

Legal Protection of PPAT Deed After the Regional Expansion

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Abstract. *This research is entitled "Legal Protection of PPAT Deeds after the Expansion of Konawe and South Konawe Regencies based on Government Regulation Number 37 of 1998 concerning the Position Regulations for Land Deed Making Officials". This research uses empirical juridical research method. Departing from a legal problem that occurred in the jurisdiction of the South Konawe Court, where the problem occurred due to the PPAT deed made by PPAT which was not PPAT Konawe Selatan Regency. In the provisions of government regulation number 37 of 1998 concerning Officials for Making Land Deeds Act 12 Paragraph (1).*

Keywords: Legal Protection; PPAT; Expansion.

1. Introduction

In the State of the Republic of Indonesia there are State Officials who are given special authority by law to make authentic deeds, namely Notaries and Land Deed Making Officials (PPAT). According to the law, the function of deeds made by PPAT is as evidence that a legal act has been committed and serves as a strong basis for registering the transfer of rights and assigning the rights concerned.¹Based on Act 3 paragraph (1) Government Regulation Number 37 of 1998 regarding land deed maker officials, it is clear that the PPAT deed is an authentic deed regarding land rights and ownership rights to apartment units located within their working area. The authentic deed is a deed which, in the form prescribed by law, is drawn up by or in front of public officials who are competent for it at the place where the deed was made.²

Based on the Civil Code (BW), authentic deeds are regulated in Act 1868, in that Act there are 3 (three) elements of authentic deeds, namely: first, in the form determined by law (*welke in de wettelijke vorm is verleden*); second, made by or in front of public officials who are in power for that purpose (*door of ten overstaan van openbare ambtenaren*); and third, in the place where the deed was made (*daartoe bevoegd*). So

¹ Salim HS, op, cit., P. 75

² Act 1868 of the Civil Code

it can be concluded that the authentic deed is determined by law and not by the regulations under it, and is made or in the presence of public employees (*openbare ambtenaren*)³.

In other regulations there are elements of the PPAT deed, namely as follows the first element, the PPAT Deed is not determined by law, the intention is to regulate the form, content, and procedure for making the PPAT Deed determined in the form of a Regulation of the Minister of State for Agrarian Affairs as stipulated in contained in Act 38 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration. Then Act 21 paragraph (1) Government Regulation Number 37 of 1998 concerning the Position Regulation of Land Deed Making Officials states that the PPAT Deed is made in the form stipulated by the State Minister for Agrarian Affairs, Regulation of the Minister of Agrarian Affairs Number 11 of 1961 concerning Form of Deed, Regulation of the State Minister for Agrarian Affairs/Head of Agency National Land Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration; Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration; Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Implementing Provisions for Government Regulation Number 37 of 1998 concerning Regulation of Officials for Making Land Deeds, Regulation of the Head of the National Land Agency Number 23 of 2009 concerning Amendments to the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Implementation Provisions Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials.⁴

The second element is made by or in the presence of public officials in power for this (*door of ten overstaan van openbare ambtenaren*). The public employees in question are public officials who have the authority to make these deeds, namely PPAT who have the authority to make deeds for certain legal actions such as the Sale and Purchase Deed, the Deed of Exchange, the Deed of Grant, the Deed of Entry into the Company (*inbreng*), the Deed of Sharing of Rights , Deed of Granting Right to Use Building/Right to Use Right of Ownership Land, Deed of Granting Mortgage Rights and Power of Attorney to Impose Mortgage Rights⁵All of the deeds are deeds which are *partij acte* (deed of the parties). In which the *Partij acte* is a deed drawn up in the presence of an authorized official, whereby the official also explains what he has seen and done.

³ Sudikno Mertokusumo, 2009. *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta, p. 155

⁴ Circular of the Head of the Land Agency Number 640-1884 dated July 31, 2003.

⁵ Act 2 paragraph (2) Government Regulation Number 37 Year 1998 concerning Land Deed Making Officials Regulations.

Based on studies conducted by legal experts in this country, there are differing views on the elements of an authentic deed and the proof of an authentic deed. Among the differences in opinion from these experts were Boedi Harsono, who stated that the PPAT deed was based on law as stated in Act 19 paragraph (1) of the UUPA. Furthermore, PPAT as a general official has the authority to make deeds of transfer of land rights, deeds of assignment of land rights and deeds of authorization to impose rights to land, each of which is determined by the State Minister for Agrarian Affairs/Head of the National Land Agency. In this connection it is emphasized in the General Explanation number 7 of Law Number 4 of 1996 concerning Mortgage Rights to Land and Land-Related Objects (UUHT), that the deeds made by PPAT are authentic deeds. By declaring the PPAT in the UUHT as a public official, doubts about the naming, legal status, duties and authority of the PPAT are ended.⁶

AP Parlindungan said that PPAT was a public official, consequently the deeds he made were authentic deeds. What is meant by authentic, if there is a problem with the PPAT deed, the court does not need to check the correctness of the contents of the deed, nor the date it was signed and thus the validity of the parties' signatures, provided that there is no evidence of forgery, fraud or other things. The possibility that the land deed will be declared null and void or must be declared null and void.⁷

To guarantee the PPAT deed, the government, in this case the National Land Agency, issued regulations regarding the making of PPAT deeds as authentic deeds determined by the Regulation of the State Minister of Agrarian Affairs Number 11 of 1961 concerning Form of Deeds; Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration; Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.

From the basis of the 4 (four) elements of assessment of a region being able to become a new autonomous region, many regions decide to develop their parent regions, to manage their own regional affairs in terms of fulfilling the welfare of the community. It is no different from the thoughts of the community and traditional leaders as well as the political elites in the southern Konawe Regency who wish to separate themselves from the main district, namely Konawe district to take care of their own areas and the welfare of the people in the southern Konawe district.

So the government of the Republic of Indonesia, both in the Indonesian Parliament and related ministries, responded well to the desire of the people of Konawe Selatan

⁶ Boedi Harsono, 2008. *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta, p. 432.

⁷ AP. Parlindungan, 1999. *Pendaftaran Tanah di Indonesia*, Mandar Maju, Bandung, p. 175.

district to separate from its parent region, namely Konawe Regency to form a new autonomous region, so Law Number 04 of 2003 concerning the formation of Konawe Selatan district in the Province was issued. Southeast Sulawesi.⁸

With the formation of a new autonomous region, namely Konawe Selatan District, the division of Konawe Regency has implications for the authority of PPAT in terms of making deeds, with the division of this area, the PPAT's authority in making deeds becomes the authority of PPAT which is in the area of South Konawe Regency not again under the authority of PPAT which is in Konawe Regency. In accordance with the mandate stated in Act 12 of Government Regulation Number 37 of 1998 regarding Land Deed Making Officials, that the working area of a PPAT is one Regency/City. From this, it is necessary to pay attention to the legal protection of the deeds made by the PPAT of Konawe Regency after the division of the area into Konawe Selatan Regency.

After the division of the Konawe Selatan district from its parent district, namely Konawe Regency, there were many problems, especially regarding problems in terms of land problems, both the community and the community and the community and the government. The root of the problems that arise is the basis for ownership of the land. As it is known, the basis of land ownership is from processing, grants, inheritance and buying and selling. Regarding the sale and purchase of land, the PPAT has the authority to make a letter/deed of transfer. However, even though it is made by an authorized official, it does not mean that there are no problems after its creation, both the working area, competence and validity of the PPAT deed. As happened in the jurisdiction of the Andoolo District Court, which is a District Court in South Konawe Regency. There was a problem that essentially occurred a land problem between the plaintiff's heir from H. PUJI and the defendant H. YAHYA where the plaintiff questioned the sale and purchase deed made by the Notaries who were in Kendari City but the object was located in the Konawe Regency area now the South Konawe Regency after expansion. The case was tried at the Andoolo District Court registered with Case Number: 16/Pdt.G/2018/PN.AdI.

2. Research Methods

This research is a juridical-empirical approach. The juridical approach was used to analyze various laws and regulations related to the protection of the PPAT Deed Law after the division of Konawe Selatan and Konawe Districts. While the empirical approach is used to analyze the law which is seen as patterned community behavior in people's lives that always interacts and relates to social aspects.⁹

3. Results and Discussion

⁸ <https://peraturan.bpk.go.id/Home/Details/4282>, Law (UU) No. 4 of 2003, accessed on 26 September 2019, at 14.05

⁹ Bambang Sunggono, 2003. *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta. p. 43

3.1. Legal Protection of Land Deed Making Officials (PPAT) based on Government Regulation Number 37 of 1998 concerning Land Deed Making Officials

As an area that is currently in the development stage, the area in this case South Konawe Regency has carried out a lot of land acquisition, both community-owned and state-owned land. So these activities have a lot to do with PPAT in terms of the transfer of their rights, namely the acquisition of community land by the local government, waqf from the community to foundations and buying and selling between communities in accordance with the PPAT authority outlined in Act 2 of PP. 37 of 1998.

In carrying out its duties, PPAT has the authority to make deeds in terms of land registration, to make authentic deeds regarding certain legal actions regarding land rights or property rights over apartment units, which include sale and purchase, Swap Exchange, Grants, income in Company (*inbreng*), Sharing joint rights, Granting Building Use Rights, or Use Rights to Freehold Land, Granting Mortgage Rights.¹⁰

This authority only applies in the work area determined by Government Regulation No. 37 of 1998 concerning Land Deed Making Officials, namely in one regency or city or according to Perkaban No. 1 of 2006, which states that the working area of a PPAT is in accordance with the district/city land office area.

In carrying out the profession as a PPAT cannot be separated from various legal problems, both problems with deeds and from problems with the PPAT's behavior in social interactions with fellow colleagues. However, in this paper, the issues to be discussed are the problems in making deeds.

Such as the case that occurred in the Andoolo District Court, which is the District Court in South Konawe Regency, where the problem is that the plaintiff is the heir of H. PANIA and the defendant H. YAHYA, where the plaintiff is questioning the sale and purchase deed made by the Notary who is in Kendari City however the object is located in the area of Konawe Regency which is now the Regency of South Konawe after the division. The case was tried at the Andoolo District Court registered with Case Number: 16/Pdt.G/2018/PN.AdI.

The plaintiffs are the heirs of H.Pania who own land located in the village of the city of build, ranomeeto sub-district, South Konawe Regency, Southeast Sulawesi Province which is land for pania pilgrimage with a certificate of ownership right number: 428 Lepo-Lepo village in 1985, covering an area of 18,261 M², Lepo village -Lepo, Mandonga District, Kendari Regency. Before the division of Konawe Selatan District, the land was in the Konawe district, Kendari district, after the division of Konaw Selatan and Konawe districts, H. Pania's land was partially located in Kendari City and partially located in South Konawe Regency.

The defendant, in this case H. Yahya, admitted to buying from Hj. Praise (H.Pania's wife) and make a Deed of Sale and Purchase at the Notary Public/PPAT Hidayat, SH PPAT Kendari City. Meanwhile, Plaintiffs II, III and IV purchased from Hj. PUJI based on

¹⁰ Act 2 PP no. 37 of 1998

the Power of Attorney for Sale made by Hj. Praise to the temporary PPAT, namely the Head of Ranomeeto Sub-district in 2002.

Based on these arguments, the plaintiff considers that the deed made by the defendant in this case the sale and purchase deed made by the notary/PPAT Hidayat, SH is invalid because the object of sale and purchase is not in the working area of PPAT and also violates the provisions of PP 37 of 1998 concerning Official Regulations The Land Deed Maker where the working area of PPAT Hidayat, SH is in Kendari City. Because of these provisions, the Sale and Purchase Deed made by PPAT Hidayat, SH is null and void by law.

Based on the above problems, the judge's decision in the case is that the plaintiff's claim cannot be accepted, with legal considerations that the plaintiff's sale and purchase certificate is not legally valid because it is not the authorization of the maker, and the issuance that the sale and purchase certificate is issued on top of the defendant's certificate.¹¹

Based on the description of the legal case that has been described above, there is still a lack of understanding from the PPAT regarding urgency to understand the boundaries of its working area in terms of making deeds of transfer of land rights. As well as the lack of PPAT attention to regional regulations (Perda) in its working regions/areas, especially those that have experienced regional expansion.

According to Perkaban No. 1/2006 giving false information in the deed is a serious violation by the PPAT which can be subject to a sanction of dishonorable dismissal from his position by the head of the Indonesian National Land Agency.¹² As a consequence of the deed made by the PPAT deed whose contents are not correct, the deed is null and void or becomes deed under hand.

Based on an interview with A. Widya Arung Raya, SH.M.Kn¹³, he said that a PPAT's caution in making deeds for its applicants was very important, because it involved the authenticity of the deeds he made and was related to violations of the PPAT code of conduct itself.

In matters relating to the PPAT's authority in making land rights deeds to carry out land registration¹⁴ deeds that can be used as the basis for the issuance of certificates or ownership of land rights, namely the deeds made by PPAT. Because the deed made by the PPAT is included as an authentic deed whose power of proof is perfect.

Regarding the legal protection of PPAT in terms of making government deeds through the National Land Agency, issuing a regulation of the Head of the National Land Agency (Perkaban) Number 2 of 2018 regarding guidance and supervision as a form of the

¹¹ Interview with Ibrahim Tane, SH.MH, Attorney of the Plaintiff in case Number 16 / Pdt.G / 2018 / PN.AdI, on January 19, 2020

¹² Head of BPN Regulation No. 1 of 2016

¹³ Interview with A. Widya Arung Raya, SH.M.Kn, Chairman of IPPAT Southeast Sulawesi, on February 8, 2020

¹⁴ Government Regulation No. 24 of 1997 regarding land registration

government's seriousness in ensuring legal certainty in terms of land registration. In this regulation, a forum is formed, namely the Association of Land Deed Making Officials (IPPAT) which has a function as an organization or a forum for PPAT in terms of legal protection for the smooth work of PPAT in making deeds of transfer of land rights.

Apart from IPPAT in Perkaban No. 2 of 2018 an institution that oversees the work of PPAT is also formed, namely the PPAT Advisory Council and Regional Supervisory Council (MPPD) which is domiciled in the district/city, and the PPAT Advisory and Regional Supervisory Council (MPPW) which is domiciled in the provincial capital, where the elements consist of BPN and PPAT agencies. which has a function as an inspection agency for PPAT on the performance of PPAT in their respective regions.

As a supervisory and coaching institution for PPAT, the formation of this institution becomes a forum for PPATs to socialize, interact, discuss and get understandings of new regulations. As well as this institution as a coordinating place for law enforcement agencies such as the police and prosecutors to coordinate the violations committed by PPAT in its working area.

Interview with Hj. Husnia, Head of the Land Registration Section of the Regional Office of the National Land Agency of Southeast Sulawesi Province¹⁵, he said that since 2018 in the Southeast Sulawesi Province, an MPPD has been formed in each district/city and an MPPW in the provincial capital which has the duties and functions as a supervisory and coaching agency for PPAT in Tenggara Sulawesi Province.

In the event of regional expansion, the PPAT is obliged to choose within 1 (one) year at the latest, whether to choose a work area to follow the parent region or to follow the newly created area as its working area. During the division of the region, PPAT can still sign the deeds of transfer of land rights up to one year after the regional expansion, if PPAT continues to carry out/make deeds after one year of division of the new region but does not choose its working area, the PPAT follows where the region is Initial work is the parent region.

Based on an interview with A. Widaya Arung Raya, SH.M.Kn,¹⁶ he explained that the deed that has been made by PPAT in its jurisdiction or position then the area blooms after the date of signing the deed ,, then the deed remains valid as an authentic deed. Never mind those that have just blossomed, even after blooming, as long as one year has passed, PPAT is still allowed to sign the PPAT deed on areas that have bloomed in their respective areas of office provided that the planting is not past 1 year.

In the event of an alleged PPAT violation who is designated as a witness or as a suspect, the MPPD and MPPW will provide legal assistance in the form of legal assistance and PPAT colleagues during examination at the police, prosecutor's office or

¹⁵ Interview with Hj. Husnia, Head of the Land Registration Section of the Regional Office of the National Land Agency of Southeast Sulawesi Province, on February 10, 2020

¹⁶ Ibid,

in court, as a form of protection provided by the organization based on statutory provisions.

3.2. Obstacles and Solutions to Implementing PPAT Deed Legal Protection Based on Government Regulation Number 37 of 1998 concerning Land Deed Making Officials

The Land Deed Making Official has the duties, among others, to maintain a list of deeds which he makes, among others, a reportorium (a list of deeds he has made), which contains the name of the applicant, the nature of the deed, sale and purchase, grants and parts thereof, date of deed and number. , the identity of the land/measuring letter and the size of the land along with the building including (permanent, semi-permanent and emergency) as well as existing plants and other information.¹⁷

Based on Act 2 paragraph (1) Government Regulation Number 37 of 1998, a PPAT has the main task¹⁸ carry out some land registration activities by making deeds as evidence of certain legal actions regarding land rights or property rights over apartment units, which will be used as the basis for registering changes to land registration data as a result of this law.

In carrying out its daily duties, PPAT has an administrative obligation to store and maintain the PPAT protocol which consists of a list of deeds, original deeds, supporting documents for deeds, report files, agendas and other letters. Apart from these administrative obligations, PPAT also has other obligations, among others¹⁹ :

Submit monthly reports regarding deeds made to the Head of the Land Office. Head of Regional Office and Head of local Land and Building Tax Service Office no later than the 10th of the following month.

In the event that the Head of the Land Office or the Head of the Regional Office of BPN RI is appointed, he must accept the protocol from the PPAT which ceases to be PPAT; Installing the PPAT nameplate, lowering the PPAT name plate on the day concerned resigns from his PPAT position.

Based on an interview with Hj. Samsan B. Kadir, SE²⁰, Analyst for Land Rights Application and Land Registration at the Regional Office of the Southeast Sulawesi Provincial Land Agency, explained that each PPAT is required to make a monthly report

¹⁷ Ali Ahmad Chomzah, *Agrarian Law (Indonesian land)*, Volume 2, Prestasi Publisher, Jakarta, 2002

¹⁸ The legal actions referred to above as mentioned in Act 2 paragraph (2) Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Land Deed Making Officials are Sale and Purchase; Exchange; Grant; Entry into the company (inbreng); Sharing of joint rights; Granting of Building Use Rights / Use Rights to Freehold land; Granting of Mortgage Rights and Granting of power to impose Mortgage Rights

¹⁹ Act 45 Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Position of Land Deed Making Officials

²⁰ Interview with Hj. Samsan B. Kadir SE, Land Rights Application Analyst and Land Registration Regional Office of the Southeast Sulawesi Provincial Land Agency, on February 18, 2020.

on the deeds it makes every month and submit it to the Regional Office of BPN Southeast Sulawesi Province on every 10th of the following month, as PPAT obligations. .

As in law, a legal subject in life has rights and obligations as well as for a PPAT who carries out his duties and positions. After carrying out its obligations, PPAT also has rights that are regulated under Act 32 of Government Regulation Number 37 of 1998 concerning the Position Regulation of Land Deed Making Officials, namely:²¹

1. PPAT and Temporary PPAT honorarium, including witness fees (honorarium) may not exceed 1% (one percent) of the transaction price stated in the deed.
2. PPAT and PPAT are temporarily obliged to provide services free of charge to someone who cannot afford it.
3. In carrying out their duties, PPAT and PPAT are prohibited from levying outside the provisions as referred to in paragraph (1).
4. Special PPAT carries out its duties free of charge.

Based on the provisions of Perkaban Number: 2 of 2018 concerning guidance and supervision, it is explained that there are rights and obligations as well as sanctions against PPAT who perform their duties and functions as a public official. Based on this, in carrying out his duties and responsibilities as a Land Deed Maker official there are problems in the process. As for these problems, we can describe them as follows:

3.3. Obstacles in the Implementation of PPAT Deed Legal Protection Based on Government Regulation Number 37 of 1998 concerning Land Deed Making Officials

a. The problem of the PPAT Organization, in this case is IPPAT

IPPAT is an organization that acts as a forum or organization where PPATs take shelter in carrying out their profession as an official who is given the authority by law to make land transfer deeds in the land registration process. In Perkaban Number 2 of 2018, Act 1 number 9, it is stated that:

"The Association of Land Deed Making Officials, hereinafter referred to as IPPAT, is a professional organization of PPAT positions in the form of associations with legal status."

Interview with Widya Arung Raya, SH.M.Kn²², Chairperson of the Southeast Sulawesi Province IPPAT, he explained that in Southeast Sulawesi Province a forum had been formed for PPAT to support performance and as a place for PPATs throughout Southeast Sulawesi to stay together and now I myself am the chairman.

²¹ Loc. Cit. Act 32

²² Loc.cit, interview Widya Arung raya, SH.M.Kn

As the only organization, the PPAT, as well as the Notary profession, has their respective duties and functions as land partners in terms of land registration, namely to supervise and foster PPAT in the working area of the land agency. In carrying out the duties and functions of the organization to carry out the duties as supervisors and supervisors of the PPAT in carrying out their duties, the Council of Trustees and Supervisors of the Official Land Deed Making Center (MPPP) and the Regional Supervisory Council (MPPD) was formed which consisted of elements from the Ministry of Land Affairs and IPPAT.²³

Interview with Hj. Samsan B. Kadir, SE²⁴, explained that in addition to IPPAT, currently there are also institutions that supervise PPAT work based on the word 2/2018, namely MPPD PPAT (Regional PPAT Supervisory Council domiciled in City District), MPPW PPAT (provincial PPAT supervisory council) domiciled in the provincial capital. Where the elements consist of BPN and IPPAT agencies. The function of the MPPD/MPPW is also to supervise and inspect PPAT in their respective areas of office.

However, in carrying out its functions and duties as a supervisor and supervision of PPAT, it cannot be separated from the various obstacles experienced by the ministry and IPPAT Southeast Sulawesi, including:

1. A part of the Southeast Sulawesi Province is an archipelago which makes the process of supervision and guidance difficult for PPAT in the regions.
2. Erratic weather which adds to the weight of supervision and guidance in the archipelago

Interview with Widya Arung Raya, SH.M.Kn,²⁵ explained that in conducting guidance and supervision of PPAT in the Southeast Sulawesi region, considering that the Southeast Sulawesi region is separated by islands, this is an obstacle for us in carrying out overall supervision and guidance. Coupled with the unpredictable weather, which often means that the ships which are used as means of transportation to the regions cannot sail due to strong winds and big waves.

In every good problem, in all fields of work, it must be resolved carefully as well as the PPAT profession, certainly not free from problems, but must be resolved by finding solutions to solve them. PPAT throughout the Republic of Indonesia in general, especially those in Southeast Sulawesi, must have problems in running their profession. PPAT profession throughout As explained above, the problems faced by BPN and IPPAT as coaches and supervisors of PPAT are very complex, namely the area of Southeast Sulawesi Province separated by islands and weather conditions that make it difficult during shipping. However, because it is a law order²⁶ In the case of

²³ Act 15 paragraph (4), which reads the PPAT Supervisory and Supervisory Council as referred to in paragraph (2), consists of: a. MPPP, b. MPPW and c. MPPD.

²⁴ Loc. Cit, interview Hj. Samsan B. Kadir

²⁵ Loc.cit, interview Widaya ARung Raya.

²⁶ Act 4 which reads (1) Fostering and monitoring of PPAT is carried out by the Minister. Juncto Act 10 which reads (4) In carrying out the inspection as referred to in paragraph (2), the PPAT Board of Trustees and Supervisors may assist in accordance with their duties and authorities.

monitoring and supervision activities, it must be carried out by finding formulas for solutions to find the problems of these obstacles.

In line with the results of an interview with Widya Arung Raya, SH.M.Kn, he explained that in dealing with problems that occur in regions, especially in archipelagic areas such as the Wakatobi district which is an island, we created the Whatsaap Group, with technological advances. We can share this about problems in the regions and a means to share if there are new regulations regarding PPAT.

b. The problem from the Ministry of BPN, in this case the Regional Office of BPN in Southeast Sulawesi Province

In the regulation of the Head of BPN No: 2 of 2018 concerning the guidance and supervision of PPAT, it is stated that the Minister of Religion is ordered by the central government of the Regional Office in the regional government and district/city land office which is given the authority to carry out guidance and supervision of PPAT in carrying out its duties and responsibilities in making deeds on the transfer of land rights in the land registration process.

As for the duties and authorities given by the statutory regulations in this paper, they are related to the legal protection of the PPAT deed

Act 13

(1) The sanctions imposed on PPAT who commit violations as referred to in Act 12 paragraph (2) can be in the form of:

a. written warning;

b. temporary suspension;

c. honorific dismissal; or

d. dishonorable discharge.

Supervision of PPAT in carrying out their positions is the National Land Agency (BPN) and the Association of Land Deed Making Officials (IPPAT) based on Act 65 in conjunction with Act 1 number 10 Perka BPN 1/2006 the role of BPN in this case is to provide guidance and supervision to PPAT in implementing his position is in accordance with the prevailing laws and regulations, while the role of IPPAT in this case is to provide guidance and supervision to PPAT so that in carrying out his position in accordance with IPPAT's Code of Ethics.

The PPAT code of ethics is all moral principles determined by the Association based on congress decisions and/or determined by and regulated in the laws and regulations concerning this matter and which apply to and must be obeyed by each and all

members of the IPPAT Association and all people who carry out their duties as PPAT, including the Substitute PPAT.²⁷

Supervision and guidance of PPAT in the Southeast Sulawesi Province are the authorities and duties of the Regional Land Office of Southeast Sulawesi Province, in this case field 2 as the supervision section of the PPAT. As for the obstacles in the implementation of guidance and supervision of PPAT throughout the Southeast Sulawesi Province, namely related to the lack of legal counseling on the regulations and the rights and obligations of the PPAT itself. Meanwhile, the implementation of counseling conducted by the Regional Office of BPN in Southeast Sulawesi Province depends on whether or not the funds are allocated for the implementation of these activities.

In accordance with the results of the interview with H. Husnia, it was stated that extension activities for all existing PPATs within the work area of the National Land Agency of Southeast Sulawesi Province depend on whether or not there is an allocation of funds for the implementation of these activities. However, every year there will be one or two outreach activities, especially if there are new regulations on PPAT.²⁸

The PPAT is required to provide a report every month to the Head of the Regional Office of the National Land Agency of Southeast Sulawesi province regarding the deeds, the number of deeds and about what deeds the PPAT has made. In accordance with Act 26 of Government Regulation Number: 37 of 1998 concerning Officials for Making Land Deeds and this is one of the obligations that a PPAT cannot fulfill.²⁹

In accordance with the interview with Hj. Samsan³⁰, which explains that every notary within the scope of the work area of the Regional Office of the National Land Agency of Southeast Sulawesi Province is obliged to report every month the number of deeds, which deeds he has made, which is an obligation that must be carried out in accordance with applicable regulations.

c. Problems on the part of individual Land Deed Making Officials (PPAT)

The problems that arise and have the potential to become problems for the Land Deed Making Officials themselves are related to reports regarding the deeds that have been made by the PPAT itself in each month which is an obligation that must be done every month. Territory of the National Land Agency.

²⁷ Act 1 number 10 Regulation of the Head of the National Land Agency Number: 2 of 2018 concerning Development and Supervision of PPAT

²⁸ Interview with Hj. Husnia, Head of the Land Registration Section of the Regional Office of the National Land Agency of Southeast Sulawesi Province, on February 10, 2020

²⁹ Act 26 Government Regulation Number 37 of 1998 concerning Officials for Making Land Deeds

³⁰ Interview with Hj. Samsan B. Kadir SE, Land Rights Application Analyst and Land Registration Regional Office of the Southeast Sulawesi Provincial Land Agency, on February 18, 2020.

In accordance with the interview with Hj. Samsan³¹, which explains that the obligation of each PPAT is to submit a report regarding the deeds made, the number of deeds made in each month. However, most of the PPATs are assigned to the National Land Agency of Southeast Sulawesi Province to submit their reports not every month but every 3 (three) months and that is a violation of the obligations of the PPAT itself.

To support the implementation of the work of each PPAT in order to avoid every problem and obstruction of a job, it is fitting that every PPAT individual himself knows and understands and updates any regulations related to the world of PPAT. Whether it's an understanding of the old existing rules or the new regulations that have been passed.

4. Closing

As a result of the legal effect of limiting the subject of the Granting of Mortgage Rights to the enactment of Act 9 paragraph (5) of the Regulation of the Minister of ATR/BPN Number 9 of 2019 concerning Electronic Mortgage Services, namely the defective element of intention in APHT, the emergence of a nominee agreement as a result of a counter-document that seems to have occurred land rights and the position of PERMEN ATR/BPN No. 9/2019 which regulates the limitation of the subject of the mortgage right is contrary to the principle of *lex superior derogat legi inferiori* Act 8 in conjunction with Act 4 paragraph (4) and paragraph (5) of the UUHT. The HT-el mortgage registration service by PPAT, which carries out the registration process, is only an alternative and not mandatory. If after the implementation of HT-el then manual HT services are not provided or canceled by the Land Office, it means that the Land Office refusing to register HT outside HT-el is contradicting Permen 9/2019 and UUHT, so that if the provisions of Act 9 Paragraph (5) of the Regulation of the Minister of ATR/BPN Number 9 of 2019 can be distracted by PPAT, by way of PPAT refusing to make it APHT if it is indicated that the material data provided originates from imperfect legal actions of transfer of rights. Because it is contrary to Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that documents declared to be false are the full responsibility of the applicant, both criminal and civil. by means of the PPAT rejecting the making of APHT if it is indicated that the material data provided originates from incomplete legal actions of transfer of rights. Because it is contrary to Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that documents declared to be false are the full responsibility of the applicant, both criminal and civil. by means of the PPAT rejecting the making of APHT if it is indicated that the material data provided originates from incomplete legal actions of transfer of rights. Because it is contrary to Act 20 paragraph (4) PERMEN ATR/BPN No. 9/2019 which states that

³¹ Loc cit, interview Hj. Samsan B. Kadir, SE

documents declared to be false are the full responsibility of the applicant, both criminal and civil.

5. References

Books:

- [1] Ali Ahmad Chomzah, 2002. *Hukum Agraria (pertanahan Indonesia)*, Volume 2, Prestasi Publisher, Jakarta.
- [2] Salim HS, 2016. *Teknik Pembuatan Akta Tanah Pejabat Pembuat Akta Tanah*. Rajawali Pers, Jakarta.
- [3] Sudikno Mertokusumo, 2009. *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta.
- [4] Boedi Harsono, 2008. *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, Djambatan, Jakarta.
- [5] AP.1999. *Parlindungan, Pendaftaran Tanah di Indonesia*, Mandar Maju, Bandung.
- [6] Bambang Sunggono, 2003. *Metodologi Penelitian Hukum*, Raja Grafindo Persada, Jakarta.

Regulations:

- [1] Kitab Undang-Undang Hukum Perdata.
- [2] Government Regulation Number 37 of 1998 concerning Regulation of the Position of Land Deed Making Officials.
- [3] Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration.
- [4] Circular of the Head of the National Land Agency Number 640-1884 dated 31 July 2003.
- [5] Act No. 4 of 1996 concerning Mortgage Rights to Land and Land-Related Objects.

Internet:

<https://peraturan.bpk.go.id/Home/Details/4282>, Law (UU) No. 4 of 2003, accessed on 26 September 2019, at 14.05

Interview:

- [1] Haerudin, SH, Interview with the Head of Sub-Section for Land Registration, Kendari City National Land Office, on January 29, 2020.
- [2] Ibrahim Tane, SH.MH, Advocate Interview and Legal Counsel for the Plaintiff in case Number 16/Pdt.G/2018/PN.AdI, on January 19, 2020

- [3] Sudarmato, SH, Interview with the Head of Legal Aid for the Legal Aid Bureau of the Konawe Selatan Regency, December 18, 2019
- [4] Sudirman, SH.M.Kn, Interview for Notaries and Chairman of the Indonesian Notary Association (INI) Kendari City, on 19 December 2019
- [5] Widya Arung Raya, SH. M.Kn, Interview for a Notary and Chairman of the Association of Southeast Sulawesi Province Land Deed Makers (IPPAT), on February 8, 2020
- [6] Hj. Husnia, Interview with the Head of the Land Registration Section of the Regional Office of the National Land Agency of Southeast Sulawesi Province, on February 10, 2020
- [7] Hj. Samsan B. Kadir SE, Staff Interview for Land Rights Application Analyst and Land Registration Regional Office of the Southeast Sulawesi Province Land Agency, on February 18, 2020.