

## The Role of The Land Deed (Ppat) Official in The Implementation of Land Certification Customary Property Rights

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**Abstract.** *This study aims to determine and analyze the Role of Land Deed Officials (PPAT) in the Implementation of Customary Land Ownership Rights Certification and to determine and analyze the Implementation of Land Deed Officials' Obligations (PPAT) in overcoming the occurrence of buying and selling of former customary land under the hand. The approach method in this study is the sociological legal approach method. The research specifications used are analytical descriptive research. The type of data uses primary and secondary data. The data analysis method used is the Theory of Legal Responsibility and the Theory of Legal Certainty. The results of the research and discussion in this study are: The Role of Land Deed Officials (PPAT) in the Implementation of Customary Land Ownership Rights Certification in Batang Regency Province Java Middle is as a liaison between indigenous peoples and the formal state land system, as well as a guardian so that the land certification process runs in accordance with applicable laws, provides legal certainty, and protects the rights of indigenous peoples to their land. PPAT is responsible for verifying the status of customary land rights, ensuring that the land is not in dispute, and preparing a deed of transfer of rights if there is a transaction such as a sale and purchase, gift, or inheritance. In addition, PPAT must also coordinate with related institutions, such as the National Land Agency (BPN), to ensure that certified customary land is legally recorded in the national land system. Through this role, PPAT helps provide legal recognition and protection for customary land ownership rights in the formal legal system and the second discussion concerns the Implementation of the Obligations of Land Deed Making Officials (PPAT) in Overcoming the Sale and Purchase of Former Customary Land Rights*

*Underhand in Batang Regency Province Java Middle has an obligation to ensure that every land sale and purchase transaction, including land that used to be customary land, is carried out through legitimate legal procedures and is not done underhand. The series is through the preparation of authentic deeds, carrying out Land Validity, educating the community through the Practice of Land Sale and Purchase Without Deeds and Coordination with the National Land Agency (BPN).*

**Keywords:** *Certificates, Customary Land, Role of Land Deed Officials*

## 1. Introduction

The position of a public official who has the authority to regulate and grant validity to a contract agreement that is stated in an authentic deed is the authority of a notary, a profession that has a code of ethics in the form of guidelines for attitudes and behavior, the word public official attached to a notary means an official who serves ordinary citizens in every compound making such as an authentic deed related to using a concentration of civil law and this authority has not been delegated to other officials and is requested by ordinary citizens who need or are interested so that their legal actions are stated in the form of an authentic deed whose authority lies with a notary..<sup>1</sup>

The problem of interests that result in land disputes in society, whether between individuals, individuals and the government, or between governments and the government, currently usually concerns legal certainty over land. So that the imbalance does not cause problems, regulations need to be made that regulate land. It was only on September 24, 1960, that the government issued regulations on land, namely Law Number 5 of 1960 concerning Basic Agrarian Principles, which we now know as the Basic Agrarian Law (UUPA).<sup>2</sup>In order to create legal certainty of land rights, land registration is required. The issue of land registration has been regulated by the Indonesian government, namely by

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<sup>1</sup>Andi P, 2015, "What and Who is a Notary in Indonesia?", Perwira Md Nusantara, Surabaya, p. 34

<sup>2</sup>AP, Parlindungan, 1990, Guidelines for the Implementation of UUPA and Procedures for Land Deed Officials, 6th Edition, Alumni, Bandung, p. 1.

issuing Government Regulation Number 24 of 1997 concerning Land Registration on the second amendment to Government Regulation Number 10 of 1961, providing special limitations and provisions regarding the Land Registration, this is expected in the equitable distribution of national development in general and land registration issues in particular can be implemented and produce maximum results.<sup>3</sup>

Based on the Basic Agrarian Law, especially Article 5, the applicable Agrarian Law is Customary Law. This means that Agrarian/Land Law according to UUPA is based on Customary Law. As is known, in the applicable Customary Law regarding the Transfer of Rights which is in cash, there is no institution called: "Juridische Levering". Thus, a right to land has been transferred since the sale/auction was carried out, which of course the sale/auction was carried out by observing material requirements.<sup>4</sup> Customary Law is the main basis in the process of forming Land Law, in the form of designs, principles, and institutions that become written law, which are then compiled according to the customary law system. Based on two legal systems according to the conventional perspective, namely the customary law system and the national law system. New land law is formed using materials in the form of legal standards stipulated in laws such as written law, which is an active national land law.<sup>5</sup> The evidence is given in the form of a certificate as stated in Article 1 point 20 of the Government Regulation of the Republic of Indonesia Number 24 of 1997, namely "A certificate is a letter of proof of rights as referred to in Article 19 paragraph 2 letter c of the UUPA for land rights, land management rights for waqf, ownership rights for apartment

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<sup>3</sup>Debora Riny Lumolos, The Role of the Sub-district Head as a Temporary Land Deed Making Officer (PPAT) in Mapanget District, Manado City, <http://ejournal.unsrat.ac.id/index.php/jurnaleksektif/article/view/2365> on April 14, 2024, at 21.00 WIB.

<sup>4</sup>Chomzah Achmad Ali, 2007, *Agrarian Law (Indonesian Land) Volume II* Prestasi Pustaka, Jakarta, p. 63.

<sup>5</sup>Mustari Suriyaman, 2014, *Customary Law Past, Present, and Future*, Jakarta, p. 120

units and mortgage rights, each of which has been recorded in the relevant land book."<sup>6</sup>

Implementation of the duties of the Land Deed Making Officer as a public official with the existence of a Land Deed Making Officer deed form. The only article in the Law that is a pillar of the existence of authentic deeds and public officials in Indonesia is regulated in Article 1868 of the Civil Code which reads: "an authentic deed is a deed in the form determined by Law made by or before a public official authorized for that purpose at the place where the deed is made." This article requires an organic Law that regulates the form of authentic deeds and public officials, not regulating authentic deed forms.<sup>7</sup>Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials defines Land Deed Making Officials as general officials who are authorized to make authentic deeds, the words make are interpreted in a broad sense, namely producing deeds in the form determined by Law including preparing, compiling and making deeds in accordance with the form determined. There is also data regarding land disputes that say disputes occur due to the transfer of land rights not being carried out before the Land Deed Making Official. So in this case it is important for a land deed making official to make a certificate as a form of implementation to avoid disputes in the future that arise over customary land and the efforts of land deed making officials in helping to increase public awareness of the importance of land registration. Based on the description above, it is then made in the form of a thesis entitled "The Role of Land Deed Officials (PPAT) in the Implementation of Customary Ownership Land Certification".

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<sup>6</sup>BPN, 1998, Land Registration in Indonesia, BPN Bumi Bhakti Cooperative, Jakarta, p. 5

<sup>7</sup>Notodisoerejo, R.Soegindo, Notarial Law in Indonesia, Erlangga, Jakarta, p.83.

## **2. Research Methods**

In the author's research, the legal approach (law is seen as a norm or *das sollen*), because in discussing the problems of this study using legal materials (both written law and unwritten law or both primary legal materials and secondary legal materials). Empirical approach (law as a social, cultural reality or *das sein*, because in this study primary data obtained from the field is used. So, the empirical legal approach in this study means that in analyzing the problem is done by combining legal materials (which are secondary data) with primary data obtained in the field regarding the Role of Land Deed Officials (PPAT) in the Implementation of Customary Land Ownership Rights Certification. The research specifications used are analytical descriptive research. The type of data uses primary data and secondary data. Data collection with the method empirical juridical. The data analysis method used is qualitative descriptive analysis.

## **3. Results and Discussion**

### **3.1. The Role of Land Deed Officials (PPAT) in the Implementation of Customary Ownership Land Certification**

The implementation of customary rights in customary law communities is seen in the provisions of Article 2 paragraph 1 which explains that customary rights are implemented as long as in reality they still exist according to the provisions of customary law applicable to the customary community. In this case, it is further clarified in the provisions of Article 2 letters a and b which explain that customary rights as referred to in paragraph 1 are declared to exist if there is a group of people who still feel bound by their customary law system who recognize and apply the provisions of the association in their daily lives, then there is certain customary land that becomes the living environment of its citizens and a place to get daily necessities.<sup>8</sup>This emphasizes the provisions of Article 2 paragraph 1 which states that "based on the provisions in Article 33

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<sup>8</sup>Articles 1 and 2 of Law no. 5 of 1960 concerning Basic Regulations on Agrarian Principles

paragraph (3) of the Constitution and matters as referred to in Article 1, the earth, water and airspace, including the natural resources contained therein, are at the highest level controlled by the State, as the organization of the power of all the people". So it is clear in the provisions of Article 3 of the UUPA that by taking into account the provisions in Articles 1 and 2, the implementation of customary rights and similar rights from customary law communities, as long as in reality they still exist, must be such that they are in accordance with national and state interests, which are based on national unity and must not conflict with other higher laws and regulations.

Land law is a set of legal rules that regulate land ownership on the surface of the earth, both written and unwritten. The right to manage customary land (HPL) is a right that grows and develops outside of Law Number 5 of 1960 concerning Basic Agrarian Regulations in accordance with the demands of Development. The granting of management rights to customary land needs to be harmonized, both vertically and horizontally. All regulations must be aligned vertically and horizontally, where lower Laws and Regulations must not conflict with higher ones.<sup>9</sup> In relation to the income of K. Wanjik Saleh who stated that: "Article 19 of the UUPA is directed to the Government to carry out land registration throughout the territory of the Republic of Indonesia is the obligation of the government as the highest authority over land ownership, land use rights, building use rights, every transfer, deletion and burden with other rights must be registered is an obligation for those who have other rights must be obtained is an obligation for those who have these rights, with the intention that they get legal certainty regarding their rights".<sup>10</sup> Efforts made to ensure legal certainty in the land sector land registration publication system land registration publication system in a country depends on the legal principles adopted by a country in

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<sup>9</sup>Wendy Agus Wendy Agus Budiawan, 2020, 'The Existence of Land Management Rights (HPL) and the Reality of Indonesian Development', *Justice Pro: Journal of Legal Studies*, No. 4. Vol. 1, pp. 1-8 .

<sup>10</sup>K. Wanjik Saleh, 2000, *Your Rights to Land*, Ghalia Indonesia, Jakarta, p. 61

transferring land rights. There are several land registration publication systems adopted by countries that organize land registration, namely the Torrens system, the negative system.<sup>11</sup> Land in the legal sense can be interpreted as the surface of the earth. According to Jhon Salindeho, land is an object of economic value according to the views of the Indonesian people, it is also what often gives vibrations in peace and often causes obstacles in the implementation of development.<sup>12</sup>

A certificate is a proof of land rights, issued by the government in order to organize land registration according to the provisions of regulations and laws. A land rights certificate proves that a person or a legal entity has a right to a certain plot of land. A land rights certificate proves that a person or a legal entity has a right to a certain plot of land. In reality, the fact that a person or a legal entity physically controls and uses the land in question does not immediately prove that he or she has the right to the land in question.<sup>13</sup> In this case, according to Mr. Akhmad Fatkhurozaq, SH, MKn. sees that the role of the Land Deed Making Officer (PPAT) in the implementation of customary land certification is very important, especially in ensuring the legality and validity of the land to be certified. PPAT is responsible for verifying the status of customary land rights, ensuring that the land is not in dispute, and preparing a deed of transfer of rights if there is a transaction such as a sale and purchase, gift, or inheritance. In addition, PPAT must also coordinate with related institutions, such as the National Land Agency (BPN), to ensure that certified customary land is legally recorded in the national land system. Through this role, PPAT helps

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<sup>11</sup>Bachtiar Effendi, 1993, Collection of Writings on Land Law, Alumni, Bandung, p. 47.

<sup>12</sup>Sahnan, 2016, Indonesian Agrarian Law, Setara Press, Malang, p. 26

<sup>13</sup>Fitriyani, Dwi Nurhayati, 2014 "Legal Protection for Duplicate Certificates (Case Study of South Jakarta District Court Decision Number 286/Pdt.G/2012/Jkt-sel)", (Master of Law Program Thesis, Faculty of Law, Gadjah Mada University, Yogyakarta), pp. 98-100

provide legal recognition and protection for customary land ownership rights in the formal legal system.<sup>14</sup>

PPAT, as an official who has the authority to make authentic deeds related to the transfer of land rights, plays an important role in the process of Certification of customary land rights in Batang Regency, Central Java Province. The role of PPAT according to Akhmad Fatkhurozaq, SH, MKn. in this case:<sup>15</sup>

1. Verification of Land Rights Validity: One of the main responsibilities of PPAT is to verify the validity of land rights to be certified. PPAT must ensure that the land is truly a legal customary land right according to local customary law and that there are no disputes or other doubtful claims.
2. Preparation of Deed of Transfer of Land Rights: If there is a transaction related to customary land rights, such as sale and purchase or grant, the PPAT is responsible for preparing a deed stating the transfer of rights to the land. This deed is a legal document and can be used as a basis for registering land at the National Land Agency (BPN).
3. Coordination with BPN: After the deed is made, the PPAT must coordinate with BPN to ensure that the land originating from customary land rights can be registered and certified. Land that was previously not recorded in the formal land system needs to go through a registration process in order to obtain legal recognition and be registered with a valid certificate number.
4. Providing Legal Certainty: Certification of customary land rights by PPAT helps provide legal certainty regarding land ownership status. Land certificates issued by BPN will provide legal protection to land owners, both in terms of recognition of ownership rights, land utilization, and in resolving disputes that may arise in the future.

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<sup>14</sup>Interview with Land Deed Making Officer Mr. Akhmad Fatkhurozaq, SH, MKn. On Tuesday, November 19, 2024 at 12.15 WIB.

<sup>15</sup>Ibid



5. Customary Land Certification Procedures: Certification of customary land rights does not always go smoothly, because often the land is not registered in the land administration system. Therefore, PPAT needs to work together with indigenous communities and related institutions, such as the BPN, to ensure that customary land can be certified through procedures that have been regulated by applicable laws and regulations.

Overall, the role of PPAT in the Certification of customary land rights is as a liaison between customary communities and the formal state land system, as well as a guardian so that the land certification process runs in accordance with applicable laws, provides legal certainty, and protects the rights of customary communities to their land. The role of the Land Deed Official (PPAT) in the implementation of customary land rights certification is very important to ensure that land owned by customary communities receives legal recognition in the national land system. PPAT is responsible for verifying the validity of customary land rights, preparing deeds related to the transfer of land rights, and coordinating with the National Land Agency (BPN) to ensure that the land is legally registered. By acting as a party that ensures that the process of transferring customary land rights runs in accordance with applicable laws, PPAT helps provide legal certainty to customary land owners. In addition, PPAT also ensures that customary land can be certified with appropriate procedures, provides legal protection for customary land rights, and reduces the potential for disputes related to land ownership. Overall, the role of PPAT in customary land certification is crucial in providing formal legality to customary land ownership rights, so that customary communities can obtain legal certainty and protection for their land. they in the broader context of agrarian law.

### **3.2. Implementation of the Obligations of Land Deed Making Officials (PPAT) in overcoming the occurrence of buying and selling of land that used to be customary land under their own control**

In land registration carried out by the government, it is intended to provide a guarantee of legal certainty. The guarantee of legal certainty includes:<sup>16</sup>

- 1) Guarantee of legal certainty regarding the person or legal entity who is the rights holder (subject of land rights);
- 2) Guarantee of legal certainty regarding the location, boundaries and area of a plot of land (object of land rights);
- 3) Guarantee of legal certainty regarding land rights.

There are many benefits as well as problems that arise and originate from land ownership rights. To anticipate all forms of disputes that may occur, then by law the owner of the rights is required to register the land that is his right, so that nothing detrimental happens in the future, as stated in Article 4 paragraph (3) of Government Regulation Number 24 of 1997 which reads as follows: "To achieve orderly administration, every plot of land and apartment unit including the transfer, burden and elimination of rights to plots of land and ownership rights to apartment units must be registered."

Currently, society tends to have a lack of understanding of the importance of land registration for the first time issuing land certificates, resulting in minimal ownership of land title certificates.<sup>17</sup> Buying and selling land under customary law includes:<sup>18</sup>

- a) Selling gade means that those who receive the land have the right to work on the land and have full rights to collect income from the land. He was only

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<sup>16</sup>Umar Said Sugiarto, Suratman, et.al, 2016, Land Acquisition for Public Interest, Intrans Publishing, Malang, p. 198.

<sup>17</sup>Harris Yonatan Parmahan Sibuea, 2011, The Importance of First-Time Land Registration, Jurnal Negara Hukum, Vol. 2, No. 2, p. 290

<sup>18</sup>Wiryono Projodikoro, 2000, Inter-group law in Indonesia, Sumur, Bandung, p.84.

bound by his promise that the land could only be redeemed by the person who sold the gade. In general, land is returned in the condition it was in when it was handed over.

- b) Selling off means the buyer gets ownership rights to the land he bought. Payment is made in advance to the association.
- c) Annual selling is a form of renting land in Java for an indefinite period.
- d) Land grant (by gift or inheritance) Granting land where the ownership rights are immediately transferred to the heirs or to another person and whether the land owner is still alive or the land owner has died.

Implementation of the Obligations of Land Deed Officials (PPAT) in Overcoming the Sale and Purchase of Former Customary Land Rights Underhand in this case the Land Deed Official (PPAT) has an obligation to ensure that every land sale and purchase transaction, including former customary land rights, is carried out through legitimate legal procedures and is not carried out underhand. Land sale and purchase transactions that are not registered or not carried out with an authentic deed are at risk of causing legal disputes, as well as harming the parties involved. Therefore, PPAT plays an important role in overcoming the practice of illegal land sales and purchases or those that are not recorded in the formal legal system, namely:<sup>19</sup>

- 1) Preparation of Authentic Deeds, PPAT is required to prepare authentic deeds for every land sale and purchase transaction. The deeds prepared by PPAT have valid legal force and can be accounted for in court. With an official deed, the land sale and purchase process becomes registered and has clear legal protection, unlike "underhand" transactions that are not officially recorded. The legal basis for this obligation can be found in Article 15 paragraph (1) of Law Number 2 of 2014 concerning the Position of Land Deed Making Officials

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<sup>19</sup>Interview with Akhmad Fatkhurozaq, SH, M.Kn. Ibid.

(PPAT Law), which stipulates that PPATs are authorized to make deeds for transactions related to land.

- 2) Land Validity Verification, PPAT is obliged to verify the status and validity of the land to be sold, including ensuring that the land is truly legally owned by the relevant party and is not in dispute. Especially for land that used to be customary land, PPAT must ensure that the land has been registered or can be registered with the National Land Agency (BPN). This verification is important to prevent illegal land transactions or land that is in dispute. This obligation is stated in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), which regulates the obligation to register land.
- 3) Preventing Land Sale and Purchase Practices Without Deeds, PPAT must prevent land sale and purchase transactions from being carried out without authentic deeds, which are commonly referred to as "underhand" transactions. If there are parties who are reluctant to use the services of PPAT or do not follow the legal procedures, PPAT is required to provide an explanation regarding the legal risks that may arise from the transaction. This is in line with Article 19 paragraph (1) of the UUPA, which emphasizes the importance of land registration and the making of deeds to provide legal certainty regarding land ownership.
- 4) Coordination with the National Land Agency (BPN), PPAT also has an obligation to coordinate with BPN in the land registration process. After the deed is made, PPAT must ensure that the land in question is registered with BPN to obtain an official certificate as proof of legal ownership. This process is important to provide legal recognition of former customary land rights. This is regulated in Government Regulation Number 24 of 1997 concerning Land Registration, which requires land registration as a condition for obtaining legal land rights.

5) Education and Socialization to the Community, in addition, PPAT must also provide education to the community regarding the importance of conducting land sales through legal procedures and in accordance with legal provisions. By providing an explanation to the seller and buyer regarding the importance of making an authentic deed, PPAT can prevent unregistered land sales practices. The obligation of PPAT to provide this explanation is in accordance with Article 15 paragraph (1) of Law Number 2 of 2014 concerning PPAT, which regulates the authority of PPAT to explain and provide information related to land transactions.

So that the implementation of the obligations of Land Deed Officials (PPAT) in Batang Regency ProvinceJavaMiddlein Overcoming the Occurrence of Underhand Sale and Purchase of Former Customary Land Rights can be implemented properly. Therefore, the implementation of PPAT's obligations in overcoming underhand sale and purchase of former customary land rights requires holistic efforts, starting from public education, increasing coordination with the BPN, utilizing technology, to strict supervision of PPAT. By implementing the suggestions above, it is hoped that the practice of illegal land sales and purchases can be minimized, as well as providing better legal protection for indigenous peoples and parties involved in land transactions. PPAT has a very important role in overcoming the occurrence of underhand sale and purchase of former customary land rights. The obligation of PPAT to prepare authentic deeds, verify the validity of the land, and coordinate with the BPN ensures that every land transaction takes place legally and is registered in the state land system. Thus, PPAT can prevent unrecorded land sales and purchases, provide legal certainty to land owners, and protect all parties from potential legal disputes that may arise in the future.

#### **4. Conclusion**

1. The Role of Land Deed Officials (PPAT) in the Implementation of Customary Ownership Land Certification in Batang Regency Province Java Middle is as a liaison between indigenous peoples and the formal state land system, as well as a guardian so that the land certification process runs in accordance with applicable laws, provides legal certainty, and protects the rights of indigenous peoples to their land. PPAT is responsible for verifying the status of customary land rights, ensuring that the land is not in dispute, and preparing a deed of transfer of rights if there is a transaction such as a sale and purchase, gift, or inheritance. In addition, PPAT must also coordinate with related institutions, such as the National Land Agency (BPN), to ensure that certified customary land is legally recorded in the national land system. Through this role, PPAT helps provide legal recognition and protection for customary land ownership rights in the formal legal system.

2. Implementation of the Obligations of Land Deed Making Officials (PPAT) in Handling the Sale and Purchase of Land Formerly Under Customary Ownership Rights in Batang Regency Province Java In the middle of Underhand in this case the Land Deed Making Officer (PPAT) has an obligation to ensure that every land sale and purchase transaction, including land that used to be customary land, is carried out through legal procedures that are valid and not done underhand. The series is through the preparation of authentic deeds, carrying out Land Validity, educating the community through the Practice of Land Sale and Purchase Without a Deed and Coordinating with the National Land Agency (BPN).

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