

The Position of the Deed of Sale and Purchase Made by the Land Deed Official for Children Under the Guardianship Based on Court Determination

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Abstract. *The aim of this research is to find out and analyze the position of the PPAT deed for children who are not yet legally competent, who are authorized to the guardian based on a court decision and the legal consequences of the position of the PPAT deed for children who are not yet legally competent, who are authorized to the guardian based on a court decision. The research method used is normative juridical, namely an approach that uses a positivist legislative concept which states that law is identical to written norms, so this research is closely related to libraries because it will require secondary data in libraries. Based on the results of the research and discussion, it was concluded that. The Position of the Sale and Purchase Deed Made by the Land Deed Official (PPAT) for Children Under the Guardian's Care Based on Court Determination. The PPAT Deed serves as a means of proof in the form of an authentic deed, in order to provide guarantees, protection and fair legal certainty as well as equal treatment before the law, regarding certain circumstances, events or legal acts. This is in line with the progressive legal theory put forward by Sajipto Raharjo. Legal consequences of a Sale and Purchase Deed made by a Land Deed Official (PPAT) on children under the guardianship of a guardian based on a court decision. By making an authentic deed as evidence in the legal action, then the parties can be more aware of the consequences of their actions so that the interests concerned receive reasonable legal protection. Legal actions that result in the transfer of rights from one legal subject to another legal subject, thereby causing the loss of authority over the land. In this way, PPAT is in line with the theory of the workings of law put forward by William Chambliss and Robert B Saidman.*

Keywords: *Competent; Court; Land.*

1. Introduction

The Unitary State of the Republic of Indonesia is a legal (constitutional) state that provides guarantees and provides protection for the rights of citizens to obtain, own and enjoy property rights.¹

Buying and selling is a process of transferring rights that has existed since ancient times, and is usually regulated in Customary Law, with the principle of clear and cash. Clear means done before an authorized public official and Cash means paid in cash, so if the price has not been paid in full, then the sale and purchase process in question cannot be carried out.²

Land registration according to Government Regulation Number 24 of 1997 concerning Land Registration, sale and purchase registration can only be done with a PPAT deed as proof. Article 37 states that the transfer of land rights through sale and purchase can only be registered if proven by a deed made by the authorized PPAT according to the provisions of the law.³

In the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that every transfer of land rights through sale and purchase can only be registered if it can be proven by a deed made by the Land Deed Making Officer (PPAT), as well as regulating maintenance. land registration data, in Chapter V. Article 39 (Paragraph 1) "PPAT refuses to make a deed if" (item c) "One or the parties who will carry out a legal action as intended in article 38 does not have the right or fulfill the requirements to act so Registration of rights to this land."⁴

If there is a transfer of rights to land owned by a child whose ownership of the property lies with the child, if a sale and purchase is carried out, PPAT will request a guardianship determination from the Court as a condition and from all the explanations above it is known that evidence is a strong reason for this request.

¹Adrian Sutedi, 2016. Transfer of Land Rights and Registration, Sinar Graphics Jakarta.

²Soedharyo Soimin, 2008, Status of Land Rights and Acquisition, Sinar Graphics, Jakarta.

³Elita Savira, Sihabuddin, Abdul Rachmad Budiono, Determination of Child Guardianship Requested by PPAT as a Requirement for Making a Deed of Sale and Purchase of Land Rights, Postgraduate Notarial Masters Study Program, Faculty of Law, Brawijaya University, Malang.
<https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwirvP3Z7YrAhUT7zgGHVskDE4QFnoECD8QAQ&url=https%3A%2F%2Fmedia.neliti.com%2Fmedia%2Fpublications%2F119942-ID-none.pdf&usg=AOvVaw0jaYYSiAp3bexRsvaMeKBr>

⁴Government Regulation Number: 24 of 1997 concerning Land Registration

This research aims to find out and analyze the position of sale and purchase deeds made by Land Deed Making Officials for children under the guardian's custody based on court decisions, as well as knowing and analyzing the legal consequences of sale and purchase deeds made by Land Deed Making Officials on children under the guardian's care based on decisions. court.

2. Research Methods

The type of research used is normative descriptive. The data source in this research uses secondary data, such as statutory regulations, literature books, research results, or opinions of legal experts that are related to the object of this research. Based on the data obtained for compiling and analyzing the collected data, the method the researcher used was the descriptive analysis method.

3. Results and Discussion

3.1. The Position of the Sale and Purchase Deed Made by the Land Deed Official for Children Under the Guardian's Care Based on Court Determination

Exposure to the case of a child who is not yet legally competent who is authorized by a guardian based on the Determination of the Raha Religious Court Number: 187/Pdt.P/2022/PA Rh.

The Raha Religious Court, which examines and adjudicates certain cases at the first instance, in a panel of judges, has handed down a decision in the guardianship case between Muh. Mustafa bin Abdul Rahman, place and date of birth Larantuka, 09 May 1969, religion Islam, occupation retired ASDP, high school education, residence on ferry port road, Napabalano Village, Napabalano District, Muna Regency, as applicant.

The Religious Court has read and studied the case files, has heard the Petitioner's statement and has examined the Petitioner's evidence.

1. Sitting Problem

Considering that the applicant with his petition letter dated 12 October 2022 which was registered at the Registrar's Office of the Raha Religious Court on 17 October 2022 with case register number 187/Pdt.P/2022/PA.Rh, stated the following matters:

- That Muhammad Farhan Kapitan Bel'a bin Muh. Mustafa and Muhammad Fahri Kapitan Bel'a bin Muh. Mustafa is the biological son of a married couple between Muh. Mustafa bin Adbul Rahman with Andi Ledyanti Herlis binti A.Gani.

- That the children's biological mother died on November 7 2020 based on the excerpt from death certificate number 7403-Km17112020-002 dated November 17 2020.
- That the Petitioner requires a Guardianship Determination over the Petitioner's underage biological children with the late Andi Ledyanti Herlis bint A.Gani to serve as a legal basis for the legal interests of the underage children and to process the sale and purchase deeds of land and buildings.

Based on the reasons/arguments, the Petitioner requests that the chairman of the Raha Religious Court immediately examine and adjudicate this case, then hand down a decision whose ruling reads:

2. Primair:

- Determining the applicant as guardian of the applicant's biological child with the late Andi Ledyanti Herlis bint A Gani named: Muhammad Farhan Kapitan Bel'a bin Muh. Mustafa, born in Makassar 9 June 2003, aged 19 years and Muhammad Fahri Kapitan Bel'a bin Muh. Mustafa, born in Makassar March 25 2006, age 16 years.

That on the appointed hearing day the Petitioner was present in person at the trial.

Whereas to strengthen the arguments of his petition, the Petitioner has submitted documentary evidence and witnesses as follows:

This case began when the property in the form of land was in Muh's name. Mustafa, Muhammad Farhan Kapitan Bel'a, and Muhammad Fahri Kapitan Bel'a, Number: 00903 and Measurement Letter Number: 266/Napabalano/2014, dated March 27 2014, located in Napabalano Village, Napabalano District, Muna Regency will be carried out for administer the Deed of Sale and Purchase of land and buildings.

The purpose of the Petitioner in filing the petition is to request that guardianship be established for the Petitioner's children, namely Muhammad Farhan Kapitan Bel'a, and Muhammad Fahri Kapitan Bel'a because the children are not yet old enough and have never been married.

In the context of this research, to obtain an overview of the status of the Land Deed Official (PPAT) regarding children who are not yet legally competent, who are authorized by guardians based on court decisions. This decision is a decision

in a case regarding the determination of guardianship which has permanent legal force (*inkracht*). The main subject matter of the petition in this case is basically regarding the appointment of a guardian.

Basic considerations for Determination Number: 187/Pdt.P/2022/PA Rh. In the case of an application for a guardianship determination, it can be seen from the legal considerations made by the panel of judges at the Raha Religious Court in the determination. For more details, the author explains it as follows:

- Authority of Religious Courts

Based on the provisions of article 49 paragraph (1) letter a of Law No. 7 of 1989 concerning Religious Courts, as first amended by Law No. 3 of 2006 and second amendment by Law No. 50 of 2009. That the guardianship of children who are not yet adults is part of the field of marriage.

- Guardianship Considerations

The Panel of Judges will consider further as in article 98 paragraph (1) of the Compilation of Islamic Law, the age limit for children who are able to stand alone or adults is 21 years, as long as the child is not physically or mentally disabled or has never been married, based on the laws that exist in society, Islamic legal norms and positive legal norms.

Based on article 47 of Law No. 1 of 1974 in conjunction with article 98 KHI, *mutatis mutandis* the applicant can act as guardian of the child to carry out legal actions both inside and outside the court, also analogous to the provisions of article 164 of the Compilation of Islamic Law, for heirs Those who are not yet adults or are unable to carry out their rights and obligations can be appointed guardians based on the Judge's decision at the suggestion of family members.

The provisions in article 33 paragraph (2) of Law No. 23 of 2002 concerning Child Protection, to become a child's guardian is done through a court order.

From the presentation of the case of the Deed of Sale and Purchase made by the Land Deed Official (PPAT) regarding children under the guardianship of the guardian based on the Raha Religious Court Determination Number: 187/Pdt.P/2022/PA Rh. When linked to the progressive legal theory by Satjipto Raharjo, it is in line with this theory where law is placed on the needs and interests of society, namely returning to the basic philosophy of law itself, namely law for humans or society.

Furthermore, the guardianship determination given by the judge is evidentiary which is used as a basis for becoming the child's guardian, and also the court's determination has inkraacht or permanent legal force.

According to Article 1 letter H of the Compilation of Islamic Law (KHI), guardianship is the authority given to a person to carry out legal acts as a representative for the interests and on behalf of a child who does not have both parents, or whose parents are still alive but are not capable of carrying out the act. law⁵

If there is a transfer of rights to land owned by the child and ownership of the property lies with the child, if a sale and purchase is carried out, PPAT will request a guardianship determination from the Court as a condition. In order to fulfill the provisions of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles. Minors cannot transfer land rights because they are deemed not to have the skills as legal subjects to carry out legal actions.

Therefore, if it is linked to the Land Deed Making Official (PPAT), the deed has binding force based on civil law, it has fulfilled the criteria for making a deed, where the party carrying out the legal action is competent to carry out the legal action with the stipulation, in this case the guardian as a substitute child. This results in the position of the PPAT deed becoming authentic.

Based on the descriptions of the evidentiary strength of a PPAT deed, it can be said that the position of a PPAT deed as perfect evidence, unless it can be proven that the deed is fake or violates the provisions referred to above. Thus, the judge must accept the PPAT deed as perfect evidence in civil procedural law.

Specifically in the context of making authentic deeds, deeds made by PPAT can be categorized into the group of rights to legal certainty and justice. Authentic evidence regarding circumstances, events or legal actions carried out through PPAT as the official in the field of making authentic deeds is really needed.

3.2. Legal Effects of a Sale and Purchase Deed Made by a Land Deed Official for Children Under the Care of a Guardian Based on a Court Determination

In connection with the sale and purchase of land, there are 2 (two) conditions that must be fulfilled regarding the method of making a PPAT deed, namely formal requirements and material requirements. The procedures for making a deed are spread out in various regulations related to PPAT, regarding the form and procedures for making a PPAT deed based on article 24 PP No. 37 of 1998 concerning PPAT position regulations.

⁵Compilation of Islamic Law (KHI), concerning Marriage Law, Book 1, Article 1 letter h.

According to Lili Rasjidi, a right requires the person affected by that right to require the person affected by that right to do something or not do something.⁶

In this case, the transfer of land rights does not only include buying and selling, but can also occur due to gifts, exchanges, gifts by will and other acts intended to transfer land ownership rights.⁷ However, what often happens in society is the transfer of rights through buying and selling. Transfer of land rights is a legal act of transferring land rights which is carried out intentionally so that the rights are separated from the original holder and become another party.⁸

Implementation of guardianship for minors in the implementation of the transfer of land rights due to sale and purchase, it is stated that the transfer of land rights due to sale and purchase to minors, the sale and purchase process requires a trust deed to be drawn up⁹

The legal consequences of a land sale and purchase agreement made before a Land Deed Making Officer (PPAT) are the emergence of obligations and rights between the parties, namely the seller and the buyer as well as the transfer of control of the rights to the land which is the object of the sale and purchase. Land sales and purchases carried out before the Land Deed Making Official (PPAT) are proven by the existence of a sale and purchase deed (AJB), which is one of the authentic deeds.

Subekti said, "in an advanced society, the most appropriate signs or evidence are indeed writing." The PPAT Deed as an authentic deed has 3 (three) evidentiary powers, namely as follows

1. The Power of External Proof

The external ability of a deed is the ability of the deed itself to prove its validity as an authentic deed. If seen from the outside (its birth) as an

⁶ Lili Rasjidi, 1998, Philosophy of Law, Teen Karya, Bandung.

⁷ Ali Ahmad Chomzah, 2002, Land Law, Granting Rights to State Land, Selamat Pustaka, Jakarta.

⁸ Istanti. Akhmad Khisni. 2017. Legal consequences of land sale and purchase deeds made before PPAT that are not in accordance with the procedures for making PPAT deeds. Vol 4 No. 2.

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⁹ Ayu Indirakirana, Komang Febrinayanti Dantes, Muhamad Jodi Setianto. 2022, Implementation of Guardianship for Minors in the Transfer of Land Ownership Rights Due to Buying and Selling in Singaraja City, Yustisia Communication e-Journal, Ganesha Education University. Legal Studies Program, Vol. 5, no. 2.

<https://www.google.com/url?sa=t&rct=j&q=&escr=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj00r AtID AhVl6jgGHRw-DZsQFnoECDAQAQ&url=https%3A%2F%2Fjournal.undiksha.ac.id%2Findex.php%2Fjatayu%2Farticle%2Fdownload%2F51635%2F22801&usg=AOvVaw1bffhwEblFEGvKbLj6J7LO>

authentic deed and in accordance with the legal rules that have been determined regarding the requirements for an authentic deed, then the deed is valid as an authentic deed, until proven otherwise, meaning until someone proves that the deed is not an authentic deed in appearance. In this case, the burden of proof is on the party who denies the authenticity of the deed.

2. Formal Proof of Power

The deed must provide certainty that an event and fact exists. Formally, to prove the truth and certainty regarding the day, date, month, year, time of appearance, and the parties appearing, the initials and signatures of the parties/appearances, witnesses and PPAT, as well as proving what was seen, witnessed, heard by PPAT.

3. Strength of Material Proof

Certainty regarding the material of a deed is very important, that what is stated in the deed is valid evidence for the parties who made the deed or those who received rights and is valid for the public, unless there is proof to the contrary (tegenbewijs). In this way, the contents of the PPAT deed have the certainty of being true, being valid evidence for/between the parties and their heirs and recipients of their rights.

The third strength of an authentic deed made before or by the PPAT is the perfection of the position of a PPAT deed as evidence in evidentiary law, especially in civil procedural law and has binding force for the parties involved in the deed.

The mechanism for making a land purchase deed, the process of transferring land rights due to sale and purchase in the event that one of the sellers is still a minor is as follows:

1. PPAT cover letter for register the transfer of rights.
2. Application letter signed by the prospective recipient of the rights with a stamp.
3. Power of attorney if authorized.
4. A statement from the prospective recipient of the rights that the prospective owner has not violated the boundaries ownership of agricultural land if the object is agricultural land.

5. Guardianship letter and statement of permission to sell or court order of guardianship and permission to sell.
6. Legalized photocopy of the buyer's seller's identity card.
7. Legalized photocopy of the buyer's seller's family card.
8. Photocopy of legalized birth certificate.
9. Photocopy of legalized tax notification letter for land and building tax payable.
10. Photocopy of local tax payment letter for land and building rights processing fees (SSPD- BPHTB) buyer's tax.
11. Photocopy of tax payment (SSP) and photocopy of proof payment.
12. A statement letter of readiness to pay the tax shortfall if there is a shortfall in payment from buyer and stamped.
13. Second sheet of sale and purchase deed.
14. Original certificate.
15. ZNT Application.¹⁰

Legal acts must be made with an authentic deed, because these acts are very important for the person concerned and this also concerns the interests of other parties, and by making an authentic deed as evidence in the legal act, the parties can be more aware of the consequences of their actions. so that the interests concerned receive reasonable legal protection, because the PPAT deed is an authentic deed, namely a deed that can be used as strong evidence (perfect evidence) that certain legal acts actually occurred.

Apart from that, PPAT in carrying out its duties is linked to the theory of the working of law, PPAT is a factor that influences the working of law in society, it can be seen from the role of PPAT as an intermediary for the entry of law into a society. This is in line with the opinion of William Chambliss and Robert B Saidman. The working of law in society is influenced by social forces, law-making

¹⁰Anjar Restu Ashari Amin Purnawan, 2017, Mechanism for Transferring Land Rights Due to Buying and Selling in the Case One of the Sellers is Underage and Registration is at the Tegal City Land Office, Vol. 4, no. 1.

<http://jurnal.unissula.ac.id/index.php/akta/article/view/1529/1181>

institutions and law implementing institutions. Docmatically, the workings of law are connected with issues of legal application, legal interpretation, legal construction and so on. From a sociological perspective, the operation of law is seen from the role of humans as intermediaries in entering a society.

Apart from that, Eddy Os Hiariej also mentioned that legal protection can be seen in abstracto and in concreto. Protection in abstracto means that the substance of a legal rule must provide protection, while legal protection in concreto means that law enforcement practices must provide protection.¹¹

4. Conclusion

The conclusion based on the results of the research and analysis of the discussion above can be concluded that the position of the sale and purchase deed made by the Land Deed Making Officer (PPAT) for children under the guardian's care is based on a court decision. The PPAT Deed serves as a means of proof in the form of an authentic deed, in order to provide guarantees, protection and fair legal certainty as well as equal treatment before the law. certain events or legal acts. This is in line with the progressive legal theory put forward by Sajipto Raharjo. The legal consequences of the Deed of sale and purchase made by the Land Deed Making Officer (PPAT) for children under the guardianship of the guardian based on the Court's decision, Making an authentic deed as evidence in the legal action is very important for the person concerned and this also concerns the interests of other parties. which can be used as proof that its value is perfect and binding (volledig en bindende bewijskracht). That certain legal acts actually occurred which resulted in the transfer of land rights. Legal actions that result in the transfer of rights from one legal subject to another legal subject, thereby causing the loss of authority over the land. The object of the sale and purchase here is the land rights to be sold with the aim of purchasing the land rights so that the buyer can legally control and use the land. What is being bought (sold) is not the land, but the land rights.

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