

## Implementation of the Principle of Caution by Land Deed Officials in Making Deeds to Prevent Land Disputes in North Sulawesi Province

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**Abstract.** *The purpose of this study is to determine and analyze the application of the principle of caution of Land Deed Officials in making deeds to prevent land disputes and to determine and analyze the responsibility of Land Deed Officials who do not apply the principle of caution in making deeds. The method used by the researcher is empirical juridical with an empirical approach. The specifications of this study are descriptive analytical. The types of data used are primary data sourced from field studies and secondary data sourced from materials obtained from literature studies. Based on the results of the study that: 1) Land Deed Officials in North Sulawesi apply the principle of caution in making deeds to prevent land disputes as mandated by Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning Land Deed Officials and its implementing regulations. Among the implementation of the principle of caution carried out by PPAT are: first, reading and explaining the contents of the deed to the parties, second, not making a deed for himself and his family, third, carrying out the obligation to check the conformity/validity of the certificate and other records at the Land Office and fourth, rejecting the making of a deed that is not based on formal data. 2) The responsibility of the Land Deed Making Officer who does not implement the principle of caution in making a deed is ethical/moral responsibility and legal responsibility. Legal responsibility is divided into civil responsibility, criminal responsibility and administrative responsibility.*

**Keywords:** Land Deed Makers; Legal Accountability; Principle of Prudence; Officials.

## 1. Introduction

Government Regulation Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials, in Article 1 number 1 states: Land Deed Making Officials, hereinafter referred to as PPAT, are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights of Apartment Units. Authentic deeds have been regulated in the Civil Code (KUHPer) Article 1868 which states that authentic deeds are deeds whose form is determined by law and made by or before an official who is authorized to make the deed.<sup>1</sup>The meaning of an authentic deed has perfect evidentiary power and can also be determined that anyone related to the deed, as long as it cannot be proven otherwise based on a court decision that has permanent legal force. That an authentic deed is a term given to certain officials who are qualified as public officials, such as authentic deeds are not only made by Notaries, for example also Land Deed Making Officials (PPAT).<sup>2</sup>

Land Deed Making Officials in carrying out their duties including making deeds must act carefully (applying the principle of caution) and pay attention to every procedure in making the Deed. Acting carefully means examining all documents and reading the contents of the deed to the parties and witnesses. The principle of caution must be applied so that the PPAT is always in the correct procedure and thus the level of public trust in the PPAT will also increase.<sup>3</sup>

The importance of implementing the precautionary principle, especially in efforts to prevent land disputes, is something that must be done. This is done because the land registration process is oriented towards legal certainty. Isnaini and Wanda, stated that the precautionary principle is a development of the prudence principle. The thoroughness of prevention, attention and objective assessment as contained in aski or concern. This level of concern requires urgency or a situation that requires a lot of training. The precautionary principle is a basis for thinking that is used before doing something by first considering all possibilities so that problems do not occur in the future, including land disputes.

Dispute is a conflict regarding land, between individuals, legal entities, or with institutions that do not have a wide impact. Land disputes abbreviated as conflict

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<sup>1</sup>Civil Code (KUHPer)

<sup>2</sup>M. Holidi, Kekuatan Pembuktian Akta Otentik Dalam Proses Peradilan Perdata Pada Pengadilan Negeri di Yogyakarta, *Jurnal Juridica*, Volume 4 No. 2, May 2023, p. 40

<sup>3</sup>Katrine Novia dan Pieter Everhardus Latumeten, Prinsip Kehati-hatian Pejabat Pembuat Akta Tanah Dalam Pendaftaran Hak Tanggungan, *Jurnal Binamulia Hukum*, Volume 12, No. 1, July 2024, p. 103

are land disputes between individuals, groups, groups, organizations, legal entities or institutions that they tend to have or have a wide socio-political impact.<sup>4</sup>In practice, it is not uncommon to find land disputes that occur due to deeds issued by PPAT. As in the case that occurred in one of the districts in North Sulawesi Province where there was a cancellation of a deed of sale by PPAT based on Decision of the Panel of Judges of the Manado High Court Number 156/Pdt/2022/PT Mnd dated December 9, 2022 concerning the Object of Land Dispute with Plaintiff/Appellant Abner Teken, against the Defendants/Appellees, namely Harce Petrus Tampunu; Bank Ekspor Impor Indonesia Manado Branch Office; Manado State Auction Office; Roy Koagow; Femmy Sophie Laoh; and Co-Defendant/Appellee Minahasa Regency Land Agency; Minahasa Regency Government Cq Pineleng Sub-district Head and Notary/PPAT Brian Janny Waleleng, which in one of its decisions, stated that the deed of sale and purchase made by the Notary/PPAT was declared invalid, and must be canceled by law.<sup>5</sup>

## 2. Research Methods

The research methodology used in this study is the empirical legal or sociological legal research method. The empirical legal research method is a legal research method that functions to be able to see the law in a real sense and examine how the law works in the community environment.<sup>6</sup>The specification of this research uses analytical descriptive research, which is a description of various problems that are the object of research and provides a conclusion that is not general. The type of data used in this study is primary data. Irwansyah argues that empirical legal research prioritizes primary data as basic data.<sup>7</sup>The sources and types of data used in writing this thesis proposal are primary data and secondary data using primary, secondary and tertiary legal materials.

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<sup>4</sup>Article 1 number 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning Handling and Settlement of Land Cases

<sup>5</sup><https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed779c6d7626a2b246313533353235.html>, accessed on May 31, 2024, Time: 21.08 WITA

<sup>6</sup>Irwansyah, (2022), *Penelitian Hukum Pilihan Merode dan Praktik Penulisan Artikel*, Yogyakarta: Percetakan Mega Cakrawala, p. 174

<sup>7</sup>*Ibid*

### **3. Results and Discussion**

#### **3.1. Implementation of the Principle of Caution by Land Deed Officials in Making Land Deeds to Prevent Land Disputes in North Sulawesi Province**

Land Cases hereinafter referred to as Cases are land disputes, conflicts, or cases submitted to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency, Regional Office of the National Land Agency, Land Office according to their authority to obtain handling and resolution in accordance with the provisions of laws and regulations. Land disputes are part of land cases which mean land disputes between individuals, legal entities, or institutions that do not have a broad impact.<sup>8</sup>

Land disputes often occur in Indonesia, considering that land is something that has so many functions that it is always needed by the community. Among the many land disputes, there has been a land case that resulted in the cancellation of the deed of sale and purchase made by the PPAT based on the Decision of the Panel of Judges of the Manado High Court Number 156/Pdt/2022/PT Mnd Dated December 9, 2022 concerning the Object of the Land Dispute with the Plaintiff/Appellant Abner Teken, against the Defendants/Appellees, namely Harce Petrus Tampunu; Bank Ekspor Impor Indonesia Manado Branch Office; Manado State Auction Office; Roy Koagow; Femmy Sophie Laoh; and Co-Defendant/Appellee Minahasa Regency Land Agency; Minahasa Regency Government Cq Pineleng Sub-district Head and Notary/PPAT Brian Janny Waleleng who in one of his decisions, stated that the deed of sale and purchase made by the Notary/PPAT was declared invalid, and must be canceled by law.<sup>9</sup>

The Decision of the Panel of Judges of the Manado High Court Number 156/Pdt/2022/PT above, shows that the deed of sale and purchase made by the PPAT is null and void because it is considered to have violated the provisions of material or objective requirements. Based on the results of an interview with Resource Person I Risky Agung Dwiputra as a Notary/PPAT in Manado City, the factors that can cancel a PPAT deed are:<sup>10</sup>

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<sup>8</sup>Regulation of the Minister of ATR/BPN Number 21 of 2020 concerning Handling and Settlement of Land Cases

<sup>9</sup><https://putusan3.mahkamahagung.go.id/direktori/putusan/zaed779c6d7626a2b246313533353235.html>, accessed on May 31, 2024, Time: 21.08 WITA

<sup>10</sup>Interview with Risky Agung Dwiputra, Notary/PPAT Manado, December 18, 2024

a. In making the deed there is a formal defect but the PPAT still makes the deed, the formal defect in question is the completeness of the data of the parties is incomplete, not appropriate, or there is manipulation of files such as the ID card shown is different from the person who came to sign the deed, but the PPAT still continues to make the deed and sign the deed. Regardless of whether the PPAT knows about it or not, this will have fatal consequences in the future, so in making the deed, the PPAT needs to be careful as an official who is authorized to make the deed

b. The PPAT was proven to have falsified the signatures of the parties so that one party was harmed.

Darwin Ginting stated that one of the root causes of land disputes is the lack of care of the Notary/PPAT in making the deed. The care of a PPAT in making a deed is part of the principle of caution. In general, the precautionary principle can be interpreted as the basis of a truth that is the basis for thinking and acting with a full attitude of caution. The precautionary principle of an action will be taken if there is sufficient evidence, so that without sufficient evidence a certain action will not be taken. The precautionary principle basically aims to anticipate and prevent from the beginning the occurrence of an uncertain consequence of a certain activity carried out by humans.<sup>11</sup>In line with the theory of law enforcement expressed by Sudarto that Law enforcement is a very broad field, not only related to actions when there is or is suspected of a crime, but also guarding against the possibility of a crime occurring. The latter is a matter of crime prevention. If prevention is interpreted broadly, then many bodies or parties are involved in it, namely the legislators, police, prosecutors, courts, civil servants and criminal execution apparatus as well as ordinary people.<sup>12</sup>

In relation to the theory of law enforcement, the principle of caution of PPAT in carrying out its duties has a preventive or preventive nature in order to minimize land disputes caused by the PPAT itself. The principle of caution of PPAT has been manifested in Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning the Regulation of the Position of Land Deed Making Officials which is embedded in Article 15 paragraph (1), Article 22, and Article 23 paragraph (1). Furthermore, regarding its implementation, it is regulated in the provisions of the Regulation of the Head of

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<sup>11</sup>Tasya Aisyah Putri Saleh, Prinsip Kehati-Hatian Dalam Penerbitan Sertifikat Hak Atas Tanah Yang Sedang Dalam Sengketa Pada Program PTSL, *Jurnal Unes Law Review*, Volume 6 No. 1, Tahun 2023, p. 3563

<sup>12</sup>Moh. Mafhud MD Dkk, (2013), *Dekonstruksi dan Gerakan Pemikiran Hukum Progresif*, Konsorsium Hukum Progresif Universitas Diponogoro Semarang: Thafa Media, p. 396

the National Land Agency Number 1 of 2006 as amended by the Regulation of the Head of the National Land Agency Number 23 of 2009 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 concerning Land Deed Making Officials, which is embedded in Article 34 paragraph (1), Article 53 and Article 54.

Based on the results of the interview with resource person II, in practice the application of the principle of caution by PPAT in making deeds in North Sulawesi to avoid land disputes is carried out by following the following procedures:<sup>13</sup>

a. Before the Deed is Made

Stages before making a deed, PPAT carries out several steps, namely: document verification, land history check, confirmation of ownership, physical inspection.

b. During the Making of the Deed

At this stage, the PPAT fills in accurate data, uses clear language, explains rights and obligations, and uses official templates.

c. After the Deed is Made

This stage is carried out by: re-examination, signing, archiving, notification and notification of BPN.

Based on the description above, the principle of caution of Land Deed Making Officials (PPAT) in North Sulawesi in making deeds to prevent land disputes is applied or implemented as stated in the provisions of laws and regulations, namely Article 15 paragraph (1), Article 22, and Article 23 of Government Regulation Number 37 of 1998 concerning Amendments to Government Regulation Number 24 of 2016 concerning Land Deed Making Officials and Article 34, Article 53 and Article 54 of Regulation of the Head of the National Land Agency Number 1 of 2006 as amended in Regulation of the Head of the National Land Agency Number 23 of 2009 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Land Deed Making Officials.

The application of the precautionary principle by PPAT in North Sulawesi in making deeds to prevent land disputes has been carried out, including:

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<sup>13</sup>Interview with Taufiq Jan Latamu, Notary/PPAT North Bolaang Mongondow, December 24, 2024

a. Read and explain the contents of the deed to the parties

One of the preventive measures to prevent land disputes by PPAT in North Sulawesi is to carry out the obligation to read and explain the contents of the deed to the parties. This is done, considering that not all Indonesian people understand in detail about land law both in terms of obligations, legal consequences, rights and formal procedures. In addition, this obligation is carried out as a form of manifestation of educational steps towards the community that must be carried out by PPAT as an official who is given the authority for that. R. Soegando Notodisoejo explained that "the reading of the deed must be read very clearly so that it can be understood by the person appearing and the witnesses. According to Tan Thong Kie, the purpose of reading the deed is as a guarantee for the person appearing with what is signed is the same as what is heard in the reading; and to provide certainty regarding the will of the person appearing that has been stated in the deed.

b. Not Making a Deed for Himself (PPAT) and His Family

The PPAT is prohibited from making a deed, if the PPAT himself, his husband or wife, his family by blood or same blood, in a straight line without limitation of degrees and in a sideways line up to the second degree, become parties to the legal action in question, either by acting alone or through a proxy, or as a proxy for another party.<sup>14</sup>This prohibition aims to maintain the objectivity of PPAT in making deeds and ensure that the deeds are made legally.

c. Carrying out the obligation to check the conformity/validity of certificates and other records at the Land Office.

Currently, the National Land Agency has an electronic certificate checking service for applicants including PPAT as stipulated in the provisions of the Regulation of the Minister of ATR/BPN Number 5 of 2017. The purpose of this service is so that applicants including PPAT can easily check the conformity of the certificate. The check can be accessed through the "Land Information Service" application. However, if, during the certificate check, there is a data mismatch, this can cause legal uncertainty regarding the process of transferring land rights and cause losses to the parties transferring land rights. The obligation of PPAT to check the conformity of the certificate at the Land Office is a manifestation of the application

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<sup>14</sup>Article 23 paragraph (1) of Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning Land Deed Making Officials

of the principle of caution in making deeds in order to prevent land disputes that occur in the future.

#### d. Rejecting the Making of Deeds Not Based on Formal Data

The validity of an authentic deed consists of two aspects, namely, Formal Terms and Material Terms, which have the following explanations:<sup>15</sup>

### **3.2. Accountability of Land Deed Officials Who Do Not Apply the Principle of Caution to Prevent Land Disputes**

Responsibility in the term liability above shows the term that is suitable to be attached to the responsibility of PPAT who does not implement the principle of caution in making the deed. According to Hans Kelsen in his theory of legal responsibility, it states that a person is legally responsible for a certain act or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of a conflicting act. Furthermore, Hans Kelsen divides the types of responsibility, namely: Individual Responsibility, Collective Responsibility, Responsibility based on error, and Absolute Responsibility.

Based on an interview with the source, Notary/PPAT Muhammad Adi Saputra<sup>16</sup>, that the Land Deed Making Officer (PPAT) who does not apply the principle of caution in making deeds can be subject to sanctions in the form of: First, Civil Sanctions, namely PPAT can be sued for damages and reimbursement of costs by the injured parties. Second, Criminal Sanctions, PPAT can be subject to criminal sanctions if they make fake letters or falsify deeds. Third, administrative sanctions, namely PPAT can receive sanctions in the form of written warnings, temporary dismissal, honorable dismissal, or dishonorable dismissal.

As explained above, the following describes the responsibility of PPAT who does not implement the principle of caution:

#### a. Civil Liability

The cancellation of the PPAT Sale and Purchase Deed in the Manado High Court decision case number: 156/Pdt/2022/PT Mnd, has shown that there was a lack of care on the part of the PPAT in carrying out his duties. Therefore, this case can be categorized as a legal relationship that arose not because of an agreement (non-

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<sup>15</sup>Meisya Adistia, Pertanggungjawaban Pejabat Pembuat Akta Tanah Terhadap Keabsahan Akta Jual Beli, *Jurnal Unes Law Review*, Volume 6 No. 3, Tahun 2024, p. 8020-8021

<sup>16</sup>Interview with Muhamad Adi Saputra, Notary/PPAT Manado, February 6, 2025



contractual). This is because the relationship between the PPAT and the parties is not based on an agreement (contractual). As stated by Y. Sari Murti Widiyastuti, a non-contractual legal relationship is an obligation that arises because of a determining law. In such a case, the existing legal relationship is not based on an agreement but on an act that is determined by law as a legal relationship that gives rise to rights and obligations.<sup>17</sup>

As is known, the careless actions of PPAT in carrying out his/her position constitute an unlawful act which in terms of legal relationship is not based on a contractual basis. However, compensation in the form of costs, losses and interest can be applied to PPAT analogously based on the provisions of the Article. The provisions in Articles 1246-1248 of the Civil Code can only be applied analogously to claims for compensation based on unlawful acts.

#### b. Criminal Responsibility

Habib Adjie stated that criminal cases related to the formal aspects of Notary/PPAT deeds in making authentic deeds are as follows:<sup>18</sup>

- 1) Making fake/forged letters and using fake/forged letters;
- 2) Forging an authentic deed;
- 3) Ordering to include false information in an authentic deed;
- 4) Helping to make fake/or forged letters and using fake/forged letters.

#### a. Administrative Accountability

Referring to the provisions of laws and regulations governing sanctions against PPAT who do not apply the principle of prudence in carrying out their duties, including those regulated in the Regulation of the Head of the National Land Agency Number 1 of 2006 which in essence states that deviations from formal and material requirements are serious violations by PPAT which can be subject to sanctions in the form of dishonorable dismissal from office by the Head of the Indonesian National Land Agency. In addition, it is also regulated in Article 62 of Government Regulation Number 24 of 1997 concerning Land Registration and the

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<sup>17</sup>Y.Sari Murti Widiyastuti, (2020), *Asas-Asas Pertanggungjawaban Perdata (Bagian Pertama)*, Yogyakarta: Cahaya Atma Pustaka, p. 20

<sup>18</sup>Habib Adjie, (2009), *Sanksi Perdata dan Administrasi Terhadap Notaris Sebagai Pejabat Publik*, Cet. ke-2, Bandung: Refika Aditama, p. 124

IPPAT Code of Ethics. In addition, it is regulated in the provisions of Article 91 paragraph (1) of Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions.

#### 4. Conclusion

That the Land Deed Making Officer (PPAT) in North Sulawesi Province has implemented the principle of caution in making deeds to prevent land disputes in accordance with the provisions of Government Regulation Number 37 of 1998 as amended by Government Regulation Number 24 of 2016 concerning Land Deed Making Officers and its implementing regulations. Among the implementation of the principle of caution carried out by PPAT in North Sulawesi Province are: first, reading and explaining the contents of the deed to the parties, second, not making deeds for themselves and their families, third, carrying out the obligation to check the suitability/validity of certificates and other records at the Land Office and fourth, rejecting the making of deeds that are not based on formal data. Meanwhile, regarding the accountability of the Land Deed Making Officer (PPAT) in North Sulawesi Province who does not implement the principle of caution in making deeds, is ethical/moral accountability and legal accountability. Legal accountability can be in the form of civil, criminal and administrative accountability. That the author's suggestion in this study is: First, the creation of firm and clear rules regarding the principle of caution for PPAT in carrying out their duties, considering that there are no detailed and firm rules governing the principle of caution for PPAT. Second, PPAT must really carry out the procedure in making deeds, both formally and materially. In addition, a form of multi-layered verification also needs to be carried out by PPAT in carrying out their duties, especially in making deeds in order to avoid actions that violate the principle of caution regulated in the provisions.

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