

## The Legal Protection for Officials Making Land Deeds for Making Deeds of Sale and Purchase of Land that Causes Disputes

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**Abstract.** *This study aims to analyze: 1) Responsibilities of Land Deed Officials (PPAT) for making land sale and purchase deeds that cause disputes. 2) Legal protection for Land Deed Making Officials (PPAT) for making land sale and purchase deeds that give rise to disputes. The approach method in this research is a sociological juridical approach. The specification of the research used is descriptive analytical research. Types of data using primary and secondary data. Data collection by interview method and literature study. The data analysis method used is qualitative analysis. The results of the study concluded: 1) The responsibility of the Land Deed Making Officer (PPAT) in making land sale and purchase deeds that give rise to disputes is as a witness, 2) Legal protection for the Land Deed Making Officer (PPAT) for making land sale and purchase deeds that give rise to disputes is that the PPAT can ask IPPAT for legal protection/defense efforts. PPATs who are summoned as witnesses can ask for help from professional organizations of IPPAT to get assistance during examinations and even at the central level. The legal assistance provided by IPPAT applies to PPATs who are not proven guilty. Based on the theory of legal protection, the provisions regarding the legal protection of the Official for Making Land Deeds are not regulated normatively in the Position Regulations for the Official for Making Land Deeds. Repressive legal protection for PPATs related to making Deeds that give rise to disputes can be achieved by using the right of denial.*

Keywords: Disputes; Protection; Purchase; Sale.

## 1. Introduction

Land is a gift from God Almighty for every human being on earth because land has many benefits in it, land must be managed, utilized and maintained as well as possible as a resource to achieve the goal of being a prosperous country.<sup>1</sup>Land and humans cannot be separated, humans live and develop and carry out their daily activities on the land. Humans most of their lives depend on land, because land is a source of livelihood and livelihood for humans.<sup>2</sup>Land plays a central role in Indonesian life and economy. The rise of development in various fields of life has caused land to become a commodity that has very high economic value and is difficult to control.<sup>3</sup>This has caused many people to be interested in investing by buying land, bearing in mind that the price continues to soar every year.

Article 2 paragraph (1) of Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) states that earth, water and space, including the natural wealth contained therein, are controlled by the state at the highest level. The purpose of the state controlling the land means that the land is not owned by the state, but that the state has internal power regulates the distribution of land rights that can be granted as well as the legal relationships that arise over a land.<sup>4</sup>

Land rights are a right to control land by the state that is given to a person, group of people, or to legal entities, both Indonesian citizens and foreign citizens.<sup>5</sup>Land rights are rights that give authority to the right holders (both individually, groups of people collectively and legal entities) to use in the sense of controlling, using and or taking advantage of certain plots of land.<sup>6</sup>Basically all land rights can be transferred or transferred. Switching is the transfer of land rights because of the

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<sup>1</sup>Heru Kurniawan. Reconstruction and Re-actualization of Islamic Social Ecological Literacy. Research Journal Volume 13 Number 2 (2016). p. 201

<sup>2</sup>Dyara Radhite Oryza Fea. (2018). Land Management Guide. The House and Permits. Yogyakarta: Legality. p.1

<sup>3</sup>Adrian Sutedi. (2018). Transfer of Land Rights and Registration thereof. Jakarta: Sinar Graphics. p.22

<sup>4</sup>Hardianto Djanggih and Salle Salle. Legal Aspects of Land Acquisition for Implementation of Development in the Public Interest. Pandecta: Research Journal of Legal Studies. Volume 12 Number 2 (2017). p. 165

<sup>5</sup>Urip Santoso. (2010). Agrarian Law and Land Rights. Jakarta: Kencana. p.87

<sup>6</sup>Ibid., p. 82

law, by itself, there is no intentional legal action to transfer that right to another party.<sup>7</sup>

Transfer of land rights can be carried out by transferring rights such as buying and selling, exchange, grants, auctions, inheritance, transfer of rights due to merger or consolidation and other transfers of rights. This is regulated in Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 which states that the transfer of rights to land and ownership rights to apartment units through buying and selling, swapping, grants, income within the company and other legal actions for transferring rights, except for transfers rights through an auction can only be registered if proven by a deed drawn up by the authorized PPAT according to the provisions of the applicable laws and regulations.

The official who is authorized to make a sale and purchase agreement deed is the Land Deed Making Officer (PPAT). PPAT is one of the institutions mentioned in the Civil Code whose authority is closely related to making authentic deeds and other powers. Departing from the need for a perfect means of proof (*volledig bewijs*) in accordance with the *Burgelijke Wetboek (BW)* or the Civil Code (*KUHPerdata*) and the *Herzien Inlandsch Reglement (HIR)* or Indonesian Civil Procedure Code, in addition to material truth, PPAT also has a role and important duties and positions of honor.<sup>8</sup>The PPAT is given the task and authority so that its presence is to serve the people who carry out legal actions by making a deed of transfer of their rights and a deed of encumbrance of their land rights.<sup>9</sup>Based on Article 531 of the Civil Code it can be said that a person is considered to have good faith if that person obtains an object by obtaining ownership rights and knowing that there is no defect contained in the object.<sup>10</sup>The most important thing in the implementation of buying and selling land is ensuring that the land object being traded is not land in dispute, and the seller is the person who really has the right to sell it.

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<sup>7</sup>Erna Sri Wibawanti. & Murjiyanto. (2013). *Land Rights and Their Transfer*. Yogyakarta: Liberty p.119.

<sup>8</sup>Tatik Arjiati. The role of the Notary/PPAT in Making the Deed of Distribution of Joint Rights (APHB) on the Distribution of Inheritance of Different Religions on Land and Buildings. *Deed Journal*. Volume 4 Number 1 (2017). Unissula. Semarang. p.75

<sup>9</sup>Denny Suwondo. Ihsan Saputra. Roles and Responsibilities of Land Deed Officials in the Implementation of Land Registration Activities. *Unissula Law Journal*. Volume 35 Number 2 (2019). p.187

<sup>10</sup>Arie S. Hutagalung and Suparjo Sujadi. "Good Faith Buyer in the Context of Buying and Selling According to Indonesian Legal Provisions." *Journal of Law and Development*. Volume 35 Number 1 (January-March 2005). p.43.

The PPAT Deed is one of the data sources for the maintenance of land registration data, so it must be made in such a way that it can be used as a strong basis for the registration of the transfer and encumbrance of the rights concerned. Therefore the PPAT is responsible for examining the requirements for the validity of the legal action in question. Among other things, matching the data contained in the certificate with the lists in the Land Office. The PPAT has the main role of carrying out the registration of land rights, which will be used as the basis for the registration of changes in land registration data resulting from the legal action. The act of buying and selling is part of a form of civil law action which if a case occurs as a result of the act is something that can be accounted for,

The making of the Deed of Sale and Purchase of Land by PPAT which gave rise to a dispute occurred in Grobogan. This case started when BS (Plaintiff) lent money to AM (Defendant) in the amount of Rp. 325,000,000.- (Three hundred and twenty five million rupiah) with collateral for land certificates bound in the sale and purchase agreement deed drawn up before a Notary/PPAT S in Gubug, Grobogan Regency (Co-Defendant). In the agreement, Plaintiff BS and Defendant AM promised to buy back the land object at a price of Rp. 425.000.000,- (Four hundred and twenty five million rupiah) within 3 (three) months since the signing of the agreement. However, in less than 3 (three) months, Defendant AM only returned Rp. 85,000,000.- (Eighty five million rupiah) to Plaintiff BS. Plaintiff BS then borrowed Defendant AM's certificate with the reason for measuring it, but without the knowledge of the Defendant, the Plaintiff instead reversed the name of the certificate to become on behalf of the Plaintiff on the basis of a Sale and Purchase Deed drawn up by a Notary/PPAT S. This case is registered in Decision Number 47 /Pdt.G/2018/PN Pwd. Based on the description above, the title of this study was chosen "Legal Protection for Officials Making Land Deeds for Making Deeds of Sale and Purchase of Land that Cause Disputes in Grobogan Regency".

## **2. Research Methods**

The approach method in this research is a sociological juridical approach. The specification of the research used is descriptive analytical research. Types of data using primary and secondary data. Data collection by interview method and literature study. The data analysis method used is descriptive qualitative analysis.

### 3. Results and Discussion

#### 3.1. Responsibilities of Land Deed Making Officials (PPAT) for Making Land Sale and Purchase Deeds that Cause Disputes

Buying and selling is a process of transferring rights that has existed since ancient times, and is usually regulated in Customary Law, with the principle of clear and cash. Clear means that it is done before an authorized public official and Cash means it is paid in cash, so if the price has not been paid off, then the intended sale and purchase process cannot be carried out.<sup>11</sup>

Terms of sale and purchase are regulated in Article 1457 of the Civil Code. Buying and selling is defined as an agreement in which one party binds himself to deliver an item and the other party to pay the promised price. Since the enactment of Government Regulation Number 10 of 1961 as amended by Government Regulation Number 24 of 1997 concerning Land Registration, the sale and purchase of land is carried out by the parties before the Land Deed Making Officer (PPAT) who is in charge of making the deed.

There were cases of buying and selling with the right to buy back, one of which was in the Purwodadi District Court Decision Number 47/Pdt.G/2018/PN Pwd. In this decision, PPAT S became a co-defendant because he had issued the Deed of Sale and Purchase Agreement Number 11, dated October 6, 2016. The dispute in Decision Decision Number 47/Pdt.G/2018/PN Pwd. Cause of deed The land sale and purchase agreement with the right to repurchase which was made before the PPAT by the Plaintiff and the Defendant caused a dispute, because the Defendant did not pay his debts by the specified time limit.

According to the decision, a sale and purchase agreement with the right to repurchase as stipulated in Article 1519 of the Civil Code is not permissible, due to several reasons:

- a. A sale and purchase agreement with the right to repurchase is a disguised (pseudo) debt agreement. This means that the sale and purchase agreement with the right to repurchase is actually a debt agreement, namely the provision of a loan with a guarantee.

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<sup>11</sup>Soedharyo Soimin. (2008). Status of Rights and Land Acquisition. Jakarta: Sinar Graphics. p.86

b. The sale and purchase agreement with the right to repurchase is contrary to customary law, because customary law does not recognize sale and purchase with the right to repurchase.<sup>12</sup>

About the forms of PPAT's responsibility for making deed that give rise to disputes are administrative responsibility, PPAT's civil liability and PPAT's criminal liability. The imposition of criminal sanctions against PPATs can be carried out as long as a PPAT has made a fake letter or forged a deed with the qualifications of a crime. The material requirements and formal requirements of the procedure for making a deed are the formal aspects that must be followed in making a land sale and purchase deed related to the duties of the PPAT position. Deviations from the material and formal requirements of the procedure for making a PPAT deed must be seen based on the limitations of the formal aspect which have been determined by laws and regulations related to PPAT's.<sup>13</sup>

The involvement of PPAT S as Co-Defendant in the Purwodadi District Court Decision Number 47/Pdt.G/2018/PN Pwd was due to making the deed of sale-purchase agreement Number 11 dated 06-10-2016. The agreement was made by Defendant IV and the Plaintiff because they were bound in debts guaranteed by land. The Defendant IV has a debt to the Plaintiff, in which Defendant IV promised that after paying off the debt within the specified time, the Plaintiff will return the land that is the collateral. In this agreement the PPAT S is also tasked with keeping the land certificate which is used as collateral (the object of the dispute in the decision). PPAT S was originally tasked with keeping the certificate until the Defendant's debt to the Plaintiff was paid off,

PPAT obliged and is responsible for keeping the certificate until the blockage is lifted or until there is confiscation by the court of the land rights because they become the object of a lawsuit in court. Moreover, because the PPAT receives payment for making a deed of transfer of land rights, whereby receiving and processing land certificates until the process of transferring the name is complete to the land office is an obligation and procedure from the stage of

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<sup>12</sup>Suharnoko. (2004). *Agreement Law: Theory and Case Analysis*. Jakarta: Kencana Prenada Media Group. p. 29

<sup>13</sup>Donna Cristin. 2017. *Analysis of the Knowledge of Juridical Disabilities in Deeds of Sale and Purchase of Land and Houses Made by PPAT*. US Journal. Vol 14 (2017). University of Northern Sumatra. p. 12

registering the transfer of land rights including making a deed which is the task of the PPAT concerned. <sup>14</sup>

Based on the theory of liability, in civil terms the PPAT is responsible individually or personally for his actions in carrying out his good position on the deed he made. Whereas for the storage of certificates as long as land rights are the object of dispute, the PPAT is responsible based on the position given to him. The PPAT is required to provide services and is responsible for keeping certificates and documents returned by the land office.

Regarding the responsibilities of the PPAT stipulated in Article 55 of the Regulation of the Head of BPN Number 1 of 2006, the PPAT is personally responsible for carrying out his duties and positions in every deed. If analyzed using grammatical interpretation analysis, in Article 55 of the Head of BPN Regulation No. 1 of 2006, which regulates the overall responsibility of the PPAT for all his actions based on his position in the process of making the deed, the article states that the PPAT is personally responsible. In this case the PPAT is not only personally responsible for the deed he made,

Article 3 letter e of the PPAT code of ethics explains that one of the PPAT's obligations is to work with full responsibility, independence, honesty and impartiality. The responsibility of the PPAT is as a witness if the deed of sale and purchase of land carried out by the PPAT is in accordance with the laws and regulations, if a dispute occurs in court it is hoped that the testimony of the parties is expected and it is not the fault of the PPAT in making the deed, then the PPAT is only held accountable just as a witness. Because in making the land sale and purchase deed, the PPAT only obtained data from the parties. So that if an error occurs due to the parties, the PPAT will only be held accountable as a witness.<sup>15</sup>

PPAT in carrying out their positions are required to always comply with laws and regulations in the field of land and those related to PPAT's as well as other laws and regulations and carry out their positions honestly, orderly, carefully and with full awareness, be responsible and impartial based on an oath PPAT position. The precautionary principle means to exercise caution both for oneself and for others by paying attention to the consequences of every action taken, both now and in

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<sup>14</sup>Ibid

<sup>15</sup>Ibid.

the future. The precautionary principle has the aim of anticipating and preventing from the outset the occurrence of an uncertain result from a certain activity carried out by humans.<sup>16</sup>

### **3.2. Legal Protection for Land Deed Making Officials (PPAT) for Making Deeds of Sale and Purchase of Land that Cause Disputes**

The Land Deed Making Officer (PPAT) is a general official who has the authority to make authentic deeds to the extent that making certain deeds is not specific to other public officials. Making authentic deeds is required by laws and regulations in order to create legal certainty, order and protection. In addition to an authentic deed made by or before a PPAT, not only because it is required by laws and regulations, but also because it is desired by interested parties to ensure the rights and obligations of the parties for the sake of certainty, order and legal protection for interested parties as well as for society as a whole.<sup>17</sup>

The Land Deed Making Official has the main duty to carry out some land registration activities by making deeds as evidence that certain legal actions have been taken regarding land rights or ownership rights to apartment units, which will be used as the basis for registering changes to land registration data resulting from said legal action.<sup>18</sup> PPAT services as officials who are given authority are very helpful for some people, especially for people who are unfamiliar with the law. Some people who do not understand the law feel unable to solve the legal problems they face, because the community has limited knowledge of the law. Some people consider the existence of PPAT very useful and very helpful in finding solutions to community legal problems, especially land law and making authentic deeds.<sup>19</sup>

Authentic deed essentially contains formal truths in accordance with what the parties have informed the PPAT. However, the PPAT has an obligation to ensure that what is contained in the PPAT Deed is truly understood and in accordance

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<sup>16</sup>Rahmia Rahman. Ahmad Aswar Rowa. Hasnawati. Liability of the PPAT for False Statements in Making the Deed of Sale and Purchase of Land. *Journal of Law Science*. Volume 18 Number 2 August 2022. p. 237

<sup>17</sup>Ratih Mega Puspa Sari. Sidik Purnama. Gunarto. The Role of PPAT in Land Certification as a Result of Sale and Purchase. *Deed Journal*. Volume 5 Number 1 March 2018. p.242

<sup>18</sup>Faizal Indra & Gunarto. Unlawful Act by a Notary Against Forgery of Authentic Deeds in the Sale and Purchase of Land in Rembang Regency. *Deed Journal*. Volume 4 Number 2 June 2017. p.260

<sup>19</sup>Kusmaryanto & Gunarto. Registration of Deed of Sale and Purchase Exceeding Land Registration Period at the Agrarian and Spatial Planning Office/National Land Agency of Semarang City. *Deed Journal*. Volume 4 Number 3 September 2017. p.476



with the wishes of the parties, namely by reading it so that the contents of the PPAT Deed become clear, as well as providing access to information, including access to applicable laws and regulations. related to the parties signing the deed. Thus, the parties can determine freely to agree or disagree with the contents of the PPAT Deed to be signed.<sup>20</sup>

The involvement of a PPAT as a co-defendant based on the Purwodadi District Court Decision Number 47/Pdt.G/2018/PN Pwd was due to issuing a deed of sale and purchase agreement which gave rise to a dispute. In this regard, the PPAT in question can make a defense even though the legal provisions regarding PPAT have not yet been regulated regarding this matter, with a guarantee of truth given by the appearer which is contained in the deed as a partij deed (deed of the parties) in accordance with the will/statement which has been given where the PPAT is not the party authorized to conduct an investigation into the truth and authenticity of the identity of the appearer, but acts on the basis of complete material evidence given to him.<sup>21</sup>Legal assistance provided by IPPAT applies to PPATs who are not proven guilty, if the PPAT is proven guilty IPPAT will not provide legal assistance.

Based on the theory of legal protection, preventive legal protection for PPATs related to the making of Deeds that give rise to disputes cannot be achieved. This is because the provisions regarding the legal protection of the Official for Making Land Deeds are not regulated normatively in the Position Regulations for Officials for Making Land Deeds (hereinafter referred to as PJPPAT), besides that an Official for Making Land Deeds in carrying out his/her position functions should not be subject to the principle of equality before the law, insofar as in carrying out his position he has followed the procedures determined by laws and regulations. However, with the "approval" of the Land Deed Making Officer being examined by investigators, public prosecutors and/or judges,

Based on the theory of legal protection, repressive legal protection for PPATs related to making Deeds that give rise to disputes can be achieved by using the right of denial. Even though a PPAT has the right of refusal, he is still obliged to provide information to the panel of judges, if desired in the examination of cases carried out by investigators, public prosecutors with the approval of the head of

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<sup>20</sup>Rath Mega. Op. cit..p.242

<sup>21</sup>Edi Asrofin & Umar Ma'ruf. The Implications of Signature Falsification in the Deed of Sale and Purchase of Land Conducted by PPAT. Deed Journal. Volume 4 Number 2 June 2017. p. 163

the agency. PPAT in carrying out their duties must comply with applicable laws and regulations, in accordance with the provisions referred to in Article 38, Article 39 and Article 40 PP No 24 of 1997, as well as the provisions of instructions given by the Minister or appointed official. If you violate the provisions of this article, you may be subject to administrative action in the form of a written warning,

When the PPAT is summoned or asked by the investigator to testify or provide information relating to the deed made before him, it is the PPAT's legal obligation to fulfill this. Then the default obligation (*Verschoningsplicht*) is used when the PPAT fulfills a summons before investigators, the PPAT can declare that it will use its default obligation as stipulated in Article 15 paragraph (1) PJPPAT Jo. Article 34 paragraph (1) Perka BPN 1/2006. The statement using the Default Obligation will be recorded in the Minutes of Examination (BAP). The statement using the obligation to deny is solely carrying out PJPPAT's orders, so it does not need to be accompanied by any reasons. Provisions in PP No. 37 of 1998 concerning PJPPAT, as well as in Perka BPN 1/2006 as amended by Perka BPN 23/2009 concerning Amendment to Perka BPN No. 1 of 2006 concerning Provisions for the Implementation of PP No. 37 of 1998 which was amended by PP No. 24 of 2016 concerning PJPPAT, as a provision for PPATs, there is no regulation regarding legal protection for the PPAT itself, nor in other regulations related to PPATs regulated, it is necessary to have a legal basis for this matter, because the PPAT has a significant role in assisting the government's tasks, especially in the land sector. So in the event that a PPAT is also summoned in a certain case, where he is used as a witness or a suspect or a defendant, then how far does the protection he gets as a Public Official carrying out his position,

#### **4. Conclusion**

The responsibility of the Land Deed Making Officer (PPAT) in making land sale and purchase deeds that give rise to disputes is as a witness if the making of the land sale and purchase deed carried out by the PPAT is in accordance with statutory regulations, if there is a dispute in court it is expected that the testimony of the parties and is not a PPAT's fault in making the deed, then the PPAT is only held accountable as a witness. Because in making the land sale and purchase deed, the PPAT only obtained data from the parties. So that if an error occurs due to the parties, the PPAT will only be held accountable as a witness. Based on the theory of accountability, PPAT is civilly responsible individually or

personally for his actions in carrying out his good position on the deed he made. Legal protection for the Land Deed Making Officer (PPAT) for making a land sale and purchase deed that causes disputes is that the PPAT can ask for legal protection/defense efforts from IPPAT. Legal assistance provided by IPPAT applies to PPATs who are not proven guilty, if the PPAT is proven guilty IPPAT will not provide legal assistance. Based on the theory of legal protection, preventive legal protection for PPATs related to the making of Deeds that give rise to disputes cannot be achieved. This is because the provisions regarding the legal protection of the Official for Making Land Deeds are not regulated normatively in the Position Regulations for the Official for Making Land Deeds.

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**Regulation:**

1945 Constitution

Civil Code

Act No. 5 of 1960 concerning Basic Agrarian Regulations

Government Regulation of the Republic of Indonesia number 24 of 1997 concerning Land Registration

Regulation of the Head of the National Land Agency Number 23 of 2009 Amendment to Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for Implementing Regulations for the Position of Officials Making Land Deeds

Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and Sale and Purchase Agreements on Land and/or Buildings.

Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning amendments to Government Regulation number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2018 concerning Development and Supervision of PPATs

PPAT Code of Ethics