

Responsibilities of Land Deed Drafting Officials (PPAT) for Land Sale and Purchase Deeds that are Canceled with a Sale and Purchase Deed

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Abstract. *The background for writing this thesis is that the sale and purchase of land is a legal act in the form of surrendering land rights to another party forever (the right to the land is transferred to the party receiving the surrender), this is stated in Article 20 paragraph (2), Article 28 paragraph (3), and Article 35 paragraph (3) of Law Number 5 of 1960 concerning Basic Agrarian Regulations which states that property rights, building use rights can be transferred and transferred. Property rights and building use rights can be transferred by deed made by PPAT. Authority Land Deed Making Officer is a public official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to flat units. Then in the Explanation to Article 45 of Government Regulation number 24 of 1997 concerning Land Registration it is also emphasized that the PPAT Deed is a tool to prove that a legal act has been carried out. The research in writing this thesis is a qualitative research. This research is field research or empirical research with a sociological approach. Characteristics of socio-legal research methods. Socio-legal research is carried out by researching in the field (field research) by interviewing respondents which is primary data and examining library materials which are secondary data and is also called library research. This research aims to analyze or explain the responsibilities of Land Deed Drafting Officials (PPAT) regarding land sale and purchase deeds that are canceled by Sale and Purchase Deeds. The legal action is annulled or annulled, the relevant PPAT deed no longer functions as evidence of the legal action. Therefore, a legal action is canceled by the parties concerned, even though the legal action has been registered at the Land Office, the registration cannot be cancelled. There are two main problems in writing this thesis, namely: What are the legal consequences of the sale and purchase deed made before the Land Deed Making Officer during the registration process at the Agrarian and Spatial Planning/National Land Agency office which is canceled by*

the sale and purchase deed and the responsibility of the Notary regarding the Sale Deed Purchase that was canceled with a Deed of Sale and Purchase. The results of this thesis research explain how the process of buying and selling land, payments and calculating SSPD BPHTB, is implemented.

Keywords: *Cancellation; Deeds; Land; Officials; Responsibilities.*

1. Introduction

The Land Deed Deed Official is a general (public) official authorized to make authentic deeds, as long as the making of certain authentic deeds is not specific to other public officials. The assertion of a PPAT as a public official authorized to make authentic deeds is found in Article 1 point 1 of the revision of Law Number 30 of 2004 concerning the Position of PPAT (UUJN). The article confirms: "PPAT is a public official authorized to make authentic deeds and has other authorities as referred to in this Law or based on other Laws". The duties and authorities given to PPAT are the duties and authorities specified in the PPAT Position Law. Apart from PPAT having duties as a public official and having the authority to make authentic deeds,¹In this way, the position of PPAT is legally recognized as an official who has the authority to make authentic deeds.

Making authentic deeds is required by laws and regulations in order to create certainty, order and legal protection. But there are also authentic deeds made by the PPAT, not only because it is required by law, 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 the community.² In addition to making authentic deeds, the PPAT has duties and obligations to provide services and legal consultations to people who need them. Legal assistance that can be provided by the PPAT includes making authentic deeds. The definition of an authentic deed according to Article 1868 of the Civil Code is a deed made in a form determined by law, made by or in the presence of a public official who has the power to do so at the place where the deed was made.³

2. Research Methods

The research in writing this thesis is qualitative research. Writing aims to provide an overview of a community or a particular group of people or an overview of a

¹ Abdul Ghofur Anshori, Indonesian Notary Institute, (Yogyakarta: UI Press, 2009), p. 13

² Paragraph IV Explanation of UUJN.

³ Triyono, 2019. Responsibilities of Land Deed Making Officials (Ppat) in Making Land Sale and Purchase Deeds and the Legal Implications for the General Public. Vol 17, No 2. Pages 167-192

symptom or between two or more symptoms. This research attempts to explain the research in full according to what was found in the field. This research is field research or empirical research with a sociological approach. The characteristics of socio-legal research methods can be identified in two ways. First, socio-legal studies carry out textual studies, articles in laws and regulations and policies can be analyzed critically and their meaning and implications for legal subjects (including marginalized groups) explained. Therefore, socio-legal studies also deal with the heart of issues in legal studies, namely discussing the constitution down to statutory regulations at the lowest level.⁴Socio-legal research is carried out by researching in the field (field research) by interviewing respondents which is primary data and examining library materials which are secondary data and is also called library research.

3. Results and Discussion

3.1. Legal Consequences of Cancellation of the Deed of Sale and Purchase of Land made before the PPAT which is in the Registration Process with the National Land Agency (BPN) Cancelled with a Deed of Cancellation of the Deed of Sale and Purchase

Notary is a certain position that carries out a profession in legal services to the community, needs to get protection and guarantees in order to achieve legal certainty. To ensure legal certainty, order and protection, written evidence is needed that is authentic in nature to identify circumstances, events or legal actions carried out through certain positions. Law number 30 of 2004 concerning Notary Positions. The notarial deed must contain general truths obtained from the explanations of the parties who appear before it, namely:

- a. Each Notary Deed Must Contain Elements of Truth and Clarity.

The notarial deed includes the deed of notarial agreement so that efforts to make it contain elements of truth and clarity mean that:

- 1) Starting from the title of the deed, it must contain/reflect in general the substance of the contents of the deed;
- 2) The editorial of each article must not have more than one meaning or can be interpreted differently;
- 3) Don't move on to another article before you have finished dealing with the editorial of that article;

- 4) Contains in detail everything that must be regulated in the deed/agreement;
- 5) Try as far as possible to seek material truth.

This can be attempted by providing legal advice to appearers in relation to the deed that will be made and put forward legal consequences and sanctions in the event of not stating or conveying anything other than the truth, for example:

- 1) Will make a debt acknowledgment agreement whether later the debtor or the debtor will actually receive the amount of money as stated in the deed or not;
- 2) People who rent out a house that is still in the name of their parents who have died. Meanwhile, the party renting out is only one of the heirs or owners of the rental object;
- 3) People who say they are selling land usually create a sale and purchase agreement followed by a power of attorney to sell. Whether it was really sold, it is possible that he was just borrowing money. In fact, don't do the opposite, for example a notary, because the prospective buyer is a close friend of the notary and then gives advice, even though the material knows exactly that it is actually a debt and receivable, the notary suggests making a sale and purchase agreement and granting power of attorney.

b. Conditions for the Validity of the Agreement

There are 4 (four) valid conditions for an agreement, consisting of subjective conditions and objective conditions. The legal conditions for the agreement are regulated in Article 1320 Civil Code, namely, Subjective Terms (concerning the makers). Failure to fulfill the conditions below will result in the agreement being voidable.

1) Agreed (Articles 1321 - 1328 Civil Code)

In order for the agreement to be valid, the parties must agree to everything contained in the agreement and give their consent or agreement if they really want what is agreed upon. In the preamble to the agreement (before going into the articles), it is customary to write as follows: "Based on what is stated above, the Parties agree and agree on the following matters:"

The inclusion of the words agreed and agreed is very important in an agreement. Without these words (or other words that mean to give a bond or just agree or just agree), then the agreement has no ties for the makers. Agreeing and agreement is carried out with full awareness between the makers, which can be

given orally and in writing. An agreement is considered defective or deemed non-existent if:

- a) contains coercion (dwang), including actions or threats or mental intimidation.
- b) contains fraud (bedrog), is a malicious act carried out by one of the parties, for example not informing about the existence of hidden defects.
- c) contains error/misguidance/misrepresentation (dwaling), that one party has a wrong perception of the subject and object of the agreement. Regarding the subject, it is called error in persona or mistake in person, for example making an agreement with an artist, but it turns out that the agreement was not made with the artist, but only has a name with the artist. Regarding objects, it is called an error in substance or a mistake in the object, for example buying an agate stone, when you buy it, it turns out the agate stone is fake.

2) Competent (Article 1329 - 1331 Civil Code)

Article 1329 of the Civil Code states that every person is competent to make agreements, unless according to law he is declared incompetent. Then Article 1330 states that there are several people who are not competent to make agreements, namely:

- a) Minors (under 21 years of age, unless otherwise specified)
- b) Those who are placed under guardianship (curatele or conservatorship); And
- c) Married woman

Based on Article 330 of the Civil Code, a person is considered an adult if he is 21 years old or less than 21 years old but is married. Then, based on Article 47 and Article 50 of Law No. 1/1974, it is stated that a person's maturity is determined by the child being under the authority of a parent or guardian until he is 18 years old.

With regard to married women, article 31 paragraph (2) of Law no. 1 of 1974 stipulates that each party (husband or wife) has the right to take legal action. Apart from that, specifically for husband and wife, please also pay attention to whether there is an agreement to separate assets in the marriage.

Objective requirements (regarding the legal actions). If the following conditions are not met, the agreement will be null and void.

3) Certain Matters (Articles 1332 - 1334 Civil Code)

Article 1333 of the Civil Code determines that an agreement must have as its principal an object (zaak) whose type can be determined at least. An agreement must have a certain object and an agreement must be about a certain matter (certainty of terms), meaning that what was agreed, namely the rights and obligations of both parties. The type of goods referred to in the agreement can at least be determined (determinable).

4) Halal Causes (Articles 1335 - 1337 Civil Code)

The fourth condition for the validity of an agreement is the existence of a halal legal cause. If the object of the agreement is illegal, or contrary to morality or public order, then the agreement is void. For example, if an agreement to kill someone has an illegal objective, then this contract is invalid. According to Article 1335 in conjunction with 1337 of the Civil Code, it is stated that a cause is declared prohibited if it is contrary to law, morality and public order.

A cause is declared to be contrary to law if the content of the cause in the relevant agreement is contrary to the applicable law. Determining whether the cause of an agreement is contrary to morality (geode zeden) is not an easy thing, because the term morality is very abstract, the contents of which can vary from one region to another or between one community group and another. In addition, people's evaluation of decency can also change according to the times.

c. Notarial deed can be canceled

The Notary Deed is an agreement between the parties that is binding on those who made it, therefore the legal requirements of an agreement must be met. Article 1320 of the Civil Code which regulates the terms of the validity of the agreement, there are subjective conditions, namely conditions related to the subject who enters into or makes the agreement, which consists of agreeing and being able to act to carry out a legal act. The terms of the validity of the agreement are embodied in a notarial deed. Subjective terms are stated at the beginning of the deed, and objective conditions are listed in the body of the deed as the contents of the deed. The contents of the deed are an embodiment of Article 1338 of the Civil Code regarding freedom of contract and providing legal certainty and protection to the parties regarding the agreements they make. Thus, if at the beginning of the deed,⁵

⁵ An annulable notarial deed means that the deed is *ex nunc*, which means that the actions and consequences of the deed are considered to exist until the time the cancellation is made.

The first subjective element is the existence of an agreement⁶free from the parties who promise, or without pressure and intervention from any party, but only the wishes of the parties who promise. Article 1321 of the Civil Code confirms, if it can be proven that the agreement was agreed under coercion or a threat that caused fear of the person being threatened so that the person has no other choice but to sign the agreement, then the deed can be cancelled. According to Subekti, it is described as spiritual coercion or coercion on the soul in the form of threats in the form of acts against the law, for example in the form of violence that creates fear.⁷

The existence of fraud is another reason for canceling the agreement, this is as stated in Article 1328 of the Civil Code, that fraud is a reason for canceling the agreement, if there is a ruse used by one of the parties, it is such that it is clear and obvious that the other party has make the agreement if the deception is carried out. This fraud is carried out either by a series of misleading words or sentences or incorrect giving by one of the parties relating to the substance of the deed, and one of the parties is then moved to approve the deed. This kind of fraud must be proven by one of the parties as a real loss.

d. Notarial Deed Null By Law

The first objective element is a certain object (clear and definite) that is agreed upon. Achievement is the subject/object of the agreement as stated in Article 1234 of the Civil Code. Performance⁸it only binds the parties mentioned in the deed, this provision is as stated in Article 1340 of the Civil Code, namely:

⁶ This issue of agreement is very interesting to study if it is related to advances in Information Technology (IT). Nowadays, a transaction can be carried out via the internet or negotiated by teleconference, even the signing of an agreement can be done digitally and the parties never meet physically. So, in this case, legislation must immediately be made that regulates this matter. Even though so far Agreement or Agreement can be seen from the Speech Theory, Delivery Theory, Theory of Knowing the Offer is Approved, Acceptance Theory, Theory of Should the Offerte Be Approved, but in accordance with technological developments and the times, this theory of Agreement must be given a new interpretation.

⁷ R. Subekti., Op Cit., p. 23.

⁸ Supreme Court Decision No. 186 K/Sip/1959 - If in an agreement it is clearly determined when the party concerned must carry out something and after the specified time has elapsed he has not yet carried it out, according to the law he cannot be said to have neglected to fulfill the obligations of the agreement as long as this has not been stated to him in writing by the opposing party.

An agreement is valid only between the parties who make it. An agreement cannot bring losses to third parties, nor can third parties benefit from it, other than in the cases regulated in Article 1317 of the Civil Code.⁹

The second objective element, namely the substance of the agreement, is something that is permissible¹⁰, both according to law, custom, decency, decency, and public order in force at the time the agreement was made and when it will be implemented.¹¹

Article 28 paragraph (3) letter a UUJN has determined that subjective requirements and objective requirements are part of the body of the deed, confusion arises between deed that can be canceled and deed that is null and void by law, so if it is recommended to cancel the notarial deed because it does not meet the requirements subjective, then it is deemed to cancel the entire body of the Deed, including canceling the objective conditions. Subjective conditions are placed as part of the initial deed, with the reason that even if the subjective conditions are not met as long as there is no filing for cancellation by way of a lawsuit from certain people, then the contents of the deed containing objective conditions are still binding on the parties, this is different if the objective conditions are not fulfilled, then the deed is deemed to have never existed.¹²

⁹ Article 1317 Civil Code; Moreover, it is also permissible to ask for a promise to be made for the benefit of a third party, if a promise made by the person to himself, or a gift made to another person, contains such a promise.

¹⁰ An agreement without cause, or which has been made for a false or prohibited reason, then the agreement has no force (Article 1335 of the Civil Code). If a cause is not stated, but there is a lawful (not prohibited) cause, or if there is a cause other than what is stated, then the agreement remains valid (Article 1336 of the Civil Code).

¹¹ - Supreme Court Decision No. 144 K/Sip/1958; The sale and purchase agreement is invalid because the cause/common goal to be achieved through the agreement, namely the transfer of ownership rights to land from a native person to a foreign East person (Chinese), is prohibited.

- Supreme Court Decision No. 144 K/Sip/1979; The sale and purchase agreement was canceled because it contained a reason that was prohibited by law, namely wanting to smuggle the prohibition provisions stated in Article 9 Jo. Article 21 UUPA.

- Supreme Court Decision No. 80 K/Sip/1971; Agreements made for reasons that are not permitted are invalid (for example, the agreement to change the name of the Pertamina agency between the Defendant and the Plaintiff).

¹² Although basically the result of an agreement that does not meet the objective requirements is that the agreement never existed, this can occur if the object of the agreement in the form of objects/goods (in kind) is still with those concerned, so that the situation can be returned to normal and accepted by the parties. and the parties do not have a problem with it, but if it turns out that the object or goods have undergone changes or have been transferred to another party, such things are very difficult to do or to return to their original state. If something like this happens, then at the request of the parties they can file a lawsuit in court, and the judge can decide and determine such circumstances.

A Notarial Deed must be drawn up in a form determined by law (UUJN), this is one of the characteristics of a Notarial Deed. Even though there is an inaccuracy in Article 38 paragraph (3) letter a UUJN which has placed subjective requirements and objective requirements as part of the body of the deed, the notarial deed framework must place back the subjective and objective terms of the notary deed that are in accordance with the meaning of an agreement can be canceled and null and void. Article 84 of the UUJN has determined its own notarial deed which has the power of proof as a private deed which is expressly stated in certain articles in the relevant UUJN as mentioned above,¹³

1) Violating the obligations as referred to in Article 16 paragraph (1) letter l, namely not making a list of wills and sending them to the Central List of Wills (DPW) within 5 (five) days in the first week of each month (including notifying if there is none).¹⁴who makes a will in any form with a notarial deed. Until now there is only one DPW, namely in the Department of Law and Human Rights (Depkumham) of the Republic of Indonesia.

2) Violating the obligations as referred to in Article 16 paragraph (1) letter k, i.e. not having a seal or stamp containing the symbol of the Republic of Indonesia and in the space surrounding it, the name, position and place of domicile are written.

3) Violating the provisions of Article 44, namely at the end of the deed it is not stated or stated explicitly regarding the mention of the deed. Read for deeds which are not made in Indonesian or other languages used in the deed, using an official translator, explanation, signing the deed in the presence of an audience, Notary and official translator.

4) Violating the provisions of Article 48, namely not giving initials or not giving other signs of endorsement by the presenter, witness and Notary, for changes or additions in the form of overlapping, insertion, crossing out or deleting and replacing them with others by means of additions, replacements or crossing out.

5) Violates the provisions of Article 49, namely not mentioning changes to the deed that are made not on the left side of the deed, but for changes made at the

¹³ Habib Adjie, Op Cit. p. 78.

¹⁴ Sending or reporting to the Central Register of Wills (DPW) applies to all Indonesian citizens who make a will in any form using a notarial deed. The purpose of sending or reporting is to protect the last will and rights of the will giver and prospective recipients of the will. Until now there is only one DPW, namely in the Department of Law and Human Rights (Depkumham) of the Republic of Indonesia. At the request of the parties to find out whether there is a will or not. DPW still does it manually which takes a long time. To shorten the time and make it easier to provide services to the community, the government in the case of the Ministry of Law and Human Rights to immediately make changes by making a request whether or not a will is online.

end of the deed before closing the deed, by pointing out the part that is changed or by inserting an additional sheet. Changes made without designating the changed part will result in the change being cancelled.

6) Violating the provisions of Article 50, namely not providing crossing out, initialing and changes in the form of crossing out words, letters or numbers, this is done in such a way that it can still be read as originally stated, and the number of words, letters or numbers crossed out is stated in side of the deed, also does not state at the end of the deed regarding the number of changes, deletions and additions.

7) Violating the provisions of Article 51, namely not correcting writing errors and/or typographical errors contained in the Minutes of the Deed that have been signed, nor making a report of the correction to the party mentioned in the deed

4. Conclusion

The PPAT in making the deed of sale and purchase of land must always prioritize the code of ethics and regulations for the position of the PPAT as stipulated in PP number 37 of 1998, if there is a condition where the notary cancels the deed of sale and purchase of land made before the PPAT because the PPAT gives too early the numbering of the deed of sale and purchase and the buyer has paid a certain amount of money to pay taxes while the decision letter from the Boyolali Regency Revenue Service has not been issued, so based on the provisions of Article 11 of the BPHTB Law, the PPAT must pay a fine, and the Notary does not cancel the sale and purchase deed with the sale and purchase deed.

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