection through interview studies, observations, and direct reviews in the field data processing is carried out by means of data examination, data selection, data classification and data systematization. Furthermore, it is analyzed descriptively analytically, the formulation of the problem in this study is analyzed using the Theory of Legal Certainty, the Theory of Responsibility, and the Treaty Theory. The results of the research and discussion show that the Responsibility of the Land Deed Making Officer in the Sale and Purchase of land which was not checked at the Semarang Regency Land Office resulted in legal defects in the formal and material requirements in the authentic deed which resulted in the deed being null and void. PPAT sanctions against the sale and purchase deed he made which did not comply with the PPAT deed making procedure or was proven to have committed violations in carrying out his duties and office resulting in the deed he made containing legal defects and the impact of this is that the PPAT can be subject to sanctions in the form of Administrative Sanctions. The PPAT concerned can be subject to sanctions in the form of dishonorable dismissal from his position, and Civil sanctions where the deed he made is degraded to a deed underhand, as well as Criminal Sanctions which can be in the form of a criminal act of participating in falsifying a Deed.*

Keywords: *Checking; Land; Responsibility.*

1. Introduction

The Land Deed Making Officer is a public official who is authorized to make Authentic Deeds, in the making of certain Authentic Deeds which are not specifically for other public officials such as Sale and Purchase Deeds which are required by Statutory Regulations in order to create legal certainty, order and legal protection for interested parties as well as society as a whole.¹The authority of the PPAT has been regulated as stated in Article 1 of Government Regulation Number 37 of 1998. An Authentic Deed is the strongest evidence, one of which is made by a PPAT, which is evidence that has an important role in every legal relationship in society, such as a deed of sale and purchase which is needed in business relations, banking activities, and others. In making an authentic deed, the elements regulated in Article 1868 of the Civil Code must be fulfilled.²

To ensure legal certainty and legal protection, the registration of the transfer of land rights is carried out by the Land Deed Making Officer (PPAT) who has been appointed by Minister Agrarian in the form of making an Authentic Deed according to the provisions of Government Regulation number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials. In the procedures and formalities of making an authentic deed are mandatory legal provisions, meaning that the procedures and procedures for making it must be followed as precisely as possible without being deviated in the slightest. Deviation from the procedures and procedures for making an authentic deed will have legal consequences for the evidentiary power of the deed.³If there is an error in making the deed, it is possible that the PPAT will be called as a witness by the Indonesian National Police (Polri) investigators, although some continue to become suspects and it is possible that they will be accused. In carrying out his professional duties, a public official must have moral integrity, meaning that all moral considerations must underlie the implementation of his professional duties.

This can cause legal consequences that initially had perfect legal force to become a deed that only has legal force under hand, all of which are caused by the negligence of a PPAT who makes a deed that is not based on the applicable Laws and Regulations, because it does not meet the subjective requirements. If a PPAT deed is issued that is legally flawed due to the negligence of the PPAT or due to the intention of the PPAT himself, then the PPAT must be held responsible both morally and legally. However, the cause of the problem can arise directly due to

¹ AbdulKadir Muhammad, 2001, *Ethics of the Legal Profession*. PT.Citra Aditya Bakti, Bandung, p. 58.

² Urip Santoso, 2016, *Land Deed Making Official; Perspective of Regulation, Authority and Nature of Deeds*, Kencana, Jakarta, p. 65

³ *Ibid.* p. 70.

the negligence of the PPAT, and can also arise indirectly if it is done by someone else.⁴

If the cause of the problem arises due to negligence either intentionally or unintentionally by the PPAT, then the deed only has the power of proof as a private deed or can be canceled (*Vernietigbaar*), because the subjective requirements are not met which can be used as a reason for the injured party to demand compensation from the Land Deed Making Officer. In other cases, it can also be the cause of the problem at the Semarang Regency Land Office, which does not arise from the error or negligence of the PPAT but rather arises due to the dishonesty of the parties regarding the truth of the administrative requirements as the basis for making the deed which can result in the deed being null and void by law (*Nietigheid Van Rechtswege*) because the objective requirements are not met.

From several legal issues and legal questions above, it often happens that the signing of the Sale and Purchase Deed without checking the certificate by the Land Deed Making Officer, related to the existence of PPAT who does not check the certificate at the Land Office, also occurs at the Semarang Regency Land Office. Based on this, the author is interested in making a thesis entitled: Responsibility of Land Deed Making Officials (Ppat) for Sale and Purchase Deeds Made Without Checking the Certificate at the Land Office.

2. Research methods

This research uses a sociological juridical approach method which uses specifications analytical descriptive. The data used includes secondary data and primary data. Data retrieval comes from primary legal materials, secondary legal materials, and tertiary legal materials.⁵

3. Results and Discussion

3.1 Responsibility of the Land Deed Making Officer (PPAT) for Sale and Purchase Deeds made in his presence without carrying out a Certificate Check at the Semarang Regency Land Office.

The responsibility of the Land Deed Making Officer in carrying out the duties and authorities of his position, especially related to the procedure for making a deed of sale and purchase must be based on Government Regulation Number 24 of 2016 concerning the Regulations on the Position of Land Deed Making Officers, if in his duties he makes a mistake, and the mistake could involve formal or material requirements, then a deed will lose the authenticity of the deed he made and cause losses to the parties, so that the PPAT is required to carry out

⁴ Jarot Widya Muliawan. 2009, *Granting of Ownership Rights for Residential Homes*. Cerdas Pustaka Publisher, Jakarta, p. 72

⁵ Soejono Soekanto, 2007, *Introduction to Legal Research*, UI Press, Jakarta, p. 45

Legal Responsibility According to the Code of Ethics and Legal Responsibility According to Civil Law.⁶

If the cause of the problem arises due to negligence, it is better to do so intentionally or unintentionally by the PPAT, then the deed only has the power of proof as a private deed or can be canceled (*Vernietigbaar*), because the subjective requirements are not met which can be used as a reason for the injured party to demand compensation from the Land Deed Making Officer. In other cases, it can also be the cause of problems at the Land Office in Semarang Regency, which does not arise from the error or negligence of the PPAT but rather arises because of the dishonesty of the parties regarding the truth of the administrative requirements as the basis for making the deed which can result in the deed being null and void by law (*Nietigheid Van Rechtswege*) because the objective requirements are not met.

PPAT as an official who makes authentic deeds, if an error occurs, either intentionally or due to negligence, resulting in another person suffering a loss, it means that in this case the PPAT has committed an unlawful act by abusing the authority that has been regulated in PP 37 of 1998 concerning the Regulations on the Position of Land Deed Officials, and if the error made by the PPAT can be proven by the parties who feel aggrieved, then the PPAT can be subject to sanctions as determined by law.⁷

Therefore, to analyze this research, the author uses an analytical tool, namely the Theory of Responsibility, to answer the formulation of the problem in this study. It is concluded that the responsibility of the land deed making official, abbreviated as PPAT, is the responsibility held by the PPAT as a Public official, namely the Code of Ethics responsibility and Civil responsibility.

PPAT as an official who makes authentic deeds, if an error occurs, either intentionally or due to negligence, resulting in another person suffering a loss, it means that in this case the PPAT has committed an unlawful act by abusing the authority that has been regulated in Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Officials, and if the error made by the PPAT can be proven by the parties who feel aggrieved, then the PPAT can be subject to sanctions as determined by law.

⁶Nia Kurniati and Efa Laela Fakhriah, "BPN as a mediator in resolving land disputes in Indonesia after PERKABAN No.11 of 2016", *Sosiohumaniora*, Vol. 19, no. 2, (Offline), <https://repository.usm.ac.id/files/scip/A11A/2017/A.111.17.0067/A.111.17.0067-05-BAB-II-20210122073813.pdf>, accessed November 1, 2023, at 10:00 WIB.

⁷Boedi Harsono, 2003, *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Contents and Implementation*, Ninth Edition. Djambatan Publisher, Jakarta, p. 32

Therefore, to analyze this research, the author uses analysis, namely the Theory of Responsibility to answer the formulation of the problem in this research, which is drawn from the conclusion that the responsibility of the Land Deed Making Officer abbreviated as PPAT, from the responsibility held by the PPAT as a Public Official, namely the Code of Ethics and Civil Responsibility.

The above, especially related to the procedure for making a deed of sale and purchase must be based on the Code of Ethics of Government Regulation Number 24 of 2016 concerning the Regulation of the Position of Land Deed Making Officials, sometimes mistakes are made, and these mistakes can involve formal or material requirements, for example mistakes regarding the lack of authority of the PPAT in making an authentic deed, which results in the loss of the authenticity of the deed he made, or the evidentiary force of the deed is no longer as complete/perfect evidence, between and for the parties but becomes a deed/letter under hand, where these mistakes can be made intentionally or unintentionally.⁸

The responsibility requested to the PPAT is not only in the narrow sense, namely making a deed, but the responsibility in the broad sense, namely responsibility during the deed phase and responsibility after signing the deed. The Professional Responsibility of PPAT can be categorized into 2 (two) things, namely Ethical Responsibility and Civil Responsibility

According to Article 1 Paragraph 4 of Law Number 24 of 2016 concerning the Regulation of Land Deed Officials, it explains that an authentic deed provides protection and legal certainty for related parties to be used as written evidence, the strongest and most complete. The function of the PPAT Deed is as evidence that a certain legal act related to land has been carried out and will be used as a registration list for changes in data resulting from the act, and the PPAT deed is also a strong basis for registering the transfer of rights and the burden of the rights concerned.⁹

From the results of the research and discussion, based on the review of the Theoretical Framework used by the researcher, namely the Theory of Legal Responsibility, then from the results of the research and discussion above, the author is of the opinion that in terms of the Theory of Responsibility regarding the Process of Making a Deed of Sale and Purchase of Land through PPAT in Semarang Regency, which did not carry out a certificate check at the Land Office. Then PPATlegally responsible for a certain act or that he bears legal responsibility,

⁸Government Regulation Number 24 of 2016 Concerning Amendments to Government Regulation Number 37 of 1998 Concerning Regulations on the Position of Notary

⁹Lumban Tobing. 1999. Notary Position Regulations (Notaris Reglement). Jakarta: Erlangga p. 41

subject means he is responsible for a sanction in the event of an act that is contrary to law. According to the provisions in Article 1 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials, specifically regarding the PPAT, Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials has been issued, which was stipulated on March 5, 1998 and the implementing provisions are stated in the Regulation of the Head of the National Land Office of the Republic of Indonesia Number 1 of 2006.

In the regulation, it is further explained in Article 1 number (1), namely: "PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights". The role of checking the certificate as an initial step in preparing the making of a deed by PPAT is very important. Because the certificate checking process is a step to adjust the physical data and legal data on the certificate.¹⁰

If the PPAT does not check the certificate first, then it has violated the provisions as regulated in the Code of Ethics of Land Deed Officials where according to Article 1 of Government Regulation Number 37 of 1998, the authority to make a deed of sale and purchase is the PPAT. Therefore, before making the deed of sale and purchase, the PPAT must first submit an application for a certificate check to the Land Office. If the certificate has been declared clean according to the land book lists, the PPAT can make a deed of sale and purchase and submit the files to the Land Office to carry out the certificate name change process.¹¹

Based on the Theory of Agreement, the researcher argues that the importance of making a deed of sale and purchase is a form of legal protection for both parties, the seller and the buyer in conducting land sales and purchases. In this case, the agreement is regulated in Book III of the Civil Code (Burgerlijk Wetboek), in Article 1313 of the Civil Code stating that an agreement is an act by which one or more people bind themselves to one or more other people. And the

¹⁰ Slamet Khudhon, Umar Ma'ruf, "The role of land deed making officials (PPAT) in making land sale and purchase deeds using checks as a means of payment", *Sulitan Agung Notary Law Review*, Volume. 5, No. 1, March 2018. <https://jurnal.unissula.ac.id/index.php/akta/search/authors/view?firstName=Umar&middleName=&lastName=Ma%E2%80%99ruf&affiliation=Fakultas%20Hukum%20UNISSULA&country=ID?firstName=Umar&middleName=&lastName=Ma%E2%80%99ruf&affiliation=Faculty%20Law%20UNISSULA&country=ID>. accessed on September 10, 2023.

¹¹ Iga Gangga Santi Dewi, "The Role of the Sub-district Head as the Land Deed Making Official (PPAT) in Land Sale and Purchase," *Pandecta*, Volume 5. Number 2. July 20 10 Pandecta <http://journal.unnes.airconditioning.id/njuindex.Php/pandecta>. accessed on September 9, 2023.

requirements for the validity of an agreement are in Article 1320 of the Civil Code, there are 4 (four) requirements, namely: agreement, ability, a certain thing, and a lawful cause (causa).

Based on the Theory of Legal Certainty, the researcher argues that by making a deed of sale and purchase by a PPAT, it will be a guarantee of legal certainty for both parties, the seller and the buyer, so that the land sale and purchase agreement can be implemented. So without legal certainty, an individual cannot have a standard provision to carry out a behavior or action in the sale and purchase. Therefore, PPAT is an extension of the Land Office in carrying out land sales and purchases and carrying out its duties according to its position and is not biased or partial and helps the community at an affordable cost.

3.2 Legal Consequences of Sale and Purchase Deeds made by Land Deed Making Officials (PPAT) without carrying out a Certificate Check at the Land Office.

In this case, the PPAT makes an authentic deed by considering other rules that also regulate the legal acts to be carried out. A PPAT in carrying out his duties and authority, especially those related to the procedure for making a deed, sometimes makes mistakes, which mistakes can involve formal or material requirements, for example, mistakes regarding the PPAT's authority to make an authentic deed, which results in the loss of the authenticity of the deed he made, or the evidentiary power of the deed is no longer as complete/perfect evidence, and for the interested parties, but becomes a deed/letter under hand, where the mistake can be done intentionally or unintentionally.

In this case, formal truths also need to be specified, where formal truth (formeel warheid) can be interpreted as truth obtained based on formal evidence submitted to the trial whose truth is only proven based on the evidence submitted. In proving a civil case, what is sought and realized is formal truth (formeel waarheid), meaning truth that is only based on evidence submitted to the court by the parties without having to be accompanied by belief.

Certificate checking in the transfer and assignment of land rights activities is a main element that must be carried out. According to the provisions of Article 39 of Government Regulation Number 24 of 1997 in conjunction with Article 97 of the Regulation of the Minister of State for Agrarian Affairs or the Head of the National Land Agency Number 3 of 1997, PPAT is required to conduct an inspection at the local Land Office regarding the conformity of the data on the land certificate or ownership rights to the apartment units that will be used as

collateral with the land book in the office.¹²The role of analysis and further study of the function of this certificate check as a form of legal protection for legal subjects and a form of legal protection if the check does not comply with procedures.¹³

That the function of checking the certificate aims to provide protection and legal certainty for legal subjects. The existence of rules governing this checking is a form of protection for legal subjects. If the checking is not in accordance with the applicable procedures with existing rules, then it can be categorized as an unlawful act. The provisions of the law on unlawful acts aim to protect and provide compensation to the injured party in terms of binding.¹⁴

Based on the Theory of Legal Certainty, the author argues that certificate checking is carried out to ensure legal certainty regarding the status of land rights to the certificate that the land rights are to be transferred, the Land Office plays a role in checking the certificate to ensure the land rights to be transferred in order to avoid problems that occur in the future. the community can sue the Land Office and the government, if there is an error made by the Land Office in checking the certificate.

Deviation from the material (subjective) requirements causes the deed of sale made by the relevant PPAT to be subject to cancellation by the incompetent party and/or his/her authorized representative, so that one of the parties to the agreement or a third party can file for cancellation of the agreement either before the obligation arising from the agreement is executed or after. Article 1451 and Article 1452 of the Civil Code stipulate that every cancellation has the effect that the property and the people it restores are the same as before the agreement was made. So the agreement that has been made will remain binding on the parties as long as it is not cancelled at the request of the party entitled to request the cancellation.

3.3 Legal Sanctions for Land Deed Making Officials Against Sale and Purchase Deeds made in their presence without carrying out a Certificate Examination at the Land Office

The essence of sanctions as a legal coercion, also to provide awareness to the party who violates it, that an action he has taken has not been in accordance with the applicable legal rules, and to return the person concerned to act in accordance with the applicable legal rules, also to maintain the balance of the

¹²Soerjono Soekanto, 1999, *Several Legal Problems in the Framework of Development in Indonesia (a sociological review)*, fourth edition, Jakarta, University of Indonesia, p. 55

¹³<http://birojasa-bekasi.com/2017/10/06/manfaat-pengecekan-sertifikat-merupakan-lindung-bagi-konsumen-kreditur/> accessed on Friday, January 14, 2024.

¹⁴Ibid. p.56

implementation of a legal rule. Likewise, the sanctions imposed on a PPAT are a form of awareness and as a benchmark of quality, that the PPAT in carrying out his duties, in the event of violating the provisions as stipulated in the laws and regulations, and to return the PPAT's actions in carrying out his duties to be orderly in accordance with the applicable provisions.

So if the legal act is canceled or annulled, then the relevant PPAT deed no longer functions as evidence of the legal act. If the legal act that has been made is canceled by the relevant parties themselves while the PPAT deed has been registered at the Land Office, then the land registration cannot be canceled. However, if there is a change in land registration data according to the cancellation of the legal act, it must be based on other evidence, for example by making a Court decision or PPAT deed regarding the new legal act.

Based on the Theory of Legal Responsibility, Theory of Agreement and Theory of Legal Certainty which are the analysis of this research, the author argues that based on the above explanation owned by PPAT in terms of making authentic deeds, PPAT is required to have a careful, alert or careful attitude in dealing with every case that exists, because a PPAT has professionalism both theoretically and practically. That way if a PPAT makes a mistake in making a deed, and results in the deed being legally flawed, it can be said that there has been an abuse of authority, because the PPAT concerned is aware that as a public official whose duties have been regulated by law. So every PPAT is required to handle a case related to his authority, and cannot be separated from accusations of abuse of authority.

4. Conclusion

Based on the theory of legal protection, the importance of making a deed of sale and purchase by conducting a prior check is a form of legal protection for land buyers. In addition, based on the theory of legal certainty, by making a deed of sale and purchase by a PPAT by conducting a check, it will be a guarantee of legal certainty for both parties so that the land sale and purchase agreement can be implemented. PPAT is an extension of the Land Office in conducting land sales and purchases. Based on the theory of justice, PPAT carries out his duties according to his position and is not biased and helps the community at an affordable cost. The role of checking the certificate as an initial step in preparing the making of a deed by PPAT is very important. Because the certificate checking process is a step to adjust the physical data and legal data on the certificate. The legal consequences of a land sale and purchase deed that does not carry out a certificate check in making a PPAT deed result in legal defects in the formal and material requirements in the authentic deed which results in the deed being null and void.

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