

## Notary/PPAT Liability for Autenticity of Deed which in Judges' Decision is Declared to Have Fake Signature

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**Abstract.** *The purpose of this research is to find out and analyze the juridical implications of making a deed in which there is a forged signature. This study used a normative juridical research method. Based on the discussion, it can be concluded that the juridical implications for the making of a deed in which there is a fake signature is that it can be canceled or null and void because it does not meet the subjective requirements in the form of agreeing the parties and the objective conditions in the form of a lawful cause. In addition, the making of a deed in which there is a forgery of a signature with procedural efforts that are not in accordance with the making of the deed results in the deed being formally flawed.*

**Keywords:** *Accountability; Deed; Signature.*

### 1. Introduction

As the ultimate owner of everything (including land) then Allah SWT gives power (*istikhlaf*) to humans to manage this property of Allah in accordance with His laws. The origin of ownership (*aslul milki*) belongs to Allah SWT, and that humans have no rights except use (*tasarruf*) in a way that is pleasing to Allah SWT.<sup>1</sup>

Plantations have an important position in the development of the agricultural sector at both national and regional levels. The opportunity to develop plantation crops is increasingly giving hope, this is related to the stronger

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<sup>1</sup>Nurhayati A., "Hak-Hak Atas Tanah Menurut Hukum Islam & Undang-Undang Pokok Agraria", Jurnal Al-Muqaranah : Jurnal Perbandingan Hukum & Mazhab Vol 5 No. 1 2017, p. 3 Url <http://jurnal.uinsu.ac.id/index.php/almuqaranah/article/view/1350/1097>

government support for smallholder plantation businesses, the growth of various industries that require raw materials, and the wider market share of plantation products.<sup>2</sup>

Land is an important factor to get a decent living. A decent living is a constitutional right of citizens according to the 1945 Constitution of the Republic of Indonesia. Rights that can be categorized as constitutional rights include certain human rights which only apply as constitutional rights for Indonesian citizens. For example, the right to a decent living as referred to in Article 27 paragraph (2) of the 1945 Constitution of the Republic of Indonesia.<sup>3</sup>

Land in its development is also seen as an object related to God (the creator), related to society which gives rise to the view that land is the cosmos, and the view that land is a saving and makes land an asset (wealth). From the series of understandings above, the operational definition of land is the surface of the earth that is used as a place to live and a place to earn a living for mankind.<sup>4</sup>

Due to the rapid population growth and increasing development in our country, the demand for land is increasing and urgent, while the land supply is getting narrower and difficult to hold. The imbalance between the supply of land and the need for land can lead to various land disputes. The Basic Agrarian Law lays the foundation for achieving legal certainty and legal protection for all Indonesian people.<sup>5</sup>

A Notary Deed/PPAT is an authentic deed that has strict requirements in terms of manufacturing procedures, forms and formalities. Regarding the type and form of the deed, its implementation and procedure are regulated by the Regulation of the State Minister of Agrarian Affairs and the Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, Articles 95 to Article 102. Therefore, Notaries/PPATs are responsible for to check the requirements for the validity of the legal action concerned, namely by matching the data contained in the certificate with the registers in the Land

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<sup>2</sup>Anggriawan & Toti Indrawati., "Peranan Komoditi Gambir terhadap Perekonomian Kabupaten Lima Puluh Kota Provinsi Sumatera Barat", *Jurnal Ekonomi Universitas Riau* Volume 21 No. 2 (2013), p. 2 url <https://je.ejournal.unri.ac.id/index.php/JE/article/view/1752>

<sup>3</sup>Tafta Aji Prihandono and Sri Kusriyah, "Awareness on Constitutional Rights of Citizens and Form of Protection of Constitutional Rights of Citizens in Indonesia", *Jurnal Daulat Hukum*, Volume 1 Issue 4, December 2018: 1003 – 1012 p. 1006. <http://jurnal.unissula.ac.id/index.php/RH/article/view/4145>

<sup>4</sup>Nurhayati A., Op.cit. p. 33

<sup>5</sup>Nur Ismi & Umar Ma'ruf, 2019, *Responsibility Land Office of Semarang City In Tems Contained In Land Multiple Certipicate*, *Jurnal Akta*, Vol.6, p.415 url: <http://jurnal.unissula.ac.id/index.php/akta/article/view/5090>

Office.<sup>6</sup> Making authentic deeds is required by legislation in order to create certainty, order and legal protection.<sup>7</sup>

The procedure for implementing the transfer of land rights, for example in this case, is the sale and purchase of land. Although the sale and purchase of land is very strict, in every transfer or transfer of land rights there is always the possibility of a third party claim. Even though the transfer of land rights has been carried out through a Notary/PPAT deed, it is still open. The possibility will cause a dispute caused by a third party or by an error in the Notary/PPAT which causes a legal defect in the deed or an error in the procedure for signing the deed, either done intentionally or unintentionally.<sup>8</sup>

One of these problems can be seen in the case of falsification of the deed of sale and purchase of land. This problem can be seen in case Number 253/pid.b/2016/PN MJL. Deni Agustin asked PPAT Dini Nandini for a blank sale and purchase deed, then he filled in the blank and faked some of the signatures. Then Deni Agustin asked for signatures from the witnesses, because the witnesses saw that the parties had signed the deed of sale and purchase, in the end the witnesses also unsuspectingly also signed, then the AJB was used to change the name of the actual land certificate in the name Titin Wastini, then a certificate that belonged to Titin became the property of Deni Agustin. Titin who returned from working as a female worker abroad did not accept it and sued Deni Agustin.<sup>9</sup>

This clearly shows that the Notary/PPAT has not been maximized in efforts to eradicate AJB that is legally flawed, even though the Notary/PPat is fully responsible for the AJB he/she makes. Notaries/PPATs basically have responsibilities in the form of:

- The notary's civil liability for the deed he made. In it is the responsibility for the material truth of the deed, in the construction of unlawful acts.
- The notary's criminal responsibility for the deed he made. Crime in this case is a criminal act born by a notary in his capacity as a public official authorized to make a deed.
- The notary's responsibilities are based on the Notary Position Regulations (UUJN).

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<sup>6</sup>Ibid.

<sup>7</sup>Imam Abdi Utama, Sri Kusriyah and Widhi Handoko, "Notary Responsibilities in Making Authentic Deeds for Interest of Community from Progressive Law Perspective" dalam *Sultan Agung Notary Law Review (SANLaR)* Volume 3 No.3, September 2021: 810-821, p. 811 url: <http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/16462>

<sup>8</sup>I Ketut Artadi & I Dewa Nyoman Rai Asmara Putra, 2010, *Implementasi Ketentuanketentuan Hukum Perjanjian ke dalam Perancangan Kontrak*, Udayana University Press, Denpasar, p. 81.

<sup>9</sup> <https://ujungan3.mahkamahagung.go.id/>.

- The responsibilities of a notary in carrying out his duties are based on the Notary Code of Ethics as stated in Article 4 of the UUJN concerning the oath of office of a notary.

Such a situation clearly contradicts legal certainty regarding the protection of legal owners of land rights. The principle of legal certainty is basically one of the contents of the formation of legislation. The principle of legal certainty implies that each regulation must be clearly and precisely formulated and its amendments must take into account the interests of the parties clearly related to the protection of their rights in the community, including in terms of guaranteed rights to protect land rights in the sale and purchase of land. This study aims to determine and analyze the juridical implications of making a deed in which there is a forged signature.

## **2. Research Methods**

This study uses a normative juridical research method, using a statutory approach and a conceptual approach. The specification of this research is descriptive analytical. The data used in this research is secondary data which is divided into three, namely: Primary legal materials, secondary legal materials, and tertiary legal materials. This study uses library research techniques in collecting and compiling the necessary data. The data analysis used in this research is qualitative data analysis

## **3. Results and Discussion**

### **3.1. Juridical Implications for Making a Deed in which there is a False Signature**

This case began when in April 2012 ADP wanted to change the name of the land rights. ADP intends to reverse the name on behalf of TW. ADP then went to MSA's house to ask if MSA had a PPAT partner that AJB could ask for a blank form to do the name transfer. MSA then went to the Notary/PPAT SDN office. In the end, MSA then got a blank AJB form with number 75/2012 that had not been signed. Furthermore, AJB brought by MSA was brought by ADP. Then ADP called the MKD and SPD to sign the AJB form as a witness from the village apparatus. MKD and SPD in the end wanted to sign the AJB because the First Party and Second Party columns had already been signed by TW and AH, which was also approved by her husband.

MKD and SPD in principle also knew that TW was abroad as a TKW and AH had also divorced her husband. After the AJB blank was signed, ADP then took care of the land for SHM No. 27/ Banyurejo which is currently occupied in the name of AH. That after TW returned from work to become a TKW abroad in 2015, TW was

surprised because the land had been renamed on the basis of AJB No. 75/2012 and TW also never signed the AJB.

Article 1 paragraph 1 Government Regulation no. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning the Regulation of Land Deed Making Officials states that Land Deed Making Officials, hereinafter referred to as PPAT, are public officials who are authorized to make authentic deeds regarding certain legal actions regarding land rights or property rights over flat units. As stated in the definition, PPAT is included in the category of public officials. According to Boedi Harsono, a public official is someone appointed by the government with the task and authority to provide services to the public in a particular field.<sup>10</sup>

Refers to Article 6 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration states that:

*"In carrying out land registration, the Head of the Land Office is assisted by PPAT and other officials assigned to carry out certain activities according to this Government Regulation and the relevant laws and regulations".*

Based on these provisions, in essence the duties and functions of the PPAT are as a party that assists the PPAT's main task in assisting the Head of the PPAT. Office Land in matters relating to land. Furthermore, the activities that can be carried out by the official making the Land Deed are regulated in Article 2 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official Making the Land Deed.

In connection with the PPAT's duties, as stated in the chronology above, the forgery of signatures on a deed is a deed of sale and purchase. Pitlo as quoted by Suharjono also revealed that a deed is a letter that is signed, made to be used as evidence, and to be used by other people for whose purposes the letter was made. Likewise, Sudikno Mertokusumo defines a deed as a signed letter, which contains legal events that form the basis of a right or an agreement, which was made from the beginning intentionally for proof.<sup>11</sup> Meanwhile, according to Article 1457 of the Civil Code, buying and selling is an agreement in which one party binds himself to submit an object and the other party pays the agreed price.<sup>12</sup> The discussion regarding buying and selling in the Basic Agrarian Law is not specifically stated with the word buying and selling, but using the word transferred. The definition of transferred indicates a deliberate legal act to transfer land rights to other parties through buying and selling, grants, exchange

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<sup>10</sup>Boedi Harsono, "PPAT Sejarah & Kewenangannya", *Majalah RENVOI*, No. 844, IV, January 2007.p. 11

<sup>11</sup>Sudikno Mertokusumo, 1981, *Hukum Acara Perdata Indonesia*, Liberty, Yogyakarta.p.110

<sup>12</sup>Munir Fuady, 2018, *Hukum Bisnis dalam Teori & Praktik Buku Ketiga*, Penerbit Citra Aditya Bakti, Jakarta. p. 256.

and testamentary grants. So, even though the article only mentions being transferred, one of them is a legal act of transferring land rights due to buying and selling.<sup>13</sup> Furthermore, the specific provisions regarding land in the Civil Code are explicitly stated that land is categorized as immovable objects. Article 506 reads: Immovable property is (1) yard land and what is built on it; (2) ..... etc. Therefore, when buying land, it is not the object that moves, but the ownership rights to the land.<sup>14</sup>

In this regard, in principle the making of the deed must also meet the formal and material requirements. In relation to the formal and material requirements that must be met in the deed, the making of an authentic deed must meet these two prerequisites. Discussion of the formal requirements related to the form of the deed. In this case, the provisions regarding the form of the deed are regulated in Article 38 of Act No. 2 of 2014 concerning Amendments to Act No. 30 of 2004 concerning the Position of a Notary. In the article, it is explained that:<sup>15</sup>

- Each deed consists of:
  - The beginning of the deed or the head of the deed;
  - Deed body; and
  - End of deed closing
- The beginning of the deed or the head of the deed contains
  - title of deed;
  - Deed number;
  - Hour, day, date, month, and year; and
  - Full name and domicile of the notary.
- The body of the deed contains:
  - full name, place and date of birth, nationality, occupation, position, domicile of the appearers and/or the person who represents them;
  - Information regarding the position of acting against;
  - The contents of the deed which is the will and desire of the parties concerned; and
  - full name, place and date of birth, as well as occupation, position, position, and residence of each identifying witness.
- At the end of the deed, it contains:
  - a description of the reading of the deed as referred to in Article 16 paragraph (1) letter l or Article 16 paragraph (7);
  - A description of the signing and the place of signing or translation of the deed if any;

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<sup>13</sup>Adrian Sutedi, 2006, *Peralihan Hak Atas Tanah & Pendaftarannya*, Jakarta: Sinar Grafika.p. 76

<sup>14</sup>Prajodi Andaru, "Hukum Jual Beli Tanah yang Perlu Dipahami Pembeli & Penjual" in <https://jendela360.com/info/hukum-jual-beli-tanah/>

<sup>15</sup>Ratri Puspita Suryandari, Lita Tyesta ALW, Adya Paramita Prabandari, "Akibat Hukum Tidak Terpenuhinya Syarat-Syarat Pembuatan Akta Jual Beli oleh Notaris", *Notarius*, Vol. 13, No. 2, 2020. p. 829.

- Full name, place and date of birth, occupation, position, position, and residence of each witness to the deed; and
- A description of the absence of changes which can be in the form of additions, deletions, or replacements.
- Deeds of Substitute Notaries, Special Substitute Notaries, and Temporary Notary Officials, in addition to containing the provisions as referred to in paragraph (2), paragraph (3), and paragraph (4), also contain the number and date of appointment, as well as the official who appointed them.

Another requirement related to formal requirements is the procedure for making a deed. In this context, other formal requirements in making a deed are:<sup>16</sup>

- Made by or before an authorized official
- Attended by the parties.
- Both parties are known or introduced to officials;
- attended by two witnesses;
- mention the identity of the notary, the appearers, and the witnesses;
- mention the place and time of making the deed;
- a notary reads the deed before the appearers and witnesses;
- Signed by all parties
- Confirmation of reading the translation and signing on the chart of the deed closing the deed;
- the position of the notary in the district or city.

On the other hand, a deed must not only meet the material requirements, it must also meet the material requirements in its preparation. The material requirements for making a deed are as follows:<sup>17</sup>

- Contains information on the agreement of the parties;
- Fill in the information regarding legal actions;
- The deed was made intentionally for proof.

Referring to the material requirements, the discussion of the material requirements of the deed is related to the deed which must meet the legal requirements of the agreement as referred to in Article 1320 of the Civil Code. Article 1320 of the Civil Code explains that for the validity of an agreement, four conditions are needed: agree that those who bind themselves; the ability to make an engagement; a certain thing; a lawful reason.<sup>18</sup>

- Agreed on the Parties that bind themselves

The parties to the agreement must mutually agree on the subject matter of the agreement, so that the agreement cannot be canceled due to elements of fraud, coercion, and oversight. This is based on Article 1321 of the Civil Code which states that there is no valid agreement if the agreement was given by mistake, or

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<sup>16</sup>Vivien Pomantow, Akibat Hukum terhadap Akta Otentik yang Cacat Formal Berdasarkan Pasal 1869 KUHPerdara, *Lex Privatum*, Vol. VI, No. 7, 2018.p. 34.

<sup>17</sup>Ibid, p. 34.

<sup>18</sup>Bambang Tri Bawono & Moh. Nurul Huda, 2021, *Unnaturally Practice; Analisis Praktek Kedokteran dalam Pelayanan Kesehatan* Unissula Pers, Semarang.p.42.



obtained by force or fraud. Basically, the discussion about binding agreement is an adjustment to the offer and acceptance.<sup>19</sup>The element of the offer is defined as a statement of will containing a proposal to enter into an agreement. While acceptance is a statement of agreement from the other party being offered.<sup>20</sup>

- The Skill to Make a Bond

Article 1329 of the Civil Code states that "Everyone is capable of entering into engagements, if by law it is not declared incompetent." An explanation of incompetent people is contained in Article 1330 of the Civil Code. Article 1320 of the Civil Code states that those who are not capable of making agreements are minors, those who are not placed under guardianship, women who have married in matters that have been determined by law, and in general all people who are prohibited by law make certain agreements.<sup>21</sup>In relation to these incompetent people, basically the ability to carry out legal actions is generally measured from the person (personal) through the standard of age of maturity and the *rechtsperson* (legal entity) through the aspect of the authority they have. The ability to take legal action for a person is generally measured by the standard of adult or old age (*beekwamheid-meederjarig*). However, in terms of measuring the standard of adult age, it turns out that there is also a difference of opinion, considering that there are those who argue that the standard of age for maturity is 21 years based on Article 1330 BW jo. 330 BW. Meanwhile, there are also those who argue that the standard age for maturity is 18 years based on Article 1 of Act No. 35 of 2014 concerning Child Protection.<sup>22</sup>Article 1 of Act No. 35 of 2014 concerning Child Protection states that "a child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb." Another provision which states that the standard for a person's maturity is when they are 18 years old is also emphasized in Act No. 3 of 1997 concerning Juvenile Court (Vide article 5 Jo.61), Act No. 30 of 2004 concerning the Regulation of Notary Positions (Vide Article 39 jo. 30), and Act No. 12 of 2006 concerning Citizenship of the Republic of Indonesia (Vide Article 5, jis, 6, 9, 21, 22, and 41). Furthermore, even the Netherlands, which was used as a reference for legal sources regarding the standard of maturity, which initially stated that the standard age for adulthood was 21 years, has now also developed to 18 years based on the provisions contained in Article 2: 33 NBW.<sup>23</sup>

- About a Certain Thing

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<sup>19</sup>Salle, *Hukum Kontrak Teori & Praktik*, Cv.Social Politic Genius (SIGn), Makassar, 2019, p. 42.

<sup>20</sup>Agus Yudho Hernoko, 2010, *Hukum Perjanjian; Asas Proporsionalitas dalam Kontrak Komersial*, Jakarta: Penerbit Kencana Prenada Media Group.p. 162.

<sup>21</sup>*Kitab Undang-Undang Hukum Perdata*, Third Ed., Penerbit Pustaka Yustisi, Yogyakarta, 2007, p. 311.

<sup>22</sup>Samuel Mp. Hutabarat, 2010, *Penawaran & Penerimaan dalam Hukum Perjanjian*, Grasindo, p. 70.

<sup>23</sup>Oemar Mochtar, 2017, *Dasar-Dasar Teknik Pembuatan Akta*, Airlangga University, Surabaya, p. 52.



As for what is meant by a certain thing, it is an achievement which is the main points of the agreement. The agreed achievements must be clear, because the conditions for a certain matter are related to the rights and obligations of both parties.<sup>24</sup> Explanation of a certain matter in substance can be referred to through Articles 1331, 1332, and Article 1333 of the Civil Code. Article 1331 paragraph (1) explains that "an agreement must have the subject matter of which at least the type can be determined." While Article 1332 of the Civil Code also confirms that "only goods that can be traded can be the subject of the agreement". While Article 1333 of the Civil Code also states that "An agreement must have a principal in the form of an item of at least a specified type. The amount of goods does not need to be certain, as long as the amount can then be calculated or determined." The substance of these articles provides guidelines that in contracting it must be clear about the object that is used as the basis for entering into an agreement.<sup>25</sup>

- A Halal Cause

With regard to the understanding of a lawful cause or what is often translated as a lawful cause, scholars propose their thoughts. Wirjono Prodjodikiro gave an understanding of lawful causes as the intent or purpose of the contents of the agreement. While Subekti in this case states that the cause is the content of the agreement itself. Article 1335 of the Civil Code states that "an agreement made without cause or made with a false or forbidden cause has no power." The reasons that are allowed are that what the parties want to achieve in the agreement must be accompanied by good faith and must not conflict with laws and regulations, public order, and morality. This is based on Article 1337 of the Civil Code which states that "a cause is prohibited,"<sup>26</sup>

In connection with the existence of such conditions, the first and second valid conditions are called subjective conditions while the third and fourth conditions are referred to as objective conditions. In the context of material requirements, there are two different consequences when a deed does not fulfill the conditions. The non-fulfillment of the subjective terms of the agreement results in a deed or agreement being cancelled. Meanwhile, if the objective conditions are not fulfilled, the deed will be null and void. The consequence of being null and void is that an agreement has never occurred and returns to each party. Meanwhile, if the formal requirements are not fulfilled in the making of the deed, the deed does not have the power of proof and the deed becomes under hands.<sup>27</sup>

Based on this discussion, according to Kelsen, law is a system of norms. Norms are statements that emphasize aspects of "should" or *das sollen*, by including

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<sup>24</sup>Dora Kusumatsusi, 2019, *Perjanjian Kredit Perbankan dalam Perspektif*, Deepublish, Yogyakarta, p. 16.

<sup>25</sup>Agus Yudho Hernoko, *Op.cit*, p. 191.

<sup>26</sup>*Ibid*, p. 17.

<sup>27</sup>R. Subekti and R. Tjitrosudibio, *Op.cit*, p. 475.

some rules about what must be done. Norms are the product of deliberative human action. Laws containing general rules serve as guidelines for individuals to behave in society, both in relation to fellow individuals and in relation to society. These rules become limitations for society in burdening or taking action against individuals. The existence of these rules and the implementation of these rules create legal certainty.<sup>28</sup>

According to Gustav Radbruch, there are four things that form the basis of the meaning of legal certainty, including:

- Positive law is the law.
- Laws are based on facts or established laws.
- The facts must be formulated clearly, so as to avoid misinterpretation and easy to implement.
- Positive law should not change easily.

With regard to such legal certainty, referring to the chronology of the cases described above, the deed was made without a clear procedure and was even carried out with parties who felt they had never committed the act. Furthermore, even the signature contained in the deed was also forged. Referring to this, a deed of sale and purchase of land as referred to in the chronology of the case of Decision No. 253/PID.B/2016/PN MJL certainly does not meet the formal and material requirements. By signing a deed falsely, the deed is materially flawed in the form of not fulfilling the objective conditions in the form of a lawful cause and the first party also feels that they have never signed the deed, so that the terms of the agreement of the parties are also not fulfilled. In this regard, then the juridical implications of a deed that does not meet the subjective and objective requirements and does not meet the formal requirements can be canceled or null and void by law. By being cancelled or null and void by law, a deed makes the agreement as if it never happened.

#### **4. Conclusion**

Based on this discussion, the juridical implications of making a deed in which there is a forged signature are that it can be canceled or null and void because it does not meet the subjective requirements in the form of agreement of the parties and objective conditions in the form of a lawful cause. In addition, the making of a deed in which there is a forgery of a signature with procedural efforts that are not in accordance with the making of the deed results in the deed being formally flawed.

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