

Legal Formulation Policy for Deeds Issued by Temporary Land Deed Officials (PPATS)

Mashuri¹⁾, Nanang Sri Darmadi²⁾ & Muhammad Hafidh³⁾

¹⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: pengacaramashuri1234@gmail.com

²⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: nanangsriddarmadi@unissula.ac.id

³⁾Faculty of Law, Universitas Islam Sultan Agung (UNISSULA) Semarang, Indonesia,
E-mail: muhammadhafidh@unissula.ac.id

Abstract. *PPATS becomes incompetent in making all forms of real deeds compared to Notaries or PPATs who obtain their positions through legal education and internships at the BPN office or at PPAT, so that the position of Notaries and PPATs is better than PPATS, so a legal formulation is needed that can regulate the limits of PPATS's authority in carrying out duties as PPAT. The research discussion includes two things, firstly how to register deeds (transfer of land rights) registered by Temporary Land Deed Making Officers in accordance with the provisions of PP Number 24 of 1997 concerning Land Registration and how is the concept of legal formulation regulating the registration of land deeds registered by Temporary Land Deed Making Officers in the future. This study aims to analyze the registration of land transfer deeds registered by Temporary Land Deed Making Officers in accordance with the provisions of PP Number 24 of 1997 concerning Land Registration. To find the right legal formulation for Temporary Land Deed Makers (PPATS) in the future. Approach Method used by the researcher in this thesis The type of research used by the author in this thesis is normative legal research. The types and sources of data used are primary, secondary, and tertiary data sources. The data collection method is a literature study, the research data analysis method carried out by the author is prescriptive. The results of the research and discussion show that: First, the PP on Land Registration does not regulate the authority of Temporary PPAT to register land transfer deeds while the authority of Temporary PPAT is obtained from the PP on PPAT Position which gives authority to Temporary PPAT to act as PPAT. Second, PPAT in Indonesia as a whole has begun to emerge and even in some areas the quota for PPAT is full, so there is no need to worry if PPATS is abolished in the legal regulations in Indonesia because with the large number of PPATs spread across various provinces in Indonesia, it would be better to optimize the distribution of the number of PPATs in 33 provinces in Indonesia by limiting*

PPATs to choose their legal work area and giving authority to BPN to regulate the distribution of PPATs in areas where there are no PPATs yet.

Keywords: *PP Land Registration; PPAT; PPATS; PP PPAT Position.*

1. Introduction

The guarantee of legal certainty for land registration is also regulated by the Basic Agrarian Law Number 5 of 1960 (hereinafter referred to as UUPA) which in essence regulates the guarantee of legal certainty of land rights by the government, this is carried out by the government throughout the territory of the Republic of Indonesia whose provisions refer to the PP on Land Registration.¹To ensure legal certainty regarding land ownership in Indonesia, land registration is necessary throughout the country. The purpose of land registration is to achieve legal protection and legal certainty for land rights holders.²Later, the land rights holder will receive proof in the form of a land ownership certificate which can be used as a basis for land ownership. Registration of land transfer deeds to the national land agency can only be done by PPAT, this is in accordance with the provisions of Article 40 of the PP on Land Registration, while PPAT according to the PP on Land Registration as stipulated in the provisions of Article 1 paragraph 24 of the PP on Land Registration is a public official who is given the authority to be able to make certain land deeds. PPAT is given the authority by the PP on Land Registration to register land transfer deeds by registering the land transfer deeds to the land office. In addition, in practice, not only PPAT registers land transfer deeds but also Temporary Land Deed Making Officers (hereinafter referred to as PPATS), of course this creates a legal problem because the PP on Land Registration does not regulate the authority of PPATS as an official to register land transfer deeds.

Basically, the PP on Land Registration requires that the registration of the deed of transfer of land rights be carried out no later than 7 working days and the person entitled to register it is the PPAT, this is intended to make it easier for land agencies to register land in the territory of the Republic of Indonesia. In addition, the PP on Land Registration does not regulate the authority of PPATS specifically and the rules governing PPATS are Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials (hereinafter referred to as PP on PPAT Position). According to the PP on PPAT Position, PPATS is a government official appointed due to a certain position to be able to carry out the duties of PPAT by making PPAT deeds in areas where there are not enough PPATs.

¹ Article 19 paragraph (1) UUPA

²Mira Novana Ardani, Tantangan Pelaksanaan Kegiatan Pendaftaran Tanah Sistematis Lengkap dalam Rangka Mewujudkan Pemberian Kepastian Hukum, *Jurnal Gema Keadilan*, vol 6 No 3 (2019) p. 270.

The provisions of Article 37 of the PP on Land Registration regulate the transfer of land rights which essentially regulates the transfer of land rights as stipulated in Article 2 paragraph 2 of the PP, the position of PPAT can only be registered if there is a deed made by PPAT and not a deed made by PPATS. Furthermore, if seen in the provisions of the PP on the Position of PPAT, the authority given to PPATS is limited and this is actually very relevant to the scientific competence possessed by PPATS, because in fact PPATS in terms of knowledge cannot be considered the same as Notary or PPAT whose knowledge can be trusted. In addition, PPATS has also never done an internship process at BPN or at PPAT, this is what can make PPATS in his scientific field doubtful because if PPATS continues to carry out the same duties as PPAT or Notary, this will be detrimental to legal subjects who experience maladministration from PPATS actions, so it is deemed necessary to limit or deactivate the authority of PPATS so that it can reflect the values of certainty and benefit.

The obligation of the Indonesian State to create legal certainty must provide protection to everyone, this is regulated in the 1945 Constitution which essentially regulates that everyone has the right to protection, guarantees, recognition, and legal certainty that has a just nature and equal standing in the eyes of the law. The Indonesian Government considers that if land registration is closely related to an authentic deed, the Indonesian State appoints other officials who are competent in the field of making authentic deeds related to land rights. Land administration remains under the authority of the national land agency, while what is meant by other officials is an official who assists the national land agency, namely PPAT. There have been cases that have occurred in Indonesia, related to legal actions carried out by PPATS who were declared to have committed Unlawful Acts, namely in the Bekasi and Kerawang District Courts. The case occurred in the Bekasi District Court where in the Decision of Case Number: 2949 K/Pdt/2016, namely a Jatiasih Sub-district Head as PPATS by the court decision stated that the product of the sale and purchase deed he made was void and had no legal force, because the person selling a plot of land, the Plaintiff, was not included as the legal owner, so on that basis the Panel of Judges examining the case assessed that the legal product made by the Jatiasih Sub-district Head as PPATS must be canceled because it was contrary to applicable law.

In the second case occurred in the Kerawang District Court, based on the Decision of Case Number: 1795 K/Pdt/2016 where the PPATS who has the authority in the working area of Cibuya District was stated according to the decision to have committed an Unlawful Act, namely the PPATS made a material deed in the form of a Sale and Purchase Agreement deed. However, the PPATS who made the deed did not include one of the parties in making the agreement without the presence of one of the parties, so that with the absence of one of the parties in making the Deed by the Panel of Judges examining the Case, the PPATS who made the sale and

purchase deed was declared to have committed an Unlawful Act by not paying attention to the principles of prudence, therefore in the Decision it has stated that all deeds made by the PPATS are legally flawed and do not have binding legal force. This case illustrates that if the PPATS in making a legal product in the form of a sale and purchase deed has contradicted the applicable law, this is what makes the PPATS incompetent in making all forms of real deeds compared to Notaries or PPATs who obtain their positions through legal education and internships at the BPN office or at the PPAT, so that the position of Notaries and PPATs is better than PPATs who in making deeds have given rise to disputes due to the lack of education level, caution and accuracy.

2. Research Methods

The type of research used in writing this thesis is Normative law. According to Mukti Fajar and Yulianto Achmad, normative legal research is research that positions law as a system of norms. The normative system in question concerns the principles, norms, and rules of statutory regulations, court decisions, agreements, and doctrines (teachings).³ The approach used in writing this thesis is a statutory approach (statute approach), conceptual approach (conceptual approach) and Case Approach. The statutory approach is carried out by examining all laws and regulations related to the legal issue at hand.⁴ Conceptual approach starting from the views and doctrines that have developed in legal science, so that we can find ideas that give rise to legal understandings, legal concepts, and legal principles that are relevant to the issues at hand.⁵ The Case Approach, researchers use to examine various cases related to the two legal issues. The cases that researchers will examine are cases that have permanent legal force, based on the two legal issues that researchers raise. This case research method is very relevant because these legal issues expose the gaps or ambiguities in norms in their application, a gap for example if the law still does not regulate a rule regarding actions or authority.⁶ The steps taken in writing this thesis include firstly collecting legal materials relevant to the problem at hand. The compiled legal materials are then linked to the existing problem for analysis and then conclusions are drawn in the form of arguments to answer the existing problem. The results of the problem analysis and conclusions are then outlined in the conclusion.

³Mukti Fajar & Yulianto Achmad, (2015), *Dualisme Penelitian Hukum Normatif dan Empiris*, Cetakan Ke-3, Yogyakarta : Pustaka Pelajar, p. 34.

⁴Peter Mahmud Marzuki, (2016), *Penelitian Hukum (edisi revisi cetakan ke 12)*, Jakarta : Kencana, p.60

⁵*Ibid*, p. 135-136

⁶I Made Pasek Diantha, (2016), *Metodologi Penelitian Hukum Normatif*, Jakarta : PT. Kharisma Putra Utama, p. 165.

3. Results and Discussion

Registration of Deeds (Transfer of Land Rights) Registered by Temporary Land Deed Making Officials in Accordance with the Provisions of Government Regulation Number 24 of 1997 Concerning Land Registration. PPATS according to its definition is contained in the PP on PPAT Position which means that PPATS is a government official appointed because of his position to carry out the duties of PPAT by making PPAT deeds in areas where there are not enough PPATs.⁷The definition of PPATS in the PP on PPAT Position can be interpreted as a form of authority granted by statutory regulations to PPATS to make PPAT deeds in areas where there are no PPATs yet. The PP on Land Registration in Indonesia does not recognize PPATS, but in other regulations, namely the PP on PPAT Position, PPATS are further regulated in the PP on PPAT Position. PPATS themselves are basically government officials from a sub-district head and village head who are appointed because of their position by the Minister.

In carrying out its duties, the PPATS is further regulated in the PP on the Position of PPAT as contained in the provisions of Article 1 paragraph 2, which in essence states that the PPATS has the task of making PPAT deeds in areas where there are not enough PPATs.⁸This means that if in a certain area there is no PPAT or there are not enough PPATs, then government officials from the Head of the Sub-district and the Head of the Village will be appointed as Temporary PPATs. The existence of Temporary PPATs in accordance with the PP on PPAT Positions is stated and appointed because of their position to carry out the duties of PPATs in areas where there are not enough PPATs, this indicates that Temporary PPATs have similar duties and authorities to PPATs which include several deeds that can be made by PPATs as stipulated in Article 2 paragraph 2 of the PP on PPAT Positions, namely:

1. Grant.
2. Buy and sell.
3. Exchange.
4. Sharing of joint rights.
5. Entry into the company.
6. Granting of building use rights.
7. Granting of mortgage rights.
8. Granting power of attorney imposes liability rights.

Furthermore, the researcher will describe the terms of several deeds that can be made by PPAT and can also be made by Temporary PPAT. The word "hibah" itself is linguistically derived from the word "wahaba," meaning handover from hand to hand. In other words, it means doing good, or is derived from the word "brouhaha comeh" (wind blowing) or "ibra" (liberation). Terminologically, it is the direct and

⁷ Article 1 Paragraph 2 of the PP on the position of PPAT

⁸ Article 1 paragraph 2 PP on the Position of PPAT

absolute granting of ownership rights to an object for as long as it lasts, without the need for replacement by a superior.⁹ A grant can also be interpreted as a gift to someone from the owner of the goods based on absolute ownership rights, so that the absolute giving of goods without any expectation of reciprocity can be declared a grant.

Furthermore, the authority of the PPATS is related to buying and selling, in this buying and selling the PPATS has the same role as the PPAT, namely making a deed of sale and purchase, the deed of sale and purchase itself is a reciprocal agreement in which one party (the seller) agrees to hand over his rights to the goods, while the other party (the buyer) agrees to pay a reward in the form of a sum of money in exchange for buying back the rights that belong to him.¹⁰ This means that the deed of sale and purchase is a basic form of proof that a legal act of sale and purchase has occurred.

The authority of the Land Deed Official (PPATS) also relates to land exchanges. The provisions for exchanges in the Civil Code are regulated by Article 1541, and the provisions for sales and purchases also apply to exchanges. The formal exchange of land rights, whether within a single regency/city or between regencies/cities, must be conducted with authentic data prepared by the PPAT or PPATS.

Another authority granted by the PPAT Position is to draft a deed of joint ownership. The Deed of Joint Ownership is one of the documents used to register the transfer of ownership at the local Land Office. If the heirs only submit a Certificate of Inheritance, the land rights remain under joint ownership.¹¹ However, if an heir makes a deed of joint distribution of rights, then in this case, it will have been transferred to one of the heirs and have rights to the land as an individual right, according to the agreement (Details) explained in the deed of joint distribution of rights. Meanwhile, the person who records the existence of a deed of transfer of land rights is the land deed official (PPAT) or PPATS.

The Land Deed Official (PPATS) also has the authority to legally act on deed of income into a company. Based on existing legal regulations, the law does not provide a definition of income into a company. However, according to several legal experts, such as Benyamin Asri, income into a company is income in the form of a gift or bequest that has been given, to be calculated as inheritance with the aim of achieving balance in the distribution of the inheritance among the heirs of the

⁹Mardani, (2013), *Fiqh Ekonomi Syariah*, Jakarta : Kencana Group Prenada, p. 342-343

¹⁰A. Qirom Syamsudin Meliala, (2004), *Pokok-pokok Hukum Perjanjian Beserta Perkembangannya*, Yogyakarta, p. 38

¹¹Andri Cahyadi, (2011), *Peran Notaris Dalam Membantu Menyelesaikan Masalah Waris Melalui Pembuatan Keterangan Waris*, Jakarta : Universitas Indonesia, p. 82

person who made the gift.¹²This means that the PPATS in making a deed of entry in a company is aimed at a person's inheritance so that its distribution is in accordance with the provisions of legal regulations, because if the inheritance is not made a deed of entry in the company, it is feared that the heirs will take it unilaterally and will cause disputes between the heirs, this is the role of the PPATS given by the PP of the PPAT position to make a deed of entry in the company. Because if the authority to make a deed of entry in the company is only given to the PPAT while in certain areas there is still no PPAT, then in the life of the community it will certainly cause many disputes regarding inheritance and therefore the authority given by the PP of the PPAT position to the PPATS to make a deed of entry in the company is a very appropriate thing.

Then the authority of PPATS is also to make a deed of granting building use rights which is a deed that is related to the rights regulated in civil law provisions related to land. The granting of building use rights is based on the existence of a deed of preliminary agreement for building use rights on land owned by someone, the initial agreement where the first party as the grantor of the rights grants the building use rights to another party as a recipient of the rights and the second party receives the granting of the use rights with an object, compensation and certain conditions.¹³This means that the granting of building use rights is intended to be used or utilized by the recipient of the building use rights with a certain agreed reward so that with the occurrence of this event, a deed is made by the PPATS as evidence of the existence of this legal event and can later be used as evidence in the future.

However, in relation to the granting of building use rights as regulated in Government Regulation Number 40 of 1996 concerning Cultivation Use Rights, Building Use Rights and Land Use Rights, it is explained that the granting of Building Use Rights to be given to a person from the grantor of building use rights must be made by a PPAT and registered at the land office.¹⁴In Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Rights and Land Use Rights, only PPAT is authorized to make and register deeds of granting building use rights to the land office, while PPATS is not recognized in Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Rights and Land Use Rights, so PPATS cannot be authorized to register deeds of granting building use rights to the land office because only PPAT has the authority.

¹²Benyamin Asri, Thabrani, (1987), *Tanya Jawab Pokok-pokok Hukum Perdata dan Hukum Agraria*, Bandung : Armico, p. 134

¹³Salim HS, (2016), *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT)* Ed.1-Cet.1, Jakarta : PT. Raja Grafindo Persada, p.94.

¹⁴ Article 24 of Government Regulation Number 40 of 1996 concerning Cultivation Rights, Building Rights and Land Use Rights

Furthermore, the authority of the PPATS granted by the PP for the PPAT Position is to make deeds. granting power of attorney to encumber mortgage rights, granting power of attorney to encumber mortgage rights can also be called SKMHT (power of attorney to encumber mortgage rights) where this power of attorney is made because the grantor of mortgage rights cannot be present in person before the PPATS at the time of granting mortgage rights. In addition to this, in making a deed of granting power of attorney to encumber mortgage rights which can be used as a basis for making a deed of granting mortgage rights, it must also be able to pay attention to the authority of the grantor who has the right to act from the object of mortgage rights. The actions of the grantor of the power of attorney are because in the land registration system there is a known principle of *nemo plus juris* which means that every person can only be allowed to transfer rights that he owns and is not allowed to transfer rights that do not belong to him.

Based on the explanation, the granting of power to encumber mortgage rights must be made with an authentic deed, only notaries and PPATS are authorized to make the authentic deed which has perfect evidentiary power which is then known as an authentic deed based on the provisions in Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.¹⁵ This means that the authority of the PPATS to make a deed granting power of attorney to encumber mortgage rights is also an authority that can be exercised by a notary.

Then the authority of the PPATS in issuing a legal product refers to Article 1 paragraph 2, which in essence states that a Temporary PPAT is a Government Official appointed because of his position to carry out the duties of a PPAT by making PPAT deeds in areas where there are not enough PPATs. Meanwhile, the task of the PPAT is to carry out some land registration activities by making deeds as evidence that it has been carried out. certain legal acts concerning land rights or Ownership Rights for Apartment Units, which will be used as the basis for registering changes to land registration data resulting from certain legal acts and the legal acts in question are legal acts in the form of several deeds that can be made by PPAT and also made by PPATS as explained by the researcher in the section above this discussion.

A PPAT/PPATS deed is an instrument that proves that a certain legal act has been carried out. The PPAT/PPATS deed in question is no longer considered evidence of a legal act if the legal act is cancelled or revoked. If a legal act is cancelled by the person concerned when the legal act is registered at the Land Registration Office, the registration cannot be canceled. Changes to land data based on the cancellation of a legal act must be based on other evidence, such as a court decision or a PPAT/PPATS deed concerning the new legal act.

¹⁵Article 1 number 1 explains that a Notary is a public official who is authorized to make authentic deeds and has other authorities as referred to in this law or based on other laws.

The PPATS itself is given the authority by the PP to carry out certain legal acts as can be carried out by the PPAT and this is the only authority that can be carried out by the PPATS.¹⁶ The authority of the PPATS (Planning Official) can indeed facilitate the public in obtaining a PPAT deed for a specific legal act concerning land ownership. This means that in addition to the PPAT appointed by the Minister, there are other officials who can be appointed as PPATs, but their status is temporary, due to the lack of PPATs in areas where PPATs are not yet established.

Furthermore, as stipulated in Article 5 of the PP on PPAT Positions, PPATS are appointed and inaugurated by the Minister who comes from sub-district and village head government officials.¹⁷ The appointment of sub-district heads and village heads as PPATS is because these government officials are responsible as heads of government in the sub-district and in the village, because there is no PPAT in the area, the sub-district heads and village heads are appointed as PPATS. However, the appointment of PPATS by the Minister of Land and Building is based on the aim of serving certain communities and in the PP on the Position of PPAT, the procedures/requirements for being appointed as PPATS are not specifically stated, but only the requirements for becoming a PPAT.

The basis for appointing a sub-district head or village head as a Temporary Land Deed Official (PPAT) is based on the provisions of Article 5 of the Government Regulation on the Position of PPAT. The initial purpose of appointing sub-district heads and village heads is to meet the need for PPATs in the regions. Appointing a sub-district head as a Temporary PPAT is essentially to meet the need for PPATs in the respective sub-district head's work area. This means that if a PPAT already meets the quota in a given area, the newly appointed sub-district head will no longer be appointed as a Temporary PPAT.

For a sub-district head, to be appointed as a Temporary Land Deed Official, they must first undergo PPAT education and training. This is emphasized in the Head of the National Land Agency Regulation Number 1 of 2006 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Officials (hereinafter referred to as the Head of the National Land Agency Regulation No. 1 of 2006):¹⁸

1. In certain cases, the Head of the Agency can appoint the Sub-district Head and/or Village Head because of their position as Temporary PPAT.
2. Before the Sub-district Head and/or Village Head are appointed as Temporary PPAT, the person concerned is required to attend education and training organized by the National Land Agency of the Republic of Indonesia, the

¹⁶ Article 2 paragraph 2 PP on the position of PPAT

¹⁷ Article 5 of the PP on the Position of PPAT

¹⁸ Article 18 of the Head of BPN Regulation No. 1 of 2006

implementation of which can be carried out in collaboration with the PPAT professional organization.

3. The obligation to attend education and training as referred to in paragraph (2) is exempted for Sub-district Heads and/or Village Heads who will be appointed as Temporary PPAT, if there is no PPAT in the relevant district/city area.
4. Education and training as referred to in paragraph (2) is intended to increase the capabilities of Temporary PPATs in carrying out their official duties.

The sub-district head or village head who is appointed as PPATS as explained above is because in the area there is still a PPAT formation. The appointment of the sub-district head as a temporary PPAT is aimed at helping the smoothness of land administration tasks, namely making land deeds which are authentic deeds regarding all legal actions including buying and selling, exchanging, granting, entering into companies (inbreng), sharing joint rights, granting Building Use Rights/Use Rights on Land Ownership Rights, granting Mortgage Rights, granting power of attorney to encumber Mortgage Rights regarding land rights and Ownership Rights on Apartment Units with work areas within the work area of his position as also explained by the researcher above, of the several authorities held by the PPATS, none of them has the authority to register land rights transfer deeds to the BPN even though the PPATS has the aim to fulfill the duties of the PPAT but in the provisions of the PP Land Registration regarding the registration of land rights transfer deeds the authorized person is the PPAT and not the PPATS.

In the deed made by the Temporary PPAT in Article 51 of the Head of BPN Regulation No. 1 of 2006 also stipulates that the Temporary PPAT in making the deed must purchase a form/form made and issued by the BPN. As according to Article 96 paragraph (3) of the Regulation of the Minister of State for Agrarian Affairs/Head of BPN Number 3/1997 concerning Provisions for the implementation of Government Regulation Number 24 of 1997 concerning Land Registration, the form as referred to is only a constitutive requirement for changes to land registration, the intention of this is that the Temporary PPAT can register the land if it uses the form/form. However, further in the provisions of Article 37 of the PP on Land Registration it is very clear that in a limited manner the authority to register the land is only given to the PPAT. Meanwhile, the Temporary PPAT by the PP on PPAT Position or PP on Land Registration is not given the authority to register the land even though the Regulation of the Head of BPN No. 1 of 2006 also stipulates that the Temporary PPAT has the right to purchase a form/form to make changes to land registration data.

The Sub-district Head as the Temporary PPAT has the authority to carry out legal actions such as the Temporary PPAT due to the position attached to him. If the Sub-district Head as the Temporary PPAT is no longer in office, he must provide a protocol to the Temporary PPAT who replaces him, or if there is no protocol to

replace him, then the Temporary PPAT protocol must be submitted to the Head of the Local Land Office. In terms of the handover of this protocol, it can also be interpreted as the handover of responsibility for the actions of the previous Temporary PPAT to his replacement, except if there is a legal action of a personal nature or it can be said that there is a violation of the law committed by the Temporary PPAT in carrying out his position, then the Temporary PPAT must be responsible for his actions.

In relation to the position of the PPATS deed, the authentic deed can have its evidentiary power reduced (degraded) from having perfect evidentiary power to only having evidentiary power as a private deed, if the public official who made the deed is not authorized to make the deed or if the deed is defective in its form, because in the process of making the deed there is one or more deviations from the formal requirements or due to negligence and/or negligence of the PPATS concerned, then the Sub-district Head as PPATS even though he is no longer in office will have legal consequences or legal consequences, namely it can be cancelled and/or null and void by law.

PPATS is a position or authority obtained from his position in government, it does not mean he is free from the responsibilities and witnesses he obtained, even though he has or is no longer in office, but still has responsibility for legal products, namely authentic deeds made in accordance with applicable laws and regulations. This is because land registration guarantees legal certainty, therefore every legal act carried out by the PPATS is a legal act, which is not released even though he is no longer in office. However, sanctions resulting from errors or negligence of the PPATS while he was in office are seen from these actions based on intent or negligence that can be proven in court.

A Temporary PPAT, who is also the Sub-district Head or Village Head, is an official granted the authority to serve as a Temporary PPAT based on its delegative nature. This means that the Temporary PPAT's authority in carrying out its duties is only to assist the BPN, while the PPAT is also an official authorized by law to assist the BPN in carrying out land registration within its jurisdiction. Land registration itself is a term derived from land registration, which is a technical term for registration, which can provide information to the general public about the value and properties of a particular piece of land. This land registration is an instrument that can describe and identify in detail and also serves as a form of registration of ownership of a land right.¹⁹ This means that with land registration, the status and position of land rights will become clear and provide a form of legal certainty regarding land ownership. If there is no land registration, this will certainly not reflect a form of legal certainty in the land law system in Indonesia.

¹⁹Urip Santoso, (2011), *Hukum Agraria: Kajian Komprehensif*, Jakarta : Kencana, p. 286.

Land registration is also regulated by Article 1, number 1 of the Land Law, namely a series of activities carried out by the government on an ongoing, regular, and continuous basis. This includes the management, collection, bookkeeping, presentation, and maintenance of legal and physical data, in the form of lists and maps, relating to land parcels and including units within apartments, as well as the provision of evidence.²⁰ A series of land registrations can be used as a means of providing information on the identity of a person's land rights. With the management, collection, bookkeeping, presentation and maintenance of legal and physical data on land, this allows every land in Indonesia to have a land identity so that in community life there will be no mutual recognition of a land right, even though in fact land ownership often becomes a problem due to the existence of an incompatible village land book list.

The definition of land registration as provided by the Land Registration Law is an expansion of the scope of land registration activities based on Article 19 paragraph 2 of Government Regulation Number 10 of 1961. The definition of land registration as stated above can be interpreted as follows:²¹

1. A series of activities

The term "series of activities" can refer to an activity for organizing land registration, which is related to others, sequentially forming a series of units oriented towards the availability of desired data in a framework of providing legal certainty to the community.

This activity consists of several parts, namely processing and collecting physical data, proving and bookkeeping of a right, issuing certificates, presenting physical data and legal data, storing general lists and documents, the activities are transfer of rights and encumbrance of land rights.

Land registration activities produce two types of data, namely physical data and legal data. Physical data is a description of the location, area and boundaries of the land plots and units in the registered flats.²² including those relating to structural evidence on the plot. while legal data is information relating to the legal status of the registered land and plot of land, other parties and the plaintiff and includes other burdens that may be imposed on them.

2. The government did it

Land registration in modern society is a task that must be carried out by the state and government, the aim of which is for the benefit of the people, this aims to provide legal certainty in the land sector.

3. Continuously and intensely

²⁰ Article 1 number 1 of the Land Registration Law

²¹ Urip Santoso, *Op. Cit.* p. 287.

²² Rachmad Nur Nugroho, *Loc. Cit.*

The term continuous/intense refers to an activity that, if carried out continuously, will not end. Data that has been collected and available must be maintained, meaning it must be adjusted to changes that occur over time until it remains consistent with the current situation.

Initial land registration is an activity to provide evidence in the form of a land certificate. Land activities that allow for the transfer of rights, extension of the term of land rights; mortgages, separation, division and merger of plots; sharing joint rights; ownership rights to apartments and the elimination of land rights; transfer and destruction of mortgage rights; changes to land data based on court decisions or rulings; and changes to the name of the rights holder must be registered at the local district/city land office to fulfill the same request for the last time.

4. Regular

The word "normal" indicates that all activities must be based on applicable laws and regulations that provide evidence in accordance with the law, although the strength of the evidence is not always the same as the laws of countries that do not have state registration.

5. Land plots and apartment units

Land registration can be carried out for Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, Administrative Rights, Waqf Land, Land Ownership Rights, Apartments, Mortgage Rights and State Land.

6. Certificate of title

The person who is first registered in the land registry will receive a letter without proof of rights in the form of a certificate for the land to which he has obtained rights and a certificate of ownership of the apartment. This certificate is evidence as referred to in Article 19 paragraph (2) letter c of the UUPA concerning land rights, management rights, land grants, ownership rights for apartment units and mortgage rights included in the relevant land register.

7. Certain rights that burden him

Land registration objects are responsible for other rights, for example ownership rights, business use rights, building use rights, use rights and ownership rights over land units, can appear in land registration and be used as collateral for debt by being burdened with mortgage rights, or ownership rights over land burdened with use rights for construction or use rights for construction.²³

Based on the description of land registration above, it has many benefits and of course all these benefits can be felt by the owner of the land rights so that in controlling the land rights there will not be any disturbance from any thing either from the threat of encroachment and other detrimental actions, so that by explaining the identity of the land rights with the existence of land registration,

²³Tony, *Loc. Cit.*

there will be no thing that states that it is unknown regarding the land that is to be cultivated.

The purpose of land registration is to provide legal certainty, known as land registration/legal land registration rights. The guarantee of legal certainty realized through land registration includes certainty regarding the status of the registered rights and certainty regarding the purpose of the rights. This registration will result in a certificate as proof of the rights held. The purpose of the UUPA, which regulates land registration, is to ensure legal certainty. This registration is an obligation of the government or land rights holders. The matters stipulated by the government's obligation to register land throughout the territory of the Unitary State of the Republic of Indonesia are regulated in Article 19 of the UUPA.

PPATS who want to register land with BPN are actually not regulated in the Land Registration PP. Where the PP on Land Registration only recognizes that PPATs can register land with BPN, this is further regulated in the provisions of Article 37 of the PP on land registration which basically states that the transfer of land rights can only be registered as evidenced by the making of a deed by the PPAT.²⁴ This means that apart from the deed, the PPAT cannot register the transfer of land rights to the BPN, although the PPATS is also regulated in the PP on the position of PPAT to be able to make a deed similar to the PPAT, but the authority of the PPATS does not extend to registering the transfer of land rights to the BPN because only the PPAT is recognized and can do this. While land registration and land transfer deeds offer numerous benefits, the process isn't straightforward and requires a formal process, including obtaining a deed from a Land Deed Official (PPAT). Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration does not change or expand the number of parties authorized to register land transfer deeds. Only PPATs are authorized to register land.

In addition to PPAT, there are also other officials who are also authorized to issue deeds but cannot register the transfer of land rights, namely PPATS, but PPATS who issue deeds of transfer of land rights often carry out actions that are not in accordance with applicable law and cause losses to the parties they assist. PPATS who cause losses to the parties they assist are motivated by the lack of legal knowledge possessed by PPATS in carrying out their duties because as stated in the Regulation of the Head of BPN No. 1 of 2006 PPATS are appointed by only following education and training without any requirements of being a bachelor's graduate, and this is different from the requirements of PPAT where the requirements to become a PPAT must have a bachelor's background, and have attended specialist Notary or Master of Notary education.

²⁴ article 37 of the PP on Land Registration

The implementation of land registration as regulated in Article 11 of the Land Registration Government Regulation includes the activities of initial land registration and the maintenance of land registration data. This article reiterates the provisions of Article 19 of the UUPA concerning the definition of land registration. Land registration includes the initial registration (recording of title) of all land. The rights that must be registered at the beginning of the enactment of PP Number 10 of 1961 which was updated with the PP on Land Registration, namely from the provisions on the conversion of land rights such as rights subject to Burgerlijk Wet (BW) and customary law lands, from the decree granting land rights and this has been regulated in the PP on Land Registration.

The deed of transfer of land rights is made by a public land deed official, in this case a PPAT. According to Dutch, the meaning of "public official" can be interpreted as *Openbaar/Ambtenaar*,²⁵ which has a meaning related to the government, matters related to the public, then based on this PPAT is appointed by the government who has the task of serving the public interest. In addition, R. Soegondo Notodisoerjo also explained that PPAT is someone who is appointed as a public official, and if he is appointed and dismissed by the government and is given obligations and authority related to public services and certain matters because he participates in implementing the authority of the government.²⁶ It can be interpreted that PPAT has the same role as the government, namely related to public services to the community, but what differentiates PPAT is that it is appointed directly by the government and is appointed by the government, which gives PPAT the authority to carry out duties as a public official in relation to issuing certain deeds.

Meanwhile, Article 1 of the Land Registration Regulation explains that the PPAT's duties include acting as a public official authorized to issue land deeds as stipulated in relevant laws and regulations, such as deeds of transfer and ownership of apartment units, as well as deeds granting power of attorney to encumber mortgages.²⁷ The PP on land registration explains that a PPAT is a public official who has the authority to make deeds, PPAT deeds have authentic properties as well as private deeds.

Authentic deeds are letters regarding a legal act made by a public official who functions as perfect proof. PPATs are specially appointed to make authentic deeds for the purpose of making them.²⁸ However, some officials have the right to make deeds regarding matters related to their duties. Meanwhile, a private deed is

²⁵John Salindeho, (2007), *Masalah Tanah Dalam Pembangunan*, Ujung Pandang : Sinar Grafika, p. 5.

²⁶*Ibid.* p. 5.3

²⁷ Article 1 PP on Land Registration

²⁸John Salindeho, *Op Cit*, p. 58

between one party and another without the regulation of an official. Thus, as the opposite or opposite of an authentic deed is a private deed, namely a deed made between one party and another without going through an official. This means that the deed is made by the agreement of both parties. In other words, the making of a PPAT deed must be attended by the parties carrying out the legal act in question (the seller and the buyer) or a person authorized by them with a written power of attorney in accordance with applicable laws and regulations. The power of attorney for the seller must be a notarial deed, while the power of attorney for the buyer may be a private deed.

Meanwhile, the relationship between government officials appointed by the government as Temporary Land Deed Officials (PPAT) is further regulated in the PP on PPAT Positions. Where sub-district heads are appointed by the government to serve as PPATs due to the absence of PPATs in an area,²⁹This has a specific purpose, namely to serve the public in the conduct of PPAT deeds in the area where there is still no PPAT as explained in the provisions of the PP on the position of PPAT. In order to serve the public in the making of PPAT deeds in areas where there is no PPAT or in the form of serving certain communities in the making of PPAT deeds, the Minister can select the following officials to become Temporary PPAT or Special PPAT.³⁰

1. The sub-district head, as a form of serving the community regarding the creation of deeds in areas where there are not yet enough PPATs, becomes a Temporary PPAT.
2. Head of the Land Office to serve the preparation of PPAT deeds required in the context of implementing community service programs or to serve the preparation of certain PPAT deeds for friendly countries based on the principle of reciprocity according to the considerations of the Department of Foreign Affairs, as a Special PPAT

The explanation above according to the researcher, a Temporary PPAT is given the authority to carry out the duties and responsibilities of a PPAT based on the absence of a PPAT in a certain area so that in the absence of a PPAT in a government area in this case to guarantee and provide a service to the community in relation to the duties of a PPAT then the government appoints a sub-district head to be appointed as a Temporary PPAT who also has the same duties and responsibilities as a PPAT. However, if we look more deeply at the Temporary PPAT from a sub-district head, it will be very obvious that in terms of legal knowledge, the PPAT is very minimal compared to a PPAT or notary, so that when carrying out his duties, a Temporary PPAT will not be free from errors in the positive legal perspective in Indonesia.

²⁹ Article 5 paragraph 3 PP on the Position of PPAT

³⁰*Ibid.*

The basis for appointment as a Land Deed Making Officer is the Decree of the Minister of State for Agrarian Affairs or the Head of the National Land Agency dated June 2, 1998 Number 8-XI-1998 concerning the Appointment of Land Deed Making Officers and the Appointment of Their Work Areas. Specifically, the existence of PPAT and PPATS is regulated in the PP on the position of PPAT. PPAT carries out part of the land registration activities with the task of making authentic deeds as evidence that certain legal acts have been carried out regarding land rights or Ownership Rights for Apartment Units which are used as the basis for registering changes to land registration data resulting from these legal acts in their work areas determined by the government (absolute competence), namely districts or cities in the same area as the work area of the Land Office.

PPAT is a general position whose authority is obtained directly through attribution. This authority is granted by legal authority in order to act "assist" the Head of the Land Office in making authentic deeds regarding legal acts regarding Land Rights or Ownership Rights for Apartment Units based on legal regulations in the form of PP on the position of PPAT as amended by Government Regulation Number 24 of 2016. However, it must also be understood that the concept of assistance is not intended as a form of subordination of PPAT as an employee of the land office, but the concept of assistance can be interpreted as a form of bureaucratization.³¹ Authentic deeds concerning land rights or ownership rights to apartment units, using a work model that prioritizes the principles of prudence, professionalism, and integrity. The goal is to facilitate land offices in verifying and validating land in the transfer of land rights or ownership rights to apartment units.

In principle, a sub-district head or village head can be appointed as a PPAT through certain education and examinations as regulated in Article 18 of the Head of BPN Regulation Number 1 of 2006 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials. However, the education and examination in question will not be like that of PPAT and Notary whose background is in law, so even though there is some education for sub-district heads or village heads who are appointed as Temporary PPAT, this does not provide a qualified legal knowledge. In fact, there are several cases whereAs a result of the actions of the PPATS, the deed he made was legally void, namely in the Bekasi and Kerawang District Courts.

The case occurred in the Bekasi District Court where in the Decision of Case Number: 2949 K/Pdt/2016, namely a Jatiasih Sub-district Head as PPATS by the

³¹Satjipto Rahardjo, *Peranan Notaris Sebagai Pembuat Akta Dalam Masa Pembangunan*, Makalah, Simposium Fungsi Notaris dalam Pembangunan, Program Pendidikan Kenotariatan, Semarang : Fakultas Hukum Universitas Diponegoro, accessed on 29 May 1984, p. 2.

court decision stated that the product of the sale and purchase deed he made was void and had no legal force, because the person selling a plot of land, the Plaintiff, was not included as the legal owner, so on that basis the Panel of Judges examining the case assessed that the legal product made by the Jatiasih Sub-district Head as PPATS must be canceled because it was contrary to applicable law.

In the second case occurred in the Kerawang District Court, based on the Decision of Case Number: 1795 K/Pdt/2016 where the PPATS who has the authority in the working area of Cibuya District was stated according to the decision to have committed an Unlawful Act, namely the PPATS made a material deed in the form of a Sale and Purchase Agreement deed. However, the PPATS who made the deed did not include one of the parties in making the agreement without the presence of one of the parties, so that with the absence of one of the parties in making the Deed by the Panel of Judges examining the Case, the PPATS who made the sale and purchase deed was declared to have committed an Unlawful Act by not paying attention to the principles of prudence, therefore in the Decision it has stated that all deeds made by the PPATS are legally flawed and do not have binding legal force.

These two cases illustrate that the Temporary PPAT in carrying out his duties as PPAT does not have adequate capabilities. Based on the theory of authority according to A'an Efendi and Freddy Poernomo, authority is an important part of administrative law. Indoharto states that authority is the basic concept of constitutional law and State Administrative Law. Indoharto in A'an Efendi and Freddy Poernomo defines authority as the ability of the given statutory regulations to create the emergence of legitimate legal consequences.³² If you look at the Land Registration Law and the Law on PPAT positions regarding the authority of Temporary PPATs, it is stated in Article 3 paragraph (2) PP on PPAT Positions.

Article 3 paragraph 2 of the PP on the Position of PPAT states that Temporary PPATs have the authority to make land deeds which are authentic deeds regarding all legal acts regarding land rights and ownership rights to apartment units using the work area in the work area of their position.³³ The authority of the Temporary PPAT is regulated in the PP on the position of PPAT related to land title deeds and whereas in the PP on Land Registration the authority of the Temporary PPAT does not specifically explain the authority and duties of the Temporary PPAT.

In relation to land registration, Temporary PPAT has the same duties as PPAT only regarding deeds made by PPAT, apart from that Temporary PPAT is not given any other authority. In relation to the registration of land transfer deeds as stipulated in Article 37 and Article 40 of the Land Registration PP, the authority to register

³²A'an Efendi & Freddy Poernomo, *Loc. Cit.*

³³PP on PPAT Position

land transfer deeds is only PPAT while Temporary PPAT is not given such authority specifically. Land registration itself has the meaning of a series of process activities to register land ownership rights to the BPN so that it has legal force in Indonesia.

For villages in remote areas, the Head of the National Land Agency (BPN) can appoint a Temporary PPAT. This provision is intended to provide services to people in remote areas, where there is no PPAT to carry out legal acts of transferring land rights. Those appointed as Temporary PPAT are Government Officials The Role of Land Deed Making Officials in the Land Rights Transfer Process who control the conditions of the area concerned, namely the Village Head (according to the Explanation of Article 7(2) of the PP on Land Registration). The appointment of the Village Head as Temporary PPAT is carried out by the Head of the BPN based on the very remote location of the village and the large number of unregistered land plots in the village area.

Article 7 paragraph (2) of the PP on Land Registration states that: For villages in remote areas, the Minister may appoint PPATS. Meanwhile, the Regulation on the Position of PPAT as stated in Article 7 paragraph (3) of the PP on Land Registration is the PP on the Position of PPAT. Through Article 5 paragraph (3) of the PP on the Position of PPAT, the Sub-district Head has the authority to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights for Apartment Units in areas where there are not enough PPATs as Temporary PPATs. The legal basis for appointing a Sub-district Head as a Temporary PPAT can be seen in Article 5 paragraph (3) of the PP Regulation on PPAT Positions, which states that: "To serve the community in making PPAT deeds in areas where there are not enough PPATs, or to serve certain community groups in making certain PPAT deeds. The Minister can appoint the officials below as Temporary PPATs or Special PPATs, Sub-district Heads or Village Heads to serve the making of deeds in areas where there are not enough PPATs as Temporary PPATs.

A series of activities in land registration is something that refers to the existence of various activities in the implementation of registration. Land is related to one another, sequentially forming a unity a series that culminates in the availability of data. Data in land registration. There are two, namely physical and legal data.³⁴Explanation related to physical data and legal data, namely physical data is information regarding the location, boundaries and area of the land plot, while legal data is information regarding the legal status of the land plot, rights holders and other burdens that burden it.

³⁴Urip Santoso, (2010), *Pendaftaran dan Peralihan Hak atas Tanah*, Kencana Prenamedia Grup, p. 14.

Land registration in Indonesia was initiated by the enactment of UUPA in 1960. The Indonesian government then further regulated land registration through the Land Registration Government Regulation (PP) which mandates all people who have land rights to register their land rights with the state, represented by the National Land Agency (BPN), to obtain state recognition in the form of a land rights certificate.

Furthermore, in 2021, the Indonesian government changed several provisions in the PP on Land Registration with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units and Land Registration (hereinafter referred to as the PP on Land Registration 2021). In the PP on Land Registration 2021, several provisions in the PP on Land Registration were changed, such as the period for systematic and sporadic land registration announcements, which were originally sporadic announcements for 60 days to 30 days, and systematic announcements which were originally 30 days to 14 days.

Furthermore, the 2021 Land Registration Government Regulation also regulates all existing regulations related to land registration, as long as they do not conflict with the 2021 Land Registration Government Regulation, which will remain in effect. Furthermore, the 2021 Land Registration Government Regulation also regulates the same matters as the Land Registration Government Regulation, such as the definition of Land Registration, which was originally explained in the Land Registration Government Regulation, and then the 2021 Land Registration Government Regulation also regulates the same matters.

Furthermore, the 2021 Land Registration PP also provides the option of not regulating, incomplete, or unclear, and/or there is government stagnation, the Minister can exercise discretion to address concrete issues in the implementation of government affairs in the fields of Management Rights, Land Rights, Apartment Units, and Land Registration.³⁵ This means that even though the government is in a state of stagnation, the minister acts on his own will to resolve issues related to the land sector. This certainly provides a form of protection from the government when the government in this case is classified as being in a state of stagnation.

Based on the researcher's explanation above, the comparison of land registration after the issuance of the 2021 Land Registration Government Regulation only relates to the announcement period for sporadic land registration and systematic land registration. Furthermore, other provisions related to land registration remain unchanged, and the 2021 Land Registration Government Regulation not only regulates land registration but also regulates management, land rights, and apartment units.

³⁵ Article 100 of the 2021 Land Registration PP

Land registration is carried out by the government, with the authority delegated to the National Land Agency (BPN). Implementing land registration in modern society is a state duty undertaken by the government for the benefit of the people, providing legal certainty in the land sector. Legal certainty regarding land ownership rights will provide clarity for each land ownership in Indonesia.

Based on the theory of authority, authority is what is called formal power, power that comes from the power granted by law, while authority only concerns a "onderdeel" or certain parts of the authority. In authority there are rechtsbevoegdheden authorities and this is the same as what was conveyed by Indoharto, so that Temporary PPAT in carrying out his duties as PPAT is given authority by law in the form of carrying out tasks as PPAT only includes as referred to in the provisions of Article 2 paragraph 2 of the PP on the Position of PPAT. This means that Temporary PPAT is given authority by law in this case the PP on the Position of PPAT to carry out all PPAT duties so that in this case PPATS is authorized to make deeds of transfer of land rights. However, the authority of Temporary PPAT seen from several cases that occurred as described by the researcher above certainly does not illustrate the inability of Temporary PPAT in making deeds.

The parties who create a deed through a Temporary PPAT are certain to use it as evidence of a specific legal act. Both parties, in addition, want their interests to be accommodated in the deed they create with the word "agreement" before a public official. Likewise, all risks are expected to be mitigated by the deed created by the Temporary PPAT.

However, if the deed made by the Temporary PPAT is declared null and void by the court, then of course this will not be able to provide any form of legal protection to the parties who made the deed, as in several cases described by the researcher above, if the Temporary PPAT is declared to have committed an unlawful act and results in the deed being null and void by law, this will certainly be detrimental to the legal subject who made the deed to the Temporary PPAT.

External legal protection, which is provided by the authorities to the parties in relation to the registration of land transfer deeds in the form of regulations on the authority of Temporary PPATs in carrying out their duties as PPATs, in order to facilitate the public in carrying out the process of transferring land rights. However, such legal protection does not provide a form of protection to legal subjects, as in the case described by the researcher above, if Temporary PPATs can commit acts that are detrimental to legal subjects, this is because Temporary PPATs are motivated by a lack of legal knowledge.

The two cases above illustrate that if a Temporary Land Deed Official (PPAT) is given the authority to carry out the duties of a PPAT as stipulated in the PP on the

position of PPAT, it will not be able to provide legal protection to the community, thus legal protection for the community's interests will not be created. Furthermore, the absence of legal protection for the community due to the actions of the Temporary Land Deed Official (PPAT) which can result in the nullity of the deed made, this will also not provide the benefits of the authority held by the Temporary Land Deed Official (PPAT).

According to John Stuart Mill, the theory of utility can be interpreted as meaning that an action should achieve an action that contains as much happiness as possible.³⁶Of course, if the actions of the Temporary PPAT can cause losses to the legal subject who wants to make a deed, it will cause unhappiness in the legal subject, with the unhappiness of the legal subject due to the actions of the Temporary PPAT, it will be contrary to the theory of benefit and this will also cause misery for the legal subject who is the victim of the actions of the Temporary PPAT. Based on the explanation as referred to above, the Temporary PPAT who is given authority by regulations to carry out activities as a PPAT is contrary to the theory of benefit and if an action does not have any benefit value, it is better to abolish it.

Based on the explanation as mentioned above, the PP on Land Registration does not regulate the authority of Temporary PPAT to register land transfer deeds while the authority of Temporary PPAT is obtained from the PP on PPAT Position which gives authority to Temporary PPAT to act as PPAT. In relation to the theory of authority received by PPATS, it is often misused and is detrimental to the parties interested in land registration so that it contradicts the theory and because it does not provide protection to the parties interested, the authority received by PPATS contradicts the theory of benefit.

The Concept of Legal Formulation of the Registration of Land Deeds Registered by Temporary Land Deed Making Officials in the Future. Legal regulations in legal science can be interpreted as legislation in written form, because it is a written decision so that legal regulations are generally referred to as written law. Meanwhile, legislation according to Maria Farida Indrati Soeprapto has 2 (two) different meanings, namely:

1. A regulation made by the state which is the result of the formation of regulations, both at the central and regional levels.
2. Legislation is a process of forming state regulations both at the central and regional levels.³⁷

³⁶Ansori, Abdul Gafur, *Loc. Cit.*

³⁷Maria Farida Indriati. S, (2007), *Ilmu Perundang-undangan; Dasar-dasar Dan Pembentukannya*, Yogyakarta : Kanisius, p. 134.

Regulations can be understood as all written rules which of course can be recorded and used as a basis for carrying out activities in carrying out certain legal actions, in relation to the registration of deeds of transfer of land rights, of course, if we look at the laws and regulations that regulate it, they are the PP on Land Registration and UUPA which are manifestations of the Indonesian state to carry out the aim of clarifying the identities of land ownership in the state of Indonesia.

The regulation of registration of land transfer deeds is legally regulated in the provisions of the Land Registration Government Regulation which is a legal regulation regarding the procedures for establishing the status of land rights. Land in Indonesia since the formation of the UUPA, the Indonesian state has guaranteed every right to land with a land certificate whose implementation is further regulated by the provisions of the Land Registration Government Regulation, to carry out land registration, of course, first of all, the land to be registered must be the property of the person who wants to register the land.

Rights themselves are something that has been obtained since birth, even before birth, or that will be obtained by someone through certain legal acts, for example; buying and selling, gifts and others. So rights can be interpreted as something that absolutely belongs to everyone and its use depends on the owner. In relation to ownership of a land that is to be registered with the government, rights must be obtained through certain legal acts or obtained from birth. So in the land registration process, the basis is the rights obtained by someone who wants to register the land. In addition, to strengthen the existence of these rights, a deed must be made to guarantee the existence of these rights.

Land registration itself in Indonesia is carried out by the BPN, which is legalized by Law Number 10 of 2006. The transfer of land rights will never be separated from the registration of a deed of transfer of land rights to the BPN, of course registering a deed of transfer of land rights requires a deed made by PPAT. The making of a PPAT deed must be attended in person by the parties wishing to make it or the party authorized by the party in the deed they wish to make.

Land registration itself is regulated in Article 1 paragraph 1 of the PP on Land Registration, namely activities carried out by the government continuously, continuously, regularly, including: collection, processing, bookkeeping, and presentation as well as maintenance of physical data and legal data in the form of a list of maps and lists of land plots and apartment units including verification of land rights where rights and ownership already exist for housing units and special rights that prevent it. Land registration itself is carried out by the BPN as a representative of the government to carry out the registration process for lands located in the territory of the Republic of Indonesia.

The elements of the definition of land registration can be described as follows;³⁸

1. There is a series of activities

The words "series of activities" refer to the existence of various activities in the implementation of land registration, which are related to one another, sequentially forming a unified series that culminates in the availability of the data needed in order to provide legal certainty in the land sector for the people.

Land registration activities consist of first-time land registration activities, the forms of activities are collecting and processing physical data; proving rights and their bookkeeping; issuing certificates; presenting physical and legal data; and storing general lists and documents, and the activities are registering transfers and encumbrances of rights; and registering changes to other land registration data. Land registration activities produce two types of data: physical and legal. Physical data is information regarding the location, boundaries, and area of the registered land plot and apartment units, including information regarding the presence of buildings or building parts thereon. Legal data is information regarding the legal status of the registered land plot and apartment units, their rights holders and other parties, and any other encumbrances.

2. Done by the government

The implementation of land registration in modern society is a state duty carried out by the government for the benefit of the people in order to provide legal certainty in the land sector.

3. Continuously and continuously

The words "continuous, continuous" refer to the implementation of activities, which once started will never end. Data that has been collected and is available must always be maintained, in the sense of being adjusted to changes that occur later so that it remains in accordance with the latest conditions.

The initial land registration activity produces proof of rights in the form of a certificate. Land registration activities can involve transfers of rights, encumbrances of rights, extensions of the term of land rights; division, separation, and merger of land parcels; division of joint rights; elimination of land rights and ownership rights to apartment units; transfer and elimination of mortgage rights; changes to land registration data based on court decisions or rulings; and name changes. Rights holders must be registered with the local District/City Land Office to ensure they remain in accordance with the latest conditions.

4. Regularly

The word "regular" indicates that all activities must be based on appropriate laws and regulations, because the results will constitute legal evidence, even though the strength of the evidence is not always the same in the laws of countries that carry out land registration.

5. Plots of land for apartment units.

³⁸Urip Santoso, (2011), *Hukum Agraria: Kajian Komprehensif*, Jakarta : Kencana, p. 286.

Land registration activities are carried out for Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, Management Rights, Waqf Land, Ownership Rights for Apartment Units, Mortgage Rights, and State Land.

6. Issuance of proof of title

The first land registration activity produces proof of rights in the form of certificates for plots of land for which rights already exist and certificates of ownership for apartment units.

A certificate is a document that serves as proof of rights as referred to in Article 19 paragraph (2) letter c of the UUPA for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which has been recorded in the relevant land book.

7. Certain rights that burden him

In land registration, it can happen that the object of land registration is burdened with other rights, for example, Ownership Rights, Cultivation Rights, Building Rights, Usage Rights, and Ownership Rights over Apartment Units are used as collateral for debt by being burdened with Mortgage Rights, or Ownership Rights over land are burdened with Building Rights or Usage Rights.

The transfer of land rights will certainly be based on a certain legal act such as sale and purchase, gift and so on. While the deed made by the PPAT is the basis for registering the transfer of land rights to the BPN. In the PP on Land Registration, it has been further regulated regarding the official who has the authority to register the deed [transfer of land rights, namely PPAT, this is regulated in the provisions of Article 37 and Article 40 of the PP on Land Registration which indicates that only PPAT can register the deed of transfer of land rights, while PPATS in the PP on Land Registration does not specifically regulate the task of registering the deed of transfer of land rights.

The authority of the PPATS is clearly regulated further in the PP on the position of PPAT, which in principle states that the authority of the PPATS is all legal actions that can be carried out by the PPAT, and the PP on the position of PPAT does not regulate the authority of the PPATS in registering land title transfer deeds. If seen, the person authorized to register land title transfer deeds is the PPAT as stated in the provisions of Article 40 of the PP on Land Registration, so that according to legal regulations, the authority of the PPATS is only limited to the authority of the PPAT regarding a legal activity stated in the provisions of Article 2 of the PP on the position of PPAT.

The distribution indicates that Land Deed Officials (PPAT) in Indonesia is evenly distributed, although Java has the largest number of PPATs compared to other regions. However, the distribution of PPATs in Indonesia outside Java is still small compared to the island itself. This is the reason why there is still a need for PPATs outside Java.

The Land Deed Official (PPATS) is a government official appointed by the regent as a Temporary Land Deed Official. However, as previously explained by researchers, some PPATS do not have a legal background or lack credible legal knowledge. This lack of legal knowledge will certainly result in suboptimal service to the public. Furthermore, a lack of adequate legal knowledge will also result in financial losses for the public. This will not only benefit the public but also negatively impact public services. In Indonesia, there have been several cases involving PPATS services that have been detrimental to the public, including: Bekasi and Kerawang District Court.

The case occurred in the Bekasi District Court where in the Decision of Case Number: 2949 K/Pdt/2016, namely a Jatiasih Sub-district Head as PPATS by the court decision stated that the product of the sale and purchase deed he made was void and had no legal force, because the person selling a plot of land, the Plaintiff, was not included as the legal owner, so on that basis the Panel of Judges examining the case assessed that the legal product made by the Jatiasih Sub-district Head as PPATS must be canceled because it was contrary to applicable law.

In the second case occurred in the Kerawang District Court, based on the Decision of Case Number: 1795 K/Pdt/2016 where the PPATS who has the authority in the working area of Cibuya District was stated according to the decision to have committed an Unlawful Act, namely the PPATS made a material deed in the form of a Sale and Purchase Agreement deed. However, the PPATS who made the deed did not include one of the parties in making the agreement without the presence of one of the parties, so that with the absence of one of the parties in making the Deed by the Panel of Judges examining the Case, the PPATS who made the sale and purchase deed was declared to have committed an Unlawful Act by not paying attention to the principles of prudence, therefore in the Decision it has stated that all deeds made by the PPATS are legally flawed and do not have binding legal force.

In both cases above, an act has been found that violates the applicable legal regulations, resulting in a form of loss to the community. PPATS who make deeds that do not comply with the principles of making deeds are certainly dilators backed by the ability in terms of knowledge, namely the legal knowledge they have, because PPATS is a sub-district head, not all sub-district heads have a legal education background, so that when faced with legal problems and processes, they will be without the familiarity of legal knowledge and therefore a sub-district head who becomes PPATS really provides a form of loss to the community even though besides that it provides benefits with the existence of PPATS making it easier for the community to issue legal deeds regarding land.

In principle, the Sub-district Head is part of the government officials who hold positions in regional government institutions. In this regard, the legal policy to appoint the Sub-district Head as a Temporary Land Deed Official (PPAT) has created

a position discrepancy in the implementation of PPAT as a general position. This discrepancy is shown by the provisions of Article 7 paragraph 2 letter b of Government Regulation Number 24 of 2016 which stipulates that "PPAT is prohibited from holding concurrent positions with civil servants..." With the existence of this provision, it further strengthens the legal uncertainty in the implementation of the Temporary PPAT position. However, on the other hand, in practice, the implementation of the Temporary PPAT position is also still carried out by the Sub-district Head. This occurs because the provisions of Government Regulation Number 24 of 2016 still open the "faucet" for the continued implementation of the Temporary PPAT position by the Sub-district Head. This occurs because the PPAT position held by the Sub-district Head has been in effect for quite some time.

Although the position of PPAT held by the Sub-district Head has existed for a long time, the conditions of the past do not absolutely apply to the current era, and the concept of PPAT in the past is not necessarily relevant to the present. In this case, at the beginning of independence, there were certainly not many PPAT officials, so officials within the government were appointed to hold the position of PPAT. Historically, if we go back further, initially the position of PPAT was not recognized in the land transfer system during the Dutch East Indies era, but was subject to the Notary Position Regulation. Along with the development of the law regarding PPAT, the concept of the Sub-district Head as PPAT has now shifted its legal policy to "in areas where there are not enough PPATs", where the initial construction stated that "for each Sub-district or area that is equivalent to it, an official land deed maker is appointed". This shift can be justified because initially it adopted the principle that each sub-district had one PPAT (Camat) due to a shortage of PPATs, then it shifted to areas or places where there were no PPATs due to a lack of PPATs.

There is no longer a centralization of Land Deed Officials (PPAT) in each sub-district, but only in remote areas or the most remote sub-districts are Temporary PPATs appointed. However, it must also be recognized that the appointment of a Sub-district Head as a Temporary PPAT is no longer relevant as it can lead to conflicting norms. Currently, it is clearly constructed that a PPAT is a holder of a public office, so that a PPAT can be referred to as a public official and cannot hold concurrent positions as a government official. Thus, the Sub-district Head as a government official appointed because of his position to carry out the duties of a PPAT is a legal uncertainty. Therefore, as a result of the norm prohibiting PPATs from holding concurrent positions with civil servants in the body of Government Regulation Number 24 of 2016, criticism has given rise to a normative evaluation of the regulations on the position of PPAT.

It can be said that a legal evaluation or legal formulation is needed regarding the existence of existing legal norms in force currently in relation to PPAT. Therefore,

legal changes are needed in the implementation of Temporary PPAT in order to create a good PPAT system, so it is important to offer a new concept that discusses Temporary PPAT. The rationale behind making this legal change is due to the fact that in law there are only 2 (two) aspects, namely the formation of law and implementation or enforcement of law.³⁹In the context of law-making, Satjipto Rahardjo emphasized that the material for making laws begins as an idea or concept which is then further processed so that in the end it truly becomes material that is ready to be given legal sanctions.⁴⁰This idea emerged in the form of a desire for a problem to be regulated by law in order to achieve legal protection for the community so that in carrying out activities in community life it is orderly and of course provides legal certainty to the community.

Indeed, based on the theory of authority, PPATS is given authority by the Statutory Regulations to carry out the duties carried out by PPAT as regulated in the PP on the position of PPAT, the concept of authority itself according to HD Stoud is the entirety of the rules relating to the acquisition and use of government authority by public law subjects in public law.⁴¹If it is seen that the PPATS is given authority by the PP of the PPAT position to carry out the duties of a PPAT in whose jurisdiction there is no PPAT, then a PPATS in carrying out his authority as a PPAT is obtained by a written regulation in order to carry out the public office of PPAT. There are two concepts of elemental authority presented by HD Stoud, namely as follows:

- a. The existence of legal regulations
- b. Nature of legal relationship

Before an authority is delegated to a particular institution, it must first be regulated in a statutory regulation, whether in the form of a law, statutory regulation, government regulation, or lower-level regulation. While the nature of the legal relationship is the nature of having interrelated bonds and having a connection or connection or related to the law, the legal relationship is either public or private. Different from other opinions, namely according to Max Weber, authority is divided into four types, which include: Charismatic, traditional, and rational (legal) authority. Official and unofficial authority. Personal and territorial authority. Limited and comprehensive authority.⁴²Charismatic authority is an authority based on charisma related to a special ability inherent in each person, an ability that is believed to have existed in a person since the person was born. Traditional authority is an authority that can be possessed by a person or group of people.

³⁹Arief Hidayat, *Konsep dan Implementasi Negara Hukum Pancasila dalam Mengatasi Permasalahan Hukum Nasional Makalah dalam Seminar Nasional "Konsep dan Implementasi Negara Hukum Pancasila Dalam Mengatasi Permasalahan Hukum Nasional"* di Semarang, accessed on 30 September 2017. p. 7.

⁴⁰Satjipto Rahardjo, (2014), *Ilmu Hukum*, Bandung : PT Citra Aditya Bakti, p.187.

⁴¹Ridwan HR, (2008), *Hukum Administrasi Negara.*, Jakarta : Raja Grafindo , p. 110.

⁴²Soerjono Soekanto, (2005). *Sosiologi Suatu Pengantar*, Jakarta : Raja Grafindo Persada, p. 280 - 288

Max Weber's opinion explains that authority is not only given by rules but also from other factors such as customs and beliefs from the community. In Indonesia today, authority is given by binding legal rules, such as the authority of PPATS which is regulated in the PP on the position of PPAT where PPATS is a government official because of his position to carry out duties as PPAT. The opinion of HD Stoud above is reflected in an authority given in Indonesia so that PPATS in Indonesia according to the theory of authority, namely PPATS is given authority based on the PP on the Position of PPAT and in carrying out his duties has been in accordance with the theory of authority, this certainly provides benefits to the community who want to make deeds related to land.

The authority of the PPATS itself, if seen from the PP on the PPAT Position, can be seen in the provisions of Article 2 paragraph 2 of the PP on the PPAT Position, where the PPATS has similar authority to the PPAT and the authority of the PPATS is only limited to the provisions of Article 2 paragraph 2 of the PP on the PPAT Position, if seen from several cases described by the researcher above as occurred in the legal area Bekasi District Court and Kerawang Court. is the authority of the PPATS which is related to the provisions of Article 2 paragraph 2 of the PP on the position of PPAT and the granting of authority to the PPATS from the PP on the position of PPAT when viewed from the two cases above, of course this will not provide a form of benefit but instead will provide a form of loss to the community. The authority of the PPATS in the PP on the position of PPAT must be changed and adjusted to the interests of land registration in each region so that with this it will provide a better form of authority in carrying out duties in the life of the community.

However, when viewed from the theory of authority over the actions of PPATS (Principal Officials) who issue land deeds, it is necessary to first review the theory of authority. Authority comes from the word "authority." According to A'an Efendi and Freddy Poernomo, authority is an important part of administrative law. Indoharto states that authority is the basic concept of constitutional law and state administrative law. Indoharto, in A'an Efendi and Freddy Poernomo, defines authority as the ability of a given statutory regulation to create legitimate legal consequences.⁴³Bradley and Ewing in A'an Efendi and Freddy Poernomo stated that in administrative law, authority has two meanings which are not always distinguished, namely:⁴⁴

1. The ability to act in certain ways (e.g., the authority to provide library services or purchase land under an agreement for the benefit of public recreation).

⁴³A'an Efendi & Freddy Poernomo, *Loc. Cit.*

⁴⁴*Ibid.* p. 109.

2. The authority to limit or take away the rights of others (for example, to regulate car trade or to purchase land for public purposes, even if the landowner does not want to sell the land).

Authority or power holds paramount importance in the study of constitutional and administrative law. FAM Stroink and JG Steenbeek argue that the concept of competence/authority is also a core concept in state and administrative law.⁴⁵ This statement can be interpreted as meaning that authority is the core of constitutional law and state administration, without authority it will not work properly.

As stated by A'an Efendi, Freddy Poernomo, FAM Stroink, and JG Steenbeek, authority is something that is closely related to administrative relations within a country. Regarding this opinion, it can be concluded that the theory of authority is a certain action regulated in an administrative system made in the form of legislation so that the existence of these legislation will provide a valid legal consequence.

If we look at the PP on the position of PPAT, the authority of PPATS has been regulated in the regulation and it is also explained that the authority of PPATS regarding the issuance of a deed is the same as the authority of PPAT in issuing a legal deed and the authority of PPAT regarding certain legal deeds is regulated in the PP on the Position of PPAT which includes grants, sales, exchanges, distribution of joint rights, entry into a company, granting building use rights, granting mortgage rights, granting power to encumber mortgage rights, then based on the theory of authority of PPATS in registering deeds of transfer of land rights can be justified.

The justification of the PPATS's actions in issuing land title deeds can certainly provide legal certainty in the Indonesian legal system. This is evident in Gustav Radbruch's theory of legal certainty, which proposes the concept of three legal reasonings, which several legal theorists and philosophers identify with the three objectives of law: legal certainty, justice, and efficiency.⁴⁶ Legal certainty is a guarantee to apply the law in a correct and proper manner, and as the main objective of law, if there is no legal certainty, the law loses its identity and meaning. that if the law has lost its identity then not everyone is guided by the law.⁴⁷ This means that with the existence of a legal rule, all actions based on the legal rule will provide legal certainty, however, the authority of the PPATS in issuing deeds of transfer of land rights has indeed been regulated in laws and regulations and has reflected the principle of legal certainty, however, if we look at several cases that

⁴⁵Ridwan HR, (2006), *Hukum Administrasi Negara*, Jakarta : Rajawali Pers, p. 101.

⁴⁶Satjipto Rahardjo, (2012), *Ilmu Hukum*, Bandung : Citra Aditya Bakti, p. 45

⁴⁷Muhammad Erwin, Loc. Cit.

the researcher has described, it can describe the actions of the PPATS who do not have credibility in carrying out their authority.

As the researcher explained regarding the two court decisions that describe the actions of PPATS do not reflect the existence of legal knowledge ownership, then by not being based on legal knowledge and resulting in the issuance of a deed that violates the law, this will certainly not provide benefits to the party whose land rights transfer deed is made. In addition, sometimes with the existence of bankso/forms issued by the BPN it is easier to make a deed of transfer of land rights and sometimes the one who makes it is not the Temporary PPAT but the subordinate/staff of the Temporary PPAT, this is what makes land registration useless if it gives authority to the Temporary PPAT to carry out the authority to make a deed of transfer of land rights.

When viewed from the theory of utility, which states that the purpose of law is to provide the greatest possible benefit to every person or legal subject. Utility in this case is seen as something that has a happy nature, so that the assessment of whether a law is good or bad and just or not depends on whether the law can provide happiness to a person or not.⁴⁸ This means that a legal rule can provide benefits if someone is happy, this means that they do not experience any form of loss, and if on the other hand they are not happy, then they will certainly experience some form of loss.

Judging from several decisions that the researcher conveyed above, it can be explained that PPATS in carrying out its authority often makes legal errors even though the errors made by PPATS as in the two decisions above are a basis for understanding civil law related to the conditions for the validity of the agreement, so it can be concluded that PPATS who have made these errors are none other than inadequate educational factors so that in practice they will not pay attention to the norms that regulate certain legal acts. In addition, it cannot be denied that PPATS often in issuing deeds are not present in person but rather instruct village officials if the PPATS is the village head and instruct staff at the sub-district if the PPTS is the sub-district.

Based on the explanation above, in principle, PPAT/PPATS in carrying out their functions as public officials must have adequate legal knowledge and have a sense of caution and precision in making certain legal products. When viewed from the scientific aspect, PPATS sometimes does not have legal knowledge that can be used as a basis for issuing certain legal deeds and in addition, seen from several cases that occurred as the researcher described above, PPATS often lacks caution in issuing deeds, resulting in losses to the parties. Of course, when viewed from the

⁴⁸Ansori, Abdul Gafur, Loc. Cit.

theory of authority, PPATS is indeed authorized to carry out legal actions to register the transfer of land rights and this already reflects the existence of legal certainty, but in terms of benefits, the authority held by PPATS does provide benefits to someone on the one hand, but on the other hand, if an act occurs in the issuance of a deed that is not based on applicable norms, of course it will not provide benefits to the parties who will make a legal deed.

Based on the explanation from the researcher above, it can be concluded that in theory the authority of the PPATS in carrying out its duties as a PPAT who makes certain legal deeds can be declared authorized and from the perspective of the theory of legal certainty, namely the existence of the PP on the Position of PPAT which regulates the authority of the PPAT has also provided legal certainty regarding the authority of the PPATS, but from the perspective of the theory of usefulness it still does not provide benefits because if the PPATS who carries out the issuance of legal deeds as referred to in Article 2 paragraph 2 of the PP on the Position of PPAT often carries out actions that are contrary to statutory regulations as in the example of the case presented by the researcher above, this is due to his ignorance of legal science, so that because the Temporary PPAT can cause no use, it is appropriate if the Temporary PPAT is abolished or eliminated.

In order to achieve legal certainty, according to Hans Kelsen, law is a norm contained in statutes. Laws containing general rules can serve as a basis for individuals' behavior in society, both in social relationships and among individuals.⁴⁹As the PP on the Position of PPAT is the basis for PPATS to exercise its authority, in order to provide legal certainty in Indonesian law, it is appropriate to remove the provisions on the authority of PPATS in the PP on the Position of PPAT.

The elimination of the authority of PPATS in the PP of PPAT position will certainly eliminate the authority of the Sub-district Head as PPATS in carrying out the position of PPAT and this will no longer cause harm to the community who want to make deeds about land. As explained by the researcher above, if PPATS in carrying out its duties does not have good credibility, it will result in forms of losses to the community who need services related to land deeds. Because in Indonesia itself the number of PPAT in Indonesia as a whole has begun to emerge even in some areas the quota for PPAT is full, then there is no worry if PPATS is removed in the legal regulations in Indonesia because with the large number of PPATs that are already spread across various provinces in Indonesia, it would be better to optimize the distribution of the number of PPATs in 33 Provinces in Indonesia by limiting PPAT to choose the place of its work area and giving authority to BPN to regulate the distribution of PPAT in areas where there is no PPAT.

⁴⁹Peter Mahmud Marzuki, Loc. Cit.

4. Conclusion

the authority of the Temporary Land Deed Making Officer in registering land transfer deeds is based on the provisions of Article 2 paragraph 2 of the PP on the Position of PPAT, in principle the PPAT/PPATS in carrying out its function as a public official must have adequate legal knowledge and have a sense of caution and accuracy in making certain legal products. In theory, the authority of the PPATS in carrying out its duties as a PPAT who makes certain legal deeds can be declared authorized and from the perspective of the theory of legal certainty, namely the existence of the PP on the Position of PPAT which regulates the authority of the PPATS has also provided legal certainty regarding the authority of the PPATS, but from the perspective of the theory of benefits it still does not provide benefits because if the PPATS is the one who issues the legal deed. Registration of land transfer deeds registered by temporary land deed making officials is reviewed from Government Regulation Number 24 of 1997 concerning Land Registration, namely the Land Registration Government Regulation does not regulate the authority of Temporary PPATs to register land transfer deeds, while the authority of Temporary PPATs is obtained from the PP on PPAT Position which gives authority to Temporary PPATs to act as PPATs. In relation to the theory of authority received by PPATS, it is often misused and is detrimental to interested parties, so the authority received by PPATS is contrary to the theory of benefit. The authority of PPATS in carrying out its duties as PPAT who makes certain legal deeds can be declared authorized and from the perspective of the theory of legal certainty, namely the existence of the PP on the Position of PPAT which regulates the authority of PPATS has also provided legal certainty regarding the authority of PPATS, but from the perspective of the theory of usefulness it still does not provide benefits because if PPATS who issue legal deeds as referred to in Article 2 paragraph 2 of the PP on the Position of PPAT often commits acts that are contrary to statutory regulations as in the example of the case presented by the researcher above, this is due to his ignorance of legal science, so that because Temporary PPAT can cause no use, it is appropriate if Temporary PPAT is abolished or eliminated.

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