

Effects Of Creation Deed of Sale and Purchase of Land Which Does Not Match Procedure of Making Land Deeds

Fery Harjanto¹, Defry Dwi Irmawan² and Gunarto³

Abstract. Land registration is held to ensure legal certainty. The absence of legal certainty in land ownership rights will lead to the deed of sale of land that is unlawful, because it is made without going through the procedures of land deed that has been determined. The purpose of this study was to analyze the causes of the Deed of Sale and Purchase of Land that is not in accordance with the procedures of the Land Deed-making event and to analyze the legal consequences Deed of Sale and Purchase of Land that is not in accordance with the procedure of making the show. This study using sociological juridical approach with analytic descriptive data analysis techniques. Data collection was done by using the study of literature. The results showed that the factors causing the deed of sale of land that does not follow the procedure of deed of land caused by the confidence that is too high between the parties with PPAT, too many employment PPAT so the time to investigate is limited, lack of understanding PPAT to the provisions of the law, the value of the transaction so that PPAT follow the will of the parties, relationships and friendship factor. Based on data analysis concluded the legal consequences of land purchase deed which is not in accordance with the procedures of a deed is PPAT be dishonorably discharged, the deed of sale published degraded proof strength be deed under the hand and third parties can use this for their own interests.

Keywords: Deed of Sale and Purchase of Land; Procedure for the Deed; Effects.

1. Introduction

Registration of land rights is the guarantee of the state, and an instruments are important for the protection of landowners. Rechtkadaster land registration which includes: 1) surveying, mapping, and soil bookkeeping; 2) registration of such rights; 3) granting land certificates are valid as evidentiary tool.⁴ Land Registry organized to ensure legal certainty. Land Registry is organized to meet the needs of the community and the government.⁵ Since its applicable PP 10 of 1961 on the sale and purchase of land registration made by the parties in the presence of PPAT chagemake its deed. By doing the selling before PPAT, filled with light condition (not a legal act of the dark, which is done in secret).⁶ Likewise, according to PP 24 of 1997 requires land purchase agreement must be made in the form of authentic deed made before the competent authorities, namely PPAT.⁷ So according to PP 24 of 1997 registration and selling it only can (should) be done with PPAT deed as proof. The person doing the selling without proven by PPAT deed will not be able to obtain a certificate.

¹ Students of Master of Notary Law Universitas Islam Sultan Agung email: feryharjanto2@gmail.com

² Students of Master of Law, Faculty of Law, Universitas Islam Sultan Agung email: defry121@gmail.com

³ Profesor of Faculty of Law UNISSULA Semarang

⁴ Adrian Sutedi 2012 *Sertifikat Hak Atas Tanah* Sinar Grafika Jakarta p. 105

⁵ National Land Agency 1989 *the Association of Land Registry Essay* March Jakarta p.44.

⁶ Boedi Harsono 1999 *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria Isi dan Pelaksanaannya* Jilid 1 Hukum Tanah Nasional Djambatan Edisi Revisi Jakarta p. 298

⁷ Article 37 paragraph (1) of Government Regulation No. 24 of 1997.

PPAT Deed relating to the delivery of judicial purposes (Juridische Levering) in addition to the real submission (feitelijk Levering).⁸ Liabilities submission of proof of ownership of land for sale is very important, because it is Article 1482 of the Civil Code states, "obligations submit an item includes everything into its equipment and is intended for use fixed, along with letters of proof belongs." So the delivery of evidence-owned includes the handover certificate.

Under PP 24 of 1997, the transition of land and bendabenda on it made by PPAT deed. The transfer of land from the owners to the recipient along with the submission of a juridical (Juridische Levering), a submission must meet the formality of law, including eligibility, made through the established procedure, using documents, created by / before PPAT.⁹

According to the Civil Code, Buying and selling is an agreement in which one party (the seller) to bind himself to hand (property rights) of an object and the other party (the buyer) to pay the price that has been promised under Article 1457. The purchase pursuant to Article 1458 deemed to have tetjadi between the two parties at the time achieved consensus on the objects sold along with the price even if the object has not been submitted and the price has not been paid. With the purchase, the land ownership has not been transferred to the buyer even though the price has been paid and the land was handed over to the buyer.¹⁰

In terms of buying and selling property rights to land based on customary law, where the purchase is cash, then when the ownership to pembeli is when berlainya entitles the buyer is at the time of sale and purchase of done before PPAT.¹¹ However, to bind third parties, including the Government, after the purchase before PPAT, must be registered in advance.

Deed of sale of land is a very important thing that works for the transfer of property rights to land and the ownership of land.¹² Under PP 24 In 1997, PP 37 of 1998, and Minister of State for Agrarian Affairs / Head of National Land Agency No. 4 of 1999 also raises the issue more complicated. Especially rural district head or head of his village have not been designated as a PPAT temporarily, while many rural residents who make buying and selling land without land title. To purchase the land with the status of "customary property rights" (without form certificate) require the written statement of the truth Lurah land sold in the territory. The owner *girik* or *kititir* issued before 1960 will be certified by way of conversion. The *girik* or *kikitir* issued after 1960 have to go through for the right to sub-Cities Regional Agricultural Directorate.¹³

This resulted in a lot of the deed of sale of land made without going through the procedures of land deed, which will inevitably lead to legal consequences because it does not match with the land deed event. So the problem in this research is: How does the

⁸Subekti 2002 *Hukum Perjanjian* cet. 19 Intermedia Jakarta p. 79

⁹Abdul Kadir Muhammad 1994 *Hukum Harta Kekayaan* Cet. I Citra Aditya Bakti Bandung p.55

¹⁰Maria. SW Sumardjono 1982 *Serangkaian Aneka Masalah Hukum Agraria* Andi Offset. Yogyakarta p. 53

¹¹ Ibid p.56

¹² Harun Al-Rasyid 1987 *Sekilas tentang jual Beli Tanah* Cet. I Ghalia Indonesia Jakarta p.64

¹³Gita Jaya 1977 *Catatan H. Ali Sadikin Gubernur Kepala Daerah Khusus Ibu Kota Jakarta 1966-1977* Cet.1 Jakarta p. 229

Deed of Sale and Purchase of Land that is not in accordance with the procedure Making Land Deed event ?; What factors cause the Deed of Sale and Purchase of Land does not match with the event Preparation of Land Deed ?; How the legal consequences Deed of Sale and Purchase of Land that is not in accordance with the procedure Making Land Deed event?

Research methods

This study using sociological juridical approach with analytic descriptive data analysis techniques. Data collection is done by the study of literature and interview techniques.

2. Result and Discussion

2.1. The Forms Of PPAT Deed Which Is Not In Accordance With The Procedure PPAT Deed

Deed of sale of land is a very important thing that works for the transfer of property rights to land and the ownership of land.¹⁴ In the process of making the deed is found that the manufacturing process does not comply with the procedure. The result will lead to a deed that is not appropriate, are as follows:

- Deed of sale has been signed but the purchase price is not paid in full by the buyer as well as Income Tax on Income From the Transfer of Rights to Land and / or buildings (Government Regulation No. 71 Of 2008 on Third Amendment to Government Regulation No. 48 of 1994 on Payment of Income Tax on Income from the Transfer of Rights to Land and / or buildings) and tax or tax on Acquisition of Land and Building (BPHTB) based on Act No. 20 Of 2000 on BPHTB also not been paid.¹⁵
- Sales and purchase agreement by the parties do not before PPAT who signed the deed of sale (deposit certificate).
- This happens because the object of the right to land is located outside the working area PPAT concerned (PPAT work area is the working area of the District Land Office / municipality, Article 12 of Government Regulation No. 37 of 1998 on the Regulation of Land Deed Official Position). PPAT is not authorized to make the deed if the subject matter of land rights.
- The signing of the deed of sale by the seller and the buyer is not done at the same time in front of PPAT.
- Deed of sale has been signed but the certificate has not been checked for conformance with the land book at the land office.
- Making the deed of sale is done outside the working area PPAT and without the presence of witnesses.
- Deed was signed outside the office PPAT and without the presence of witnesses.
- Transaction price values contained in the deed of sale is different from the actual transaction value.

¹⁴ Harun Al-Rasyid 1987 *Sekilas tentang jual Beli Tanah* Cet. I Ghalia Indonesia Jakarta p.64

¹⁵ Interview with Rusdiyanto PPAT in Semarang 5 September 2018

Sale and Purchase Agreement is a treaty relief (which is the reason for the agreement depends on the existence of other agreements that serves as a preliminary agreement and free form). In general, a binding sale and purchase agreement (SPA) contains promises that must be met first by one party or the parties before it can do the basic agreement is the ultimate goal of the parties is of course requirement can be assorted.¹⁶

2.2. Factors That Cause The Land Purchase Deed Which Is Not In Accordance With The Procedure PPAT Deed

There are several factors that lead to the manufacture of the deed of sale of land by PPAT thus become incompatible or deviate from the procedure PPAT deed. The PPAT are in fact well aware and know that there are serious consequences for what they do in terms of making the deed of sale that is not in accordance with the procedures deed PPAT, but they still do these things because there is a belief that if they does not accept or does not want to commit such an act they will lose clients because their clients will move and use the services of other PPAT. Factors that cause these things above include:¹⁷

- The existence of a situation which requires PPAT to manufacture the deed of sale that does not comply with the procedures PPAT deed, which is needed in order to save a sale and purchase transaction. Making the deed of sale as it looks in construction purchase and sale transactions where the taxes owed and the unpaid purchase price has not been paid in full upon signing the deed is done.
- There is a mutual trust is very high among PPAT and between the parties with PPAT, a kind of "esprit de corps", so they believe that among PPAT will protect and will not open the secrets that exist between them and between them there are also mutual understanding and mutual understanding. This has led to the belief among them that their actions will be safe and there will be problems later on which may make it difficult for them. Things like this seem in terms of construction and selling by way of deposit certificates. PPAT who left entirely to the PPAT deed of trust which receives deposits, which receives deposits that PPAT deed would do good service to which he entrusts PPAT deed and to clients who entrust PPAT deed and vice versa.
- The number of jobs that PPAT in question did not have time to research and mencemati, especially from the authority to act on the client, and not noticed the legal provisions applicable to the case at hand.¹⁸
- Factors PPAT lack of understanding of the legal provisions on something in connection with the deed made by or in front of him as the PPAT.¹⁹
- The time factor and bustle of the party causing the PPAT adjust to time and bustle of the parties. Such a situation is seen in the construction of purchase in respect of which the signing of the deed of sale do not in the presence of the parties and not

¹⁶ Interview Muhammad Mamduh PPAT in Semarang 5 September 2018

¹⁷ A. Zulda Putra 2010 *Akibat Hukum Dari Pembuatan Akta Yang Tidak Sesuai Dengan Tata Cara Pembuatan Akta PPAT* Tesis UNDIP Semarang.

¹⁸ Mulyoto 2014 *Pertanggungjawaban Notaris PPAT Dalam Menjalankan Tugas Jabatannya* Cakrawala Media Yogyakarta p.vi.

¹⁹ *Ibid.*

simultaneously. Deed of sale was signed first by one party and after that one of the other parties to sign the deed of sale.

- The reason for the efficiency of the time for the parties since the making of the deed of sale sometimes for inspection or checking certificates land office can not be ascertained until how long it takes. Things like this can be seen from the construction and selling where the deed of sale was signed first in spite of examination or checking the certificate has not been completed.
- Factor the value of purchase transactions are carried out by the parties so that PPAT is willing to follow the will of the parties. It is undeniable that the opportunity to get a large amount of the transaction are rare, so if there is an opportunity as much as possible PPAT will try to get it. Such a situation is seen in the construction and selling is done outside the working area PPAT, even abroad in order to get trading opportunities in large numbers.
- Factors relationships and friendships can also be a reason for PPAT to manufacture the deed of sale that does not comply with the procedures PPAT deed. This is done by PPAT in order to maintain good relations with relatives or friends, because when PPAT in question does not want to fulfill the wishes of relatives or friends, then relatives or friends will feel treated equally with clients PPAT others and feel they are not get preferential or special treatment. Such conditions occur in construction and selling where signatories deed done by one of the parties by way of PPAT concerned who come to the party in the absence of a valid reason and justified.
- Factors that caused by the demands of the parties. The desire of the parties to ask PPAT to manufacture the deed of sale which resulted in the loss of the state in terms of tax revenue. Incidents like this seen in construction and selling in terms of transaction value in the deed of sale is lower than the actual transaction value.

From a variety of factors and reasons as mentioned above, there is the possibility of a combination of several factors and reasons in terms of making the deed of sale that is not in accordance with the procedures PPAT deed. So there is the possibility of buying or selling, deed manufacturing carried out by one or more ways that are not in accordance with the procedure PPAT deed. In the opinion of the author of the above things happen because of the unprofessional, cheekily on the parties and the high competition among PPAT factor in terms of a deed. PPAT was unable to explain to the parties about how making PPAT deed should be.

2.3. The Legal Consequences Of The Deed Of Sale Of Land That Is Not In Accordance With The Procedure Of Deed Land

A deed basically has a variety of functions with respect to legal actions, among others, the function of determining the validity (According Mochammad Dja'is and RMJ Koosmargono, deed viewed from the function to specify a complete or perfect (not the validity) an act of law), or the requirements of establishing and function as evidence²⁰, In terms of its function as evidence, proving the strength of the authentic act has perfect (just one is

²⁰ Herlien Budiono 2006 *Asas Keseimbangan Bagi Hukum Perjanjian Indonesia Hukum Perjanjian Berlandaskan Asas-Asas Wigati Indonesia* PT. Citra Aditya bakti Bandung p. 256.

enough evidence as the basis of circuit breaker case, the authentic act is considered true and those who argue burdened to prove his denial).²¹

According to Article 1869 of the Civil Code, the authentic act can be dropped or degraded strength of the proof of having the strength of evidence is perfect to just have the strength of evidence as writing under his hand, if a public official who makes the deed was not authorized to make such deed or if the deed was defective in form. Here are the legal consequences deed of sale of land is not in accordance with the procedure PPAT deed:

- Deed degraded proof strength be deed under the hand because it does not meet the requirements specified by law or other regulations.
- PPAT makes deed subject to administrative sanctions and fines (Article 26 paragraph (1) of Act No. 20 of 2000 on the Amendment of Act No. 21 of 1997 on Customs Acquisition Rights to Land: Deed Official Land / Notaries and Officers of State Auction in violation of the provisions referred to in Article 24 paragraph (1) and (2), subject to administrative sanctions and fines of US \$ 7,500,000.00 (seven million five hundred thousand rupiah) for each offense).
- The parties or interested third parties can take advantage of this situation, suppose that the third party will file a lawsuit but the knock by their authentic act which has the strength of evidence was perfect (just one is enough evidence as the basis for a case breaker). In accordance with the wording of Article 1870 of the Civil Code: "For the interested parties and their heirs or for the people who get the right of them, an authentic act provides a perfect evidence about what is contained therein" With the gap that the authentic act of the can be degraded into a deed under the hand, so that interested third parties are likely to win the lawsuit.
- PPAT be dishonorably discharged from his position (Article 28 paragraph (2) Regulation of the National Land Agency Number 1 Of 2006 on Implementation Provisions of Government Regulation No. 37 Of 1998 on the Regulation of Land Deed Official Position.

3. Closing

3.1 Conclusion

Based on research, it is deduced as follows:

- The shape of the deed of sale of land that is not in accordance with the procedures of making the land deed is deed of sale were signed but the purchase price is not paid in full by the buyer, signing the deed of sale by the parties do not before PPAT who signed the deed of sale (deposit certificate), the signing of the deed of sale by the seller and the buyer is not done at the same time in front of PPAT, deed of sale were signed but the certificate has not been checked for conformance with the land book at the land office, the Making of the deed of sale is done outside the working area PPAT and without the presence of witnesses, the transaction price value contained in the deed of sale is different from the actual transaction value.

²¹Mochammad Dja'is and RMJ Koosmargono op. cit p. 157.

- Factors that cause the making of the deed of sale of land that is not in accordance with the procedures deed PPAT namely the existence of a situation which requires PPAT to manufacture the deed of sale that is not in accordance with the procedures deed PPAT, which is necessary in order to save a sale transaction buy, mutual trust is very high which are among PPAT and between the parties with PPAT, the amount of work that PPAT in question did not have time to research and observe, especially from the authority to act on the client, and not noticed the legal provisions applicable to the case faced, lack of understanding PPAT against the legal provisions on something in connection with the deed made by or before him as PPAT, busyness and the time of the party causing the PPAT adjust to time and bustle of the parties, the value of the sale and purchase transactions carried out by the parties so that PPAT is willing to follow the will of the parties, and the relationship and the friendship factor.
- The legal consequences of the deed of sale of land that is not in accordance with the procedures deed PPAT that PPAT can be dishonorably discharged from his position, if any dispute arises and the parties concerned can prove that the deed has been made without meeting one or more ordinances manufacture PPAT deed the deed degraded proof strength be deed under the hand and easily exploited by interested third parties can take advantage of the situation.

3.2 Suggestion

- The PPAT should not get used to copy and paste and lazy reading. Studying any provisions with respect to plans deed made.
- PPAT should learn over and over of notary law and all regulations related, because the legal rules are always changing and may increase.
- PPAT should limit the volume of work that is sometimes beyond the limits of fairness that should be resolved bias.
- Do not merely entrusted to the staff especially when it must involve the law and no legal consequences against PPAT.
- PPAT have to perform tasks in accordance with the provisions of applicable law UUJN or laws or other provisions, as well as the applicable provisions do not violate due to the proximity to the client.

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