



PPAT'S responsibility for deeds of sale and purchase made in his presence (Study of PPAT in Kupang City)

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ABSTRACT

This research aims to describe the process of the birth of a sale-purchase deed, and find out how the responsibility of a Land Deed Official (PPAT). The research method used in this research is empirical normative research, with primary and secondary data types. The results show that the responsibility of PPAT in making land sale and purchase deeds regarding the form and procedure for making PPAT deeds is not only regulated in Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning PJPAT Articles 21-24 but also in Government Regulation No. 24 of 1997 concerning Land Registration which regulates this matter is confirmed in Article 38 paragraph (2) which determines "The form, content and method of making PPAT deeds are regulated by the Minister" (Minister of State Secretary). Before making a deed of sale and purchase of land rights, PPAT must first conduct an inspection at the local Land Office to find out the suitability of the certificate of land rights concerned with the existing registers at the Land Office by showing the original certificate to the Land Office officer. This examination needs to be done in order to avoid buying and selling land against fake certificates or double certificates or original but fake certificates (Asphalt). This is to avoid fraud in land transactions where it turns out that what is sold does not belong to the rightful seller.

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1. Introduction

One form of providing certainty, order, and legal protection is the existence of written evidence, in this case called an authentic deed made by or before the relevant authorised official. In everyday life, consciously or unconsciously, we are all familiar with what is called a deed, such as a marriage certificate, birth certificate, notary deed, and so on, even though we do not definitely know the definition and understanding of the deed. In general, every person who runs a business and or is engaged in the economic field or establishes legal relations with other people must have received or made a deed (Malik, 2010).

The making of these deeds is usually intended from the beginning as a means of proof or as evidence of the existence of a legal relationship between one person and another. By holding a deed as evidence, a person will be able to easily prove the existence of the legal relationship if at some time there is a party who breaks the promise or in legal language is called default on the contents of the previously agreed agreement (Iqlima, 2016). In addition, the deed can also be used as a basis by someone to request (demand) the other party to carry out the legal obligations contained in the deed. Deed is basically a pouring of will or legal facts that can be used as evidence that with the deed there has been a legal action, such as a deed of sale and purchase agreement, deed of lease, marriage, and so on, or as evidence of legal events, such as birth certificates, and so on (Muhammad, 2011). The authenticity of a deed is determined by the law which gives authenticity to deeds made by or made before certain officials (Ramadhan & Permadi, 2019). The law provides such authenticity because the deed-making official is given trust based on the law and is appointed by the supreme authority of the state by taking an oath before him before carrying out the office.

In appointing these public officials, the state chooses among people who are honest, trustworthy, have knowledge and expertise in the field of their duties, so that they deserve to be given this enormous trust (Kamaluddin & Patta Rapanna, 2017). It should be noted that what is even more important is that these officials must have integrity, so that they can maintain the dignity of their position while being trusted by the state to become public officials (Putri, 2016). (Putri, 2016). Not enough with the above requirements, the state determines that the deeds made by these officials must be in the form according to the laws that regulate them, and the deed is made by the official in the place where he has the authority to do so. If a deed has fulfilled the requirements of authenticity as determined by law, then the deed has perfect evidentiary power. (Hendra, 2012). Judges and other officials to whom an authentic deed is submitted are obliged to recognise the truth of the deed, until proven otherwise. Parties who deny the truth of an authentic deed must be able to prove its untruth, while the party who has an authentic deed does not need to prove the untruth contained in the deed owned.

Deeds can also be used as strong evidence before the court if there is a dispute born in relation to the deed, even juridically deeds have stronger legal strength than other written evidence, as long as the deed is made by an official who has the authority to issue the deed. (Loke, 2022). A Land Deed Official (hereinafter referred to as PPAT) is a public official who is authorised to make authentic deeds regarding certain legal acts concerning land rights or ownership rights over apartment units (Article 1 paragraph (1) of Government Regulation number 24 of 2016 concerning Amendments to Government Regulation number 37 of 1998 concerning Regulations on the Position of Land Deed Officials). A PPAT is appointed by the Head of the National Land Agency of the Republic of Indonesia, based on several requirements in accordance with Article 6 of Government Regulation No. 37 of 1998 on the Regulation of the Position of a Land Deed Official. PPAT is a Public Official who is authorised to make Authentic Deeds regarding certain legal acts concerning land rights or Property Rights of Residential Units. According to A.P Parlindungan, PPAT is a public official appointed by the government but not paid by the government and has general powers, meaning that the deeds issued are authentic deeds (Parlindungan, 1989). PPAT itself is divided into three, namely General PPAT, Special PPAT, and Temporary PPAT. Special PPAT is a PPAT who is appointed because the PPAT concerned is in a government programme or working on government duties. Temporary PPAT is a PPAT who carries out the task of making PPAT in areas where there are not enough PPATs.

In accordance with the provisions of land legislation, as stipulated in this provision, it is described in detail in articles 2 - 6 of KBPN regulation No. 1 of 2006 which is an elaboration of PP No. 37 of 1998 and a follow-up to the provisions stipulated in PP No. 24 of 1997, Minister of Religious Affairs / KBPN No. 3 of 1997, explains the main tasks and authorities of PPAT, namely, carrying out part of the land registration activities with the task of making authentic deeds as evidence that certain legal acts have been carried out regarding land rights or property rights over apartment units which will be used as the basis for land registration caused by existing legal acts, such as sale and purchase, exchange, grants, division of joint rights, granting

building use rights or use rights on land ownership rights, granting mortgages and also granting powers to charge mortgages in their working areas determined by the government (*absolute* competence), namely districts or cities in the same area as the working area of the Land Office. In accordance with Government Regulation No. 24/1997 on Land Registration, the sale and purchase must also be conducted by the parties before a PPAT who is in charge of making deeds. By conducting the sale and purchase before a PPAT, the requirement of clarity is fulfilled (it is not a dark legal act, which is carried out secretly).

If the deed of sale and purchase in question is felt by the parties not to achieve their desired objectives or must be changed according to the circumstances, then the parties jointly and unanimously come before the PPAT to cancel the contents of the deed in question. (Melati, 2016). In a correct legal setting regarding the sale-purchase deed and PPAT, if a sale-purchase deed is disputed by the parties, then the parties come back to the PPAT to make a deed of cancellation of the deed, and thus the cancelled deed is no longer binding on the parties, and the parties bear all the consequences of the cancellation. If the parties do not agree for the deed to be cancelled or they have a dispute, one party can sue the other party, to the general court to cancel the contents of the deed so that it is no longer binding.

2. Method

The specification of this research is Normative empirical research, which is research conducted by collecting data obtained in the field and supported by data obtained from references or books related to the issues to be raised in the research (Priadana & Sunarsi, 2021). The types and sources of data used are primary data and secondary data. The sample in this research is the Head of the Land Rights & Land Registration Section at the Kupang City BPN office & the Land Deed Official Dr Christophorus Banunaek, S.H., M.Kn., M.H.

3. Analysis and Results

3.1. The Birth Process of Deed of Sale and Purchase

The procedure for the sale and purchase of registered (certificated) land begins with the parties, both seller and buyer, appearing before the Land Deed Official and stating their intention to conduct a sale and purchase of land. The Land Deed Official must carefully ensure that:

- a. The seller is the person who has the right to the land he is selling. In this case, of course, he is the legal holder of the land rights, called the owner (Saranaung, 2017).
- b. In the event that the seller is married and there is a property partnership, the husband and wife must be present and act as the seller; if the husband or wife cannot be present, then a written and valid proof must be made stating that the husband or wife agrees to the sale of the land. In the event that the seller is under guardianship or conservatorship, the guardian or conservator shall act as the seller.
- c. If the sale and purchase uses a power of sale, then the Land Deed Official must ensure that the person appearing before him is indeed the seller's power of attorney and is authorised to perform all the performance and receive all the counterparts in the sale and purchase of the land.
- d. The purchaser is the person entitled to have rights over the land he buys. This depends on the legal subject and the legal object. The legal subject is the legal status of the person who will buy it, while the legal object is what rights exist on the land. For example, according to the Basic Agrarian Law, only Indonesian citizens and legal entities determined by the government can have property rights over land.
- e. Land that is the object of sale and purchase is land that can be traded or is not in dispute. (Rondonuwu, 2017). The types of land rights that can be traded are land ownership rights, business use rights, building rights and use rights.

The Land Deed Official as notary then put the date and a statement at the bottom of the letter which reads: "*I, the undersigned,, Notary at declare that the contents of this letter have been read and explained to, whom I, the Notary, know/introduced to me, the Notary*

and thereafter the said affixed his/her signature on this letter in the presence of me, the Notary."

The difference between a handwritten letter that is legalised by an authorised official and a handwritten letter that is not legalised is that a legalised handwritten letter has a fixed date, the signature affixed under the letter is genuine and was affixed by the person whose name appears on the letter. The signatory cannot say that he did not know what the letter contained, because the contents were read to him before he put his signature in the presence of the public official. Next, the Land Deed Official checks the certificate at the local Land Office to ensure that it is free of encumbrances, not in dispute and not liable for any debt.

If after checking the certificate it is found to be "clean", a deed of sale is drawn up. The deed is made in the presence of the parties to the legal action concerned and witnessed by at least 2 (two) witnesses who are qualified to act as witnesses in the legal action. Before making the Sale and Purchase Deed, the Land Deed Official will ensure that the seller has paid the taxes charged to the seller including the current year's Land and Building Tax and the buyer has paid the taxes charged to the buyer (Hutama & Priyono, 2023). Overall, the sale and purchase deed contains information about: The parties are the Seller, the Buyer and the witnesses; Information that they have made a trade; Information about the object of sale and purchase, namely the status of the land, its size, location, boundaries and the accompanying land; The purchase price and a description of the receipt of the money by the Seller; The conditions of the sale and purchase are set out in the articles of the deed of sale and purchase.

3.2. Responsibilities of the Land Deed Official (PPAT)

A PPAT in carrying out the duties and authority of his position, especially in relation to the procedure for making a PPAT deed, sometimes makes mistakes, and these mistakes can involve formal and material requirements, for example: errors regarding the PPAT's disqualification in making authentic deeds, which results in the loss of the authenticity of the deed he made, or the evidentiary power of the deed is no longer a complete / perfect evidence, between and for interested parties, but becomes a deed / letter under the hand, where the error can be done intentionally or unintentionally (Wibawa, 2019).

The responsibility asked of PPAT is not only in the narrow sense of making a deed, but the responsibility is in a broad sense, namely responsibility during the deed phase and responsibility after signing the deed. The professional responsibility of PPAT can be categorised into 2 (two) things, namely ethical responsibility and legal responsibility. These legal responsibilities can also be divided into 3 (three) types, namely responsibilities based on administrative law, civil law and criminal law (Rahadjie & Buana, 2022)..

Human action is said to be an offence because the rule of law imposes a sanction as a consequence of the action. An offence is a condition in which sanctions are imposed based on existing legal norms. Thus, it is a criminal offence if it has criminal sanctions, and it is a civil offence if it has a civil sanction as a consequence (Kelsen, 2012). Every rule of law that applies in Indonesia has sanctions at the end of the rule of law. In civil law, sanctions are punitive measures to force people to fulfil agreements or comply with statutory provisions. The inclusion of sanctions in various legal rules is like an obligation that must be included in each legal rule. So the conclusion is that the enforcement of a legal principle can be enforced if there are accompanying sanctions, and the enforcement of the legal principle in question is carried out procedurally (procedural law). Sanctions are usually placed at the end of each regulation which in Latin can be called *in cauda venenum*, meaning that at the end of a legal rule there are sanctions. (Widjaja, 1999)

A PPAT deed is a tool to prove and show that a legal action has been carried out before a PPAT, so that if the legal action is cancelled or cancelled, the legal action is cancelled. (Wardhani, 2017) If the legal act is cancelled, then the relevant PPAT deed no longer functions as evidence of the legal act. If the legal act that has been made is cancelled by the parties concerned while the PPAT deed has been registered at the BPN Office, the land registration cannot be cancelled. (AGUSTIN, 2020). But 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 a new legal act. In the laws and regulations related to PPATs, it is regulated that when a PPAT in carrying out his duties and positions is proven to have committed an offence, the PPAT can be subject to or sanctioned in the form of administrative sanctions, but does not regulate the existence of civil and criminal sanctions against PPATs, so if there is a violation that meets the civil and criminal offences against the PPAT, it can be subject to civil sanctions contained in the Civil Code and criminal sanctions contained in the Criminal Code.

There are PPAT responsibilities regarding deeds that contain legal defects, which can be explained as follows:

a. Administrative responsibility

Mistakes or errors in administrative matters or commonly referred to as maladministration committed by PPAT in carrying out some land registration activities will certainly have legal consequences, namely PPAT can be held accountable. PPAT must be responsible for the making of the deed of sale and purchase of land that contains legal defects, because it is categorised as an act of abuse of authority, considering that the authority available to him based on Article 2 of PJPPAT has been misused, so that the use of authority is ultimately not in accordance with the purpose of granting authority itself, in this case it appears that there has been an abuse of authority by PPAT because it does not exercise authority as it should.

Based on the responsibility held by the PPAT in terms of making authentic deeds, the PPAT is required to take a careful or careful attitude in dealing with each case, because a PPAT has theoretical and practical professionalism. Therefore, if a PPAT makes a mistake in making a deed, and as a result the deed is legally defective, it can be said that there has been an abuse of authority, because the PPAT concerned realises that as a public official whose duties are regulated by law, every PPAT is required to handle a case related to his authority, and cannot be released from accusations of abuse of authority. The situation of abuse of authority will become clearer if there is an element of harm suffered by one or the parties that appears when the PPAT's deed is cancelled as the final consequence of a deed that has a legal defect.

This administrative responsibility of PPAT includes the responsibility of taxation, which is an additional authority of PPAT given by the tax law. In this regard, PPATs may be subject to administrative sanctions in the form of fines for violations of Article 91 paragraph (1) of Law No. 28/2009 on Regional Taxes and Levies, which explicitly states: "The Land Deed Official/Notary can only sign the deed of transfer of Land and/or Building Rights after the taxpayer submits proof of tax payment". As a result of these actions, the PPAT may be subject to sanctions as stipulated in Article 93, namely:

"Land Deed Officials/Notary and the head of the office in charge of state auction services, who violate the provisions referred to in Article 91 paragraph (1) and paragraph (2) shall be subject to administrative sanctions in the form of a fine of Rp.7,500,000.00 (seven million five hundred thousand rupiah) for each violation."

So, the sanctions that can threaten PPATs who make deeds that are not in accordance with the formal and material requirements of the procedure for making PPAT deeds are the sanctions of dishonourable dismissal from office and the imposition of administrative fines.

b. Civil liability

After administrative liability, there is also civil liability in this case PPAT related to negligence, negligence and / or intent in making a deed of sale and purchase that is not in accordance with the formal requirements and material requirements of PPAT deed making procedures, the consequences can not only be subject to administrative sanctions but also do not rule out the possibility of being sued for compensation by the parties who feel harmed.

In relation to the error (*beroepsfout*) of the PPAT, it must be examined regarding the form of the error, namely whether the error is a default or an unlawful act (*onrechtmatige daad*). The commonly held opinion is that default occurs if it is preceded by an agreement, while if there is no connection with the agreement, the form of violation is called an

unlawful act or *onrechtmatige daad*. In determining whether an act can be categorised as unlawful, four conditions are required: a) Contrary to the legal obligations of the perpetrator; b) Contrary to the subjective rights of others; c) Contrary to decency; and d) Contrary to propriety, accuracy and prudence.

The existence of an unlawful act does not require the existence of the four criteria cumulatively, but the fulfilment of one of the criteria alternatively is sufficient to fulfil the requirements for an unlawful act. Civil sanctions are imposed on PPAT for unlawful acts (*onrechtmatige daad*), namely actions that cause harm, and normatively these actions are subject to the provisions of Article 1365 of the Civil Code, which reads "Every unlawful act, which brings harm to another, obliges the person who through his fault causes the loss, to compensate for the loss".

In relation to the making of PPAT deeds that are legally flawed, what is often found is that the PPAT concerned pays little attention to and consistently applies the existing rules and conversely it is very rare to find an element of intent to harm the parties or third parties. Referring to the description of the previous sub-chapter, the researcher argues that there are practices that are generally often carried out by PPATs due to various factors, such as time and busyness for reasons of time efficiency, close relationships and very high mutual trust between fellow PPATs and between the parties and PPATs, as well as because of a situation that requires PPATs to make sale and purchase deeds that are not in accordance with the procedures for making PPAT deeds.

Of all these factors, sometimes it is unconscious and unintentional and even if there is a conscious and intentional by the PPAT itself or the parties, the element of intent to give an adverse effect to one of the confrontants or the confrontants is very small or rarely found. On the other hand, even if no element of intent is found, this means that there is a lack of care due to inattention or inaccuracy or negligence of the PPAT concerned, and it is also very rare to find a detrimental element from such negligence. (Rizky Bukit, Personal interview at the Office of Notary & PPAT Dr. Christophorus Banunaek, SH, M.Kn, MH Friday 8 January, 2021).

However, if in the implementation of the duties and position of a PPAT related to the obligation of a PPAT to realise an authentic deed with perfect evidentiary power, it contains a legal defect, which is then declared not authentic by a court decision because the formal and material requirements of the procedure for making a PPAT deed are not fulfilled, so that it becomes an underhand deed or even declared void, or becomes null and void, and results in a loss, then the incident becomes contrary to the legal obligations for the PPAT, and the PPAT is responsible for the loss. (Rizky Bukit, Personal interview at the Office of Notary & PPAT Dr. Christophorus Banunaek, SH, M.Kn, MH Friday 8 January, 2021).

3. Criminal liability

The imposition of criminal sanctions against PPAT can be carried out as long as a PPAT has made a false letter or falsified a deed with qualifications as a criminal offence. The material and formal requirements of the procedure for making a PPAT deed are formal aspects that must be passed in making a land sale and purchase deed related to the duties of the PPAT office. Researchers argue that deviations from the material and formal requirements of the PPAT deed-making procedure must be seen based on the limitations of these formal aspects which have been determined by laws and regulations related to the PPAT. This means that if a PPAT violates the formal aspects, the sanctions that can be imposed are civil sanctions and administrative sanctions depending on the type of violation or sanctions of the IPPAT code of ethics, so that the qualification of violations of these formal aspects as a criminal offence is an act without legal basis that cannot be accounted for.

The formal aspects of a PPAT deed can be used as a basis or limitation to criminalise a PPAT, if: These formal aspects are proven to be intentional (with full awareness and consciousness and planned by the PPAT concerned) that the deed he made was used as an instrument to commit a criminal offence; PPAT consciously and deliberately to jointly with the parties concerned to perform a legal act which he knows to be unlawful.

The imposition of criminal sanctions against PPAT can be carried out as long as the restrictions as mentioned are violated, meaning that in addition to fulfilling the formulation of violations mentioned in the legislation related to PPAT, the IPPAT Code of Ethics must also meet the formulation mentioned in the Criminal Code (KUHP). The criminal cases related to the formal aspects of Notary/PPAT deeds in making authentic deeds are as follows (adjie, 2009): Making false/falsified documents and using false/falsified documents (Article 263 paragraph (1) and (2) of the Criminal Code); Committing forgery of an authentic deed (Article 264 of the Criminal Code); Ordering false information to be included in an authentic deed (Article 266 of the Indonesian Criminal Code); Committing, ordering to commit, participating in committing (Article 55 Jo. Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code); Assisting in the production of forged and/or falsified documents and using forged/falsified documents (Article 56 paragraph (1) and (2) Jo. Article 263 paragraphs (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code).

4. Conclusion

Based on the description of the discussion above, it can be concluded that; the responsibility of PPAT in making land sale and purchase deeds regarding the form and procedure for making PPAT deeds is not only regulated in Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning PJPPAT Articles 21-24 but also in Government Regulation No. 24 of 1997 concerning Land Registration which regulates this matter is confirmed in Article 38 paragraph (2) which determines "The form, content and method of making PPAT deeds are regulated by the Minister" (Minister of State Secretary).

The regulations in question are PMNA/Ka BPN No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration, which is regulated in Articles 95-102, Articles 51-55 Perka BPN No. 1 of 2006 concerning Provisions for the Implementation of Government Regulation No. 37 of 1998 concerning PJPPAT, and regulations relating to taxation. Before making a deed of sale and purchase of land rights, PPAT must first conduct an inspection at the local Land Office to find out the suitability of the certificate of land rights concerned with the existing registers at the Land Office by showing the original certificate to the Land Office officer. This examination needs to be done in order to avoid buying and selling land against fake certificates or double certificates or original but fake certificates (Asphalt). This is to avoid fraud in land transactions where it turns out that what is sold does not belong to the rightful seller. The legal consequences of a land sale and purchase deed that is not in accordance with the procedure for making a PPAT deed which results in legal defects can be found due to the existence of:

Deviations from the formal requirements based on the requirements for the fulfilment of an authentic deed stipulated in Article 1868 of the Civil Code are associated with the provisions of Articles 95-102 of the Regulation of the Minister of Agrarian Affairs/Head of the BPN No. 3 of 1997 concerning Provisions for the Implementation of Government Regulation No. 24 of 1997 concerning Land Registration, then if the formal provisions are violated, it will cause the degradation of the perfect evidentiary power of the sale and purchase deed to the evidentiary power of an underhand deed if based on a court decision states that one or more violations have been committed.

Deviations from the Material Requirements, which are based on the terms of the agreement stipulated in Article 1320 of the Civil Code, are associated with the provisions of Article 39 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, then the material requirements of the procedure for making a PPAT deed must fulfil the subjective requirements (the subject of the right or the parties facing or comparing) and the objective requirements (the object of the transferred right) in making a PPAT deed. If the subjective and objective conditions are violated, the PPAT deed can be requested for cancellation and/or declared null and void.

Administrative Sanctions, where the PPAT concerned may be subject to sanctions of dishonourable dismissal from his position and the imposition of administrative fines for violating prohibitions or neglecting his obligations. Civil Sanctions: If a PPAT deed that is relegated to an underhand deed, or declared null and/or void by law based on a Court Decision that has permanent legal force is categorised as an unlawful act that causes a loss to the parties, the PPAT can be held liable in the form of reimbursement of costs, compensation and interest.

Criminal Sanctions, where as long as the actions of the relevant PPAT are proven to have been deliberately and premeditated either alone or jointly with one or the parties to make the deed made as a means of committing a criminal offence, the relevant PPAT can be subject to criminal sanctions in accordance with applicable regulations.

Normatively or clearly, Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials along with other laws and regulations related to PPATs have not explicitly regulated legal protection for PPATs in carrying out their official duties related to special procedures for law enforcement against PPATs.

Implicitly, the position of PPAT has a privilege in the form of the Obligation of Ingkar (*Verschoningsplicht*) and the Right of Ingkar (*Verschoningrecht*) which is recognised as a legal immunity for the obligation to provide information as a witness at the level of investigation, prosecution and trial of both civil and criminal cases for certain positions, one of which is the Position of PPAT, the privilege is materially based on Article 17 paragraph (2) of PP No. 37 of 1998 concerning the Regulation on the Position of Land Deed Official. 37 of 1998 on the Regulation of the Position of Land Deed Official in conjunction with Article 34 paragraph (1) of BPN Head Regulation No. 1 of 2006 on Provisions for the Implementation of PP No. 37 of 1998; Article 322 paragraph (1) of the Criminal Code; and Article 1909 paragraph (3) of the Civil Code. While formally based on Article 170 of KUHAP for criminal proceedings; and Article 277 paragraph (1) HIR Jo. 146 paragraph (1) number 3 HIR for civil proceedings.

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