

The Falsification of Land Sale and Purchase Deed Date by Land Deed Making Officer in Yogyakarta

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Abstract. *This research describes the responsibility of the Land Deed Making Officer (PPAT) and the legal protection for the parties for the forgery of the sale and purchase deed made by PPAT by postponing the date of the deed. The forgery is done to make it appear as if it does not require a court order and the approval of the guardian. In the execution of the deed, there is interference from the buyer who has bad faith by forcing the seller to sign the deed of sale and purchase first before the payment is fully paid. The type of research used is Doctrinal. The result of the analysis of this research is that PPATs who are negligent in carrying out their obligations in making deeds resulting in losses for the parties can be subject to civil suits for losses as legal protection for the parties whose names are listed in the deed. In addition, PPAT is also subject to criminal sanctions for violations of Article 263 of the Criminal Code and administrative sanctions regulated in Article 13 paragraph (1) Permen ATR/KBPN Number 2 of 2018, Article 39 paragraph (1) letter c of PP 24/1997, and Article 3 of the IPPAT Code of Ethics.*

Keywords: *Forgery; Land; Purchase; Sale.*

1. INTRODUCTION

Land is essentially a gift given by God to all mankind. It is caused by Indonesia's National Land Law, which follows the principle of religiosity that considers components of religious law. People rely heavily on land in their daily lives, as it is where they stand and do various activities. Therefore, land is one of the most important needs for the entire community, including the citizens of Indonesia.

Land rights are rights that give general and special authority to the right holder to use the land, including the earth, water, including the space above it and use the land in accordance with the type of land rights owned. In Indonesia, land rights are regulated in Law No. 5/1960 on Basic Agrarian Principles (abbreviated as UUPA). The various types of land rights listed in the UUPA consist of property rights, business-use rights, building-use rights, use rights, rental rights, land clearing rights, rights to collect forest products and other rights not included in the aforementioned rights which will be

stipulated by Law as well as temporary rights as mentioned in Article 53."¹ The optimal utilization of land is vital for the betterment of the society. In order to actualize this endeavor, the state possesses the authority to govern its distribution in order to attain the well-being and prosperity of the populace. Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia is one of the bases for the establishment of the Basic Agrarian Law Number 5 of 1960. In order to attain legal certainty within the land sector, it is imperative to take into account two key factors, the necessity of a codified land law and the effective execution of land registration procedures.²

Boedi Harsono defines the National Land Law as a comprehensive set of laws and regulations that primarily draw from customary law, complemented by local customary law provisions that have not been regulated in legislation and provisions outside customary law which are arrangements in the National Land Law to address the evolving needs of the community, both presently and in the future.³ In relation to this matter, despite the implementation of reforms in national land law, it continues to rely on the principles and values derived from customary law. The sale and purchase of land is one of the land law system that incorporates elements of customary law.

In accordance with customary land law, sale and buy refer to a legally binding transaction that involves the transfer of rights which is cash, clear, and real. Cash refers to a transaction in which the seller transfers ownership of the land to the buyer while the buyer pays certain amount of money, either partially or in whole. The term "clear" refers to the requirement that the sale and purchase must be observed by the village headman or indigenous chief. While real means, the intention to engage in a verbal transaction must be substantiated via tangible actions, with a deed of sale and purchase signed by both parties. Sale and purchase is one of the attempts in acquiring land rights through the transfer of rights. To officially record the transfer of rights, a Land Deed Making Officer must create an authentic deed. One of the legal products made by a Land Deed Making Officer is a deed of land sale and purchase.⁴

According to Article 1457 of the Civil Code, selling and purchasing is a contractual arrangement where one party commits to delivering an item to the other party, while the other party pays the agreed-upon amount.⁵ According to Article 1320 of the Civil Code, the validity of an agreement is contingent upon the presence of four essential elements: agreement, capability, a specific subject area, and a permissible cause.⁶ Article 1330 of the Civil Code stipulates that all individuals possess the capacity to enter into an agreement, unless the law establishes their incapacity.⁷ An individual who is classified as incapable of entering into a contract is someone who is under the guardianship. Article 433 of the Civil Code governs the concept of guardianship, stating that any adult who is deemed mentally incapacitated, insane, or has black eyes must

¹ The Basic Agrarian Principles, Act Number 5 of 1960, State Gazette No. 104 of 1960 referred to as UUPA, article 16 paragraph (1).

² Aartje Tehupeiory, *The Importance of Land Registration in Indonesia*, (Jakarta: Raih Asa Sukses, 2012) p. 6.

³ Boedi Harsono, (2013), *Towards the Perfection of National Land Law*. Jakarta: Trisakti University, p. 37.

⁴ Boedi Harsono, "Duties and Position of PPAT," *Journal of Law and Development*, Vol. 25, No. 6, (1995), p. 477

⁵ Civil Code [*Burgerlijke Wetboek*], translated by R. Soebekti and R. Tjitrosudibio, Article 1457.

⁶ Civil Code, Article 1320.

⁷ Misael and Partners. "Buying and selling if one party has dementia or senility." 2016. Available at <http://misaelandpartners.com/jual-beli-jika-salah-satu-pihak-pikun/>. Accessed on March 29, 2023.

be placed under guardianship, regardless of their cognitive abilities. An adult may also be placed under guardianship due to extravagance.⁸

Land sale and purchase deed is an authentic deed made and signed before a Land Deed Making Officer to prove that a legal act of transferring land rights has been carried out. As an official empowered by law to execute a deed of sale and purchase, PPAT ought to exercise caution in the performance of its duties and authority. This is significant because the sale and buy agreement that PPAT has produced is a genuine document with flawless evidentiary power, meaning that it may serve as proof to ensure the parties' legal certainty. However, it is important to note that there are still numerous mistakes or omissions committed by PPATs, which subsequently lead to financial losses for the involved parties. It is incumbent upon PPATs to assume responsibility for these mistakes. As found in High Court Decision Number 65/Pdt/2022/PT.Yyk, there was falsification of a sale and purchase deed made by a PPAT by postponing the date of the deed before the issuance of a court order so that its making did not require a court order and approval from the guardian. There was interference from the buyer who acted in bad faith by not paying off the remaining shortfall but still trying to get the parties to sign the sale and purchase deed.

As previously explained, PPAT as a public official in its capacity has the authority to make authentic deeds that serve as strong evidence as the basis for registering the transfer of rights. Hence, the PPAT possesses the authority to decline the execution of a deed in the event that certain requirements are not satisfied or contravene legal statutes and regulations. Thus, the author intends to conduct research on the Falsification of Land Sale and Purchase Deed Date by Land Deed Making Officer in Yogyakarta. This research aims to find out the form of PPAT's responsibility and legal protection for the parties in the deed made according to the applicable legal provisions in Indonesia.

2. RESEARCH METHODS

The type of research used is Doctrinal research. This research uses secondary data taken from literature studies of laws and regulations, books, and scientific articles. Secondary data is obtained by conducting literature searches or literature studies consisting of primary legal materials and secondary legal materials.⁹ Primary legal materials are related to laws and regulations concerning the position of PPAT and land law, while secondary legal materials obtained from literature studies in the form of literature related to legal issues to be studied. The data analysis carried out is qualitative data analysis.

3. RESULT AND DISCUSSION

3.1. Legal Liability of PPAT Against Forgery of Land Sale and Purchase Deed

The concept of legal responsibility plays a crucial role in ensuring the long-term viability of a well-established legal society. A person who is said to be legally responsible for a particular act is that he or she may be subject to a sanction in the

⁸ Civil Code, Article 433.

⁹ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research. A Brief Overview*, p. 52.

case of a contrary act.¹⁰ Hans Kelsen's theory of legal responsibility posits that an individual is legally accountable for a certain action or assumes legal responsibility. In this context, the term "subject" refers to the individual who is held liable for a sanction in the event of a contradictory act.¹¹ Responsibility arises because there are rights and obligations that must be fulfilled. The theory of liability according to Hans Kelsen is further stated as follows, "Failure to exercise the care required by law is called negligence; and negligence is usually regarded as another type of fault (*culpa*), although not as severe as the fault which is fulfilled by anticipating and intending, with or without malice, a harmful result."¹²

According to Article 1, paragraph (1) of Government Regulation Number 24 of 1997, which pertains to the amendments made to Government Regulation Number 37 of 1998 concerning Land Deed Officials, a Land Deed Making Officer is defined as a public official who possesses the authority to create legally valid deeds pertaining to specific legal transactions related to land rights or ownership rights over residential units.¹³

A PPAT must adhere to the relevant statutory provisions while performing their duties. The PPAT, as a legally authorized official responsible for executing deeds pertaining to the lawful transfer of land rights, shall give precedence to the concept of prudence when performing its tasks and using its authority. The principle of prudence is a principle that emphasizes a vigilant attitude both to oneself and others by considering every action performed to prevent undesirable outcomes from occurring in the future.¹⁴ This is important because the sale and purchase deed issued by PPAT is an authentic deed that has perfect evidentiary power so that it can function as evidence that guarantees legal certainty for the parties. Even so, currently there are still many mistakes or omissions made by PPATs that result in losses to the parties and PPATs are obliged to be responsible for these mistakes. As found in High Court Decision No. 65/Pdt/2022/PT.Yyk. The problem began with Mrs. MV who owned a piece of land with proof of ownership of Certificate of Title No. 230/Sidoarum. Mrs. MV suffered from a stroke (cerebrovascular disease), so the land was planned to be sold to pay for her treatment and had been declared being under guardianship by obtaining Yogyakarta District Court Stipulation No. 38 /Pdt.P/2018/PN Yyk on April 30, 2018 with Mr. SM, her husband as guardian. On May 14, 2018, a Deed of Sale and Purchase Agreement No. 2 was made on the land at Notary EA with the prospective buyer, Mrs. HS. The transaction value of the land sale was 9.5 billion Rupiah and an advance payment of 1.5 billion Rupiah was made, with an agreed payment in installments over a period of 12 months.¹⁵ After the sale and purchase agreement was made, Mrs. HS approached Mr. SM to convey her intention to settle the remaining shortfall of 8 billion Rupiah. Then, intentionally, Mrs. HS and PPAT SP asked for Mrs. MV's thumbprint on the blank

¹⁰ Jimly Asshidiqie and M. Ali Safa'at, (2006), *Hans Kelsen's Theory of Law*, Jakarta: Secretary General and Registrar of the Indonesian Constitutional Court, p. 61

¹¹ Moh. Syaeful Bahar, "Legal Protection of Labor Due to the Arbitrariness of Employers." *Legisia Journal* 14, No. 2 (2022), p. 224.

¹² M. Billy Saputra, Yurisa Martanti, and Iran Sahril, "Liability of PPAT in Connection with Alleged Forgery of Signature on Sale and Purchase Deed." *Sibatik Journal* 1, No. 11 (2022), p. 2434.

¹³ Government Regulation Number 24 of 1997 concerning Amendments to Government Regulation Number 37 of 1998 concerning Land Deed Officials, Article 1 paragraph (1).

¹⁴ This was stated by Adam Smith in his book *The Theory of Moral Sentiments* Indianapolis as cited in Hatta Isnaini Wahyu Utomo and Hendry Dwicahyo Wanda, "The Principle of Caution of Land Deed Officials in the Transfer of Uncertified Land." *Ius Quia Iustum Law Journal*, Vol. 24, No. 3 (2017), pp. 470.

¹⁵ Yogyakarta High Court Decision Number 65/Pdt/2022/PT.Yyk.

Sale and Purchase Deed and the blank receipt. Mrs. HS promised to transfer the shortfall immediately, but Mrs. HS did not transfer the shortfall, then gave a bilyet giro to Mr. SM for the purpose of repayment, but upon request for disbursement, the bilyet giro had expired and the signature of the drawer did not match the specimen.¹⁶

The blank receipt with Mrs. MV's thumbprint was then used to draw up a deed of sale and purchase with a date that was postponed before the guardianship order and the sale and purchase agreement were issued, as if the guardianship order was not required, and as if the sale and purchase had been made in full, and was used to record the transfer of rights on the Certificate of Title No. 230/Sidoarum into the name of Mrs. HS¹⁷, which should not be allowed.

In carrying out government administration, the National Land Agency of the Republic of Indonesia (hereinafter referred to as BPN) is appointed as the government agency authorized to carry it out.¹⁸ To carry out land registration programs, the BPN is assisted by Land Deed Making Officer.¹⁹ This is as stipulated in Article 6 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration. In relation to the duties and authority of PPAT as a public official authorized to make authentic deeds including sale and purchase deeds, Article 37 paragraph (1) of PP No. 24 of 1997 confirms that the transfer of land rights including sale and purchase must be proven by an authentic deed.²⁰

The terms of sale and purchase according to national land law are regulated in the Basic Agrarian Law Number 5 of 1960. In buying and selling land rights, the seller and buyer must fulfill the material and formal requirements. Material requirements relate to matters that aim to determine whether the sale and purchase in question is in accordance with the applicable statutory provisions. This requirement must have been fulfilled prior to the sale and purchase.

The first requirement is that the buyer has the right to purchase the land in question, which means that the buyer must be a party that meets the criteria as a subject holder of land rights as stipulated in the Basic Agrarian Law (hereinafter referred to as UUPA) and Government Regulation No. 18 of 2021 concerning Management Rights, Land Rights, Residential Units, and Land Registration (hereinafter referred to as PP No. 18 of 2021). The land title certificate owned by Mrs. MV as stated in the decision is a certificate of ownership and only Indonesian citizens and legal entities designated by the government are allowed to own it²¹ as stipulated in article 21 of the UUPA. Therefore, Mrs. HS as the purchaser is the rightful party to purchase the land in question.

Second requirement, The seller has the right to sell the land in question. The seller must be the party whose name is listed as the holder of the right to the land in the

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Rafiq Ayu Wardhana and I Gusti Ayu Ketut Rachmi Handayani, "Cancellation of PPAT Sale and Purchase Deed with Legal Defect due to Court Decision" *Journal of Sebelas Maret State University*, Vol. 6, No.1 (2019) pp. 2.

¹⁹ Government Regulation on Land Registration, ... Article 6 paragraph (2).

²⁰ PP 24/1997 Article 37 paragraph (1)

²¹ UUPA, Article 21.

certificate of title.²² In the court decision that the author examined, the certificate of title to the land was registered in the name of Mrs. MV. Thus, it can be concluded that the seller is the person whose name is listed in the certificate, recorded as the holder of the land rights and no other party owns it. However, what needs to be underlined is that Mrs. MV is someone who is under guardianship and it has been and can be concluded that Mrs. MV is not capable of doing legal acts, so the consequences of the sale and purchase can be canceled.

The third requirement is that the land concerned may be traded and is not in dispute. The sale and purchase of land carried out by Mrs. MV and Mrs. HS is not state land and is not disputed land. Land rights that can be bought and sold are regulated in the UUPA and PP No. 18 of 2021. As the object of the sale and purchase in this court decision is property rights, it is in accordance with Article 28 of the UUPA and Article 30 of PP No. 18 of 2021.

After all material requirements have been met, the PPAT can make a Sale and Purchase Deed. However, if the seller is not entitled to sell the land concerned or the buyer is not entitled to buy the land concerned, the sale and purchase can be canceled. Meanwhile, if the land in question cannot be traded or is in dispute, it can result in the sale and purchase being null and void. In this decision, the sale and purchase made by the parties did not meet the material requirements because the seller was not legally competent, so the sale and purchase could be canceled.

In the application of the precautionary principle carried out by the PPAT before the making of the authentic deed, the PPAT must examine and evaluate all documents submitted by the confrontants, conduct an introduction to the confrontants, and include facts or information provided by the confrontants.²³ To ensure that all the documents presented were correct, and then the deed was executed. However, what happened in this case was that one of the parties to the Sale and Purchase Deed, Mrs. MV, had suffered a severe stroke since 2010. According to witness testimony, since 2014 Mrs. MV has been unable to communicate and only has a short-term memory. The guardianship order was only issued on April 30, 2018 and the PPAT postponed the date of the deed to May 7, 2018 to make it appear that the guardianship order was not required. Article 446 of the Civil Code does stipulate that the guardianship order will take effect from the date the order is issued.²⁴ However, there is the potential for the court order to apply retroactively.²⁵ This is evidenced by the provisions of Article 447 of the Civil Code which states that, "All civil actions that occurred before the guardianship order was pronounced based on a state of imbecility, insanity, and dark eyes, may be canceled, if the basis for this guardianship had existed at the time the actions were carried out."²⁶ Therefore, it can be concluded that legal acts committed by a person

²² Suwardi and Arief Atmoko, "The Essence of Transfer of Ownership Rights through Sale and Purchase of Land in Accordance with Basic Agrarian Law Number 5 of 1960." *Lex Journal of Law and Justice Studies* 4, No.2 (2020), p. 2.

²³ Emha Ainun Rizal, "The Responsibility of PPAT for the Cancellation of Deeds Made Before Him." *Journal of Officium Notarium* 2, No. 2 (2022), p. 356.

²⁴ Civil Code, Article 446

²⁵ Feri Fenoria, "Cancellation of Land Sale and Purchase Agreements Made Prior to Guardianship and its Implications for Good Faith Land Buyers." Universitas Airlangga, November 5, 2022, available at: <https://unair.ac.id/pembatalan-perjanjian-jual-beli-tanah-yang-dilakukan-sebelum-adanya-pengampuan-dan-implikasinya-terhadap-pembeli-tanah-beritikad-baik/>, accessed on March 15, 2024.

²⁶ Civil Code, Article 447.

under guardianship, especially a person who is dumb, mentally ill, and blind, can be canceled. For example, see Supreme Court Decision No. 639/K/Pdt/2018, in which the panel of first instance judges annulled a deed signed by a party who was not legally competent. Although the deed was signed in 2015 and the guardianship order was only obtained in 2016, the deed was still annulled.²⁷ If the PPAT SP heeds the precautionary principle, then he should have known that the person under guardianship was incapable of signing the deed at the time the person appeared before him. Based on this, it can be concluded that the PPAT was negligent in carrying out his duties. In practice, the signing of the Sale and Purchase Deed is done after the buyer has paid the full price. This is regulated in the Decree of the Minister of State for Public Housing No. 09/KPTS/M/1995 concerning Guidelines for Binding the Sale and Purchase of Houses (hereinafter referred to as KEPMENPERA) letter X, the Sale and Purchase Deed can be signed if three aspects have been fulfilled, namely: 1) "the house has been completed on the land and is ready for occupancy; 2) the purchaser has paid the full price of the land and the house, together with taxes and other related costs; 3) the application process for a building use right over the land has been completed and the building use right certificate is registered in the name of the seller."²⁸

There was another negligence committed by PPAT SP, which was signing the sale and purchase before the sale and purchase transaction was paid in full. In the case, the sale and purchase was agreed with a value of 9.5 billion rupiah as stated in the sale and purchase binding agreement. However, Mrs. HS as the buyer has only paid off 1.5 billion rupiah. Therefore, the sale and purchase of freehold land number 230/Sidoarum violated the provisions of Kepmenpera Number 09/KPTS/M/1995 letter X number 2.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 2 of 2018 on the Guidance and Supervision of Land Deed Officials regulates violations committed against PPAT. Furthermore, the sanctions imposed are regulated in detail in Appendix II of Ministerial Regulation No. 2/2018 on the Guidance and Supervision of Land Deed Officials. Article 12 paragraph (2) states what violations committed by PPAT are, namely: 1) "violation of the implementation of the PPAT position; 2) does not carry out the obligations stipulated in laws and regulations; 3) violating the prohibition stipulated in the laws and regulations; and/or 4) violating the Code of Ethics."²⁹

Article 13 paragraph (1) regulates the sanctions imposed on PPATs who commit violations, which can be in the form of: "written reprimand; temporary dismissal; respectful dismissal; or dishonorable dismissal."³⁰

Based on these provisions, it can be said that PPAT SP committed another violation by filling in the blank of the sale and purchase deed with a postponed number and date,

²⁷ Supreme Court Decision Number 639/K/Pdt/2018

²⁸ Decree of the Minister of State for Public Housing, Kepmenpera Number 09/KPTS/M/1995, Letter X.

²⁹ Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 2 of 2018 on the Guidance and Supervision of Land Deed Officials, Article 12 paragraph (2).

³⁰ Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 2 of 2018 on the Development and Supervision of Land Deed Officials, Article 13 paragraph (1).

in order to make it appear that a guardianship order was not required. The deed of sale and purchase blank was also filled in with the names of the parties, land data, selling price and payment procedures to make it appear as if a sale and purchase had taken place. This clearly fulfills the types of violations listed in Appendix II of the Regulation of the Minister of ATR/KBPN Number 2 of 2018 concerning the Guidance and Supervision of Land Deed Making Officer, namely filling in the deed blank in the context of making a PPAT deed is not carried out in accordance with the correct events, status and data and is not supported by documents in accordance with statutory regulations.³¹ The making of a PPAT deed must be carried out in accordance with the incident, status and correct data and supported by documents in accordance with statutory regulations, this is because the dating of an authentic deed is very important to determine the suitability of the date with the actual event. As a result, PPAT SP can be subject to witnesses in the form of temporary dismissal with a maximum period of one year, for his actions in filling out the deed blank in the context of making a PPAT deed not carried out in accordance with the incident, status and correct data and not supported by documents in accordance with statutory regulations.³²

PPAT SP also violated Article 39 paragraph (1) letters c and g of Government Regulation No. 24/1997 on Land Registration, namely PPAT must refuse to make a deed if one or the parties to the legal action are not entitled or qualified to act.³³ Sanctions imposed by PPAT based on Annex II of Regulation of the Minister of ATR/KBPN Number 2 of 2018 concerning Guidance and Supervision of Land Deed Making Officer are PPAT can be dismissed dishonorably if they commit serious violations in terms of making deeds in the presence of unauthorized parties.³⁴ One of the serious violations referred to is making a deed in the presence of parties who are not authorized to carry out legal actions according to the deed they make.³⁵ In addition to violations of laws and regulations, PPAT SP also violated the obligations stipulated in the Code of Ethics of the Association of Land Deed Making Officer (IPPAT) in Article 3 letters a, b, e, f, and h, namely: a) have a good personality and uphold the dignity and honor of PPAT; b) uphold the basis of the state and the applicable law and act in accordance with the meaning of the oath of office and code of ethics; e) have professional behavior and participate in national development, especially in the field of law; f) work with a full sense of responsibility, independently, honestly, and impartially; and h) provide legal counseling to the public in need of his/her services with a view to making the public realize and appreciate his/her rights and obligations as citizens and members of the community.³⁶ Sanctions imposed on such violations are in the form of reprimand, warning, suspension (temporary dismissal) from membership of the IPPAT association, onzetting (dismissal) from membership of the IPPAT association, and dishonorable discharge from membership of the IPPAT association.³⁷

³¹ Annex II of PMNA/KBPN Number 2 of 2018 on the Guidance and Supervision of Land Deed Officials, pp. 42.

³² *Ibid.*

³³ GR 24/1997, Article 39 paragraph (1) letter c.

³⁴ Appendix II of PMNA/KBPN Number 2 of 2018 on the Guidance and Supervision of Land Deed Officials, p. 41.

³⁵ *Ibid.*

³⁶ Code of Ethics of the Association of Land Deed Officials, Article 3.

³⁷ Code of Ethics of the Association of Land Deed Officials, Article 6 paragraph (1).

Document forgery is one type of crime regulated in the Criminal Code (hereinafter referred to as the Criminal Code). In addition to committing offenses regulated in laws and regulations and the IPPAT Code of Ethics, PPAT may also commit criminal offenses if they meet the formulations listed in the Criminal Code.³⁸ In this case, the act of postponing the date of making the PPAT deed by PPAT SP fulfills the formulation stated in Article 263 of the Criminal Code regarding forgery of documents, namely "whoever falsely makes or forges a document which may give rise to a right, an obligation or a release from debt, or which is intended as evidence of a matter, with intent to use or to cause others to use the document as if the contents were true and unfalsified, shall, if such use may cause loss, being guilty of forgery of documents, be punished by a maximum imprisonment of six years."³⁹ Article 264 paragraph (1) further states, "forgery of authentic deeds is punishable by imprisonment for a maximum of eight years."⁴⁰

3.2. Legal Protection for the Parties in the Deed of Land Sale and Purchase Made by PPAT

PPAT can also be held civilly liable for the loss of the parties in the making of the deed. Civil liability applies if there is a civil lawsuit from a party related to the sale and purchase deed made by the PPAT, and the party feels harmed by the presence of the Sale and Purchase Deed.⁴¹ The action of PPAT SP to postpone the date of making the deed can be classified as a tort. The definition of unlawful act is regulated in Article 1365 of the Civil Code, "Every act that violates the law and brings harm to another person, obliges the person who causes the harm through his fault to compensate for the loss."⁴² A tort claim must meet the criteria of four elements, namely the tort, the loss, the fault, and the causal relationship between the tort and the loss.⁴³ PPAT SP's actions constitute an unlawful act because they violate the provisions of laws and regulations and the IPPAT Code of Ethics, then the elements of error committed are postponing the date of making a deed that does not match the actual event, making a deed of sale and purchase when the sale and purchase has not been paid off, and signing the deed in front of an unauthorized party. The causal relationship between these acts is that by making the sale and purchase deed, the buyer in bad faith uses the deed to record the transfer of rights, which should not be allowed. Although the land is still physically controlled by the seller, the loss incurred is related to the utilization of the land which results in the land being unable to be leased. Based on this, it can be concluded that PPAT SP meets the criteria to be sued for tort, even though in the decision PPAT SP was not sued for any losses.

³⁸ Viona Putri Oktavia and Oci Senjaya, "Juridical Analysis of Alleged Falsification of Sale and Purchase Deed by Land Deed Officials Based on Law No. 30 of 2004 on Notary Position.", *Rectum Journal* 5, No. 1 (2023), p. 989.

³⁹ Kitab Undang-Undang Hukum Pidana, translated by Moeljatno, (Jakarta: Bumi Aksara, 2008), Article 263 paragraph (1).

⁴⁰ *Ibid*, Article 264 paragraph (1).

⁴¹ Yovita Christian Assikin, Lastuti Abubakar, and Nanda Anisa Lubis, "The Responsibility of Land Deed Officials in Connection with Canceled Sale and Purchase Deeds in Review of Applicable Legislation." *Acta Diurnal Journal of Kenotariatan Law Science Faculty of Law Unpad* 3, No. 5 (2019), p. 93.

⁴² Civil Code, Article 1365.

⁴³ Ahmad Zainul Anam, "Elements of Unlawful Acts." Registrar of the Supreme Court, October 15, 2021, available at: <https://kepaniteraan.mahkamahagung.go.id/glosarium-hukum/1876-unsur-unsur-perbuatan-melawan-hukum>, accessed on March 16, 2024.

4. CONCLUSION

PPAT as an official authorized by law to make a deed of sale and purchase should apply the principle of prudence in carrying out its duties and authority. This is important. A PPAT in carrying out his position must be guided by the applicable statutory provisions so that there are no mistakes in making deeds in the future. PPAT can be held civilly, criminally, and administratively liable at the same time as a result of making deeds that are not in accordance with applicable legal provisions. PPATs who are negligent in carrying out their obligations to postpone the date of the sale and purchase deed to make it appear as if it does not require a guardianship order, as well as the signing of the deed prior to the payment by the buyer, may be subject to a civil lawsuit for losses as legal protection for the parties whose names are listed in the deed. In addition, PPATs may be subject to administrative sanctions in the form of honorable dismissal and dishonorable dismissal, as well as criminal sanctions for forgery of authentic deeds with a maximum imprisonment of eight years.

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