

## **Legal Responsibility for Land Deed Officials (PPAT) for Forgery of Land Sale and Purchase Deeds as The Basis for Transfer of Land Rights (Study of Decision Number 773/Pid.B/2021/Pn Smg)**

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**Abstract.** *The preparation of a land sale and purchase deed by a Land Deed Making Officer (PPAT) is part of the legal procedure in the process of transferring land rights, which forms the basis for the legality of the transaction. However, in practice, there are cases where PPATs are involved in falsifying land sale and purchase deeds, which can be detrimental to the parties involved. This study aims to analyze the legal responsibility of PPATs regarding falsification of land sale and purchase deeds as the basis for transferring land rights, with a focus on the case study of Decision Number 773/Pid.B/2021/PN Smg. The type of research used is normative juridical, with a case-based and statutory approach, which examines the application of law in cases of land deed forgery. This research identifies legal violations committed by Land Deed Officials (PPAT) in falsifying land sale and purchase deeds and their impact on the transfer of land rights. Based on the analysis, it can be concluded that the actions of Land Deed Officials (PPAT) who falsify authentic deeds can be held accountable under civil, criminal, and administrative law. PPATs can be sued for compensation, subject to criminal sanctions under the Criminal Code, and administrative sanctions such as warnings or dismissal. A forged deed can give rise to disputes that can be brought to court, with claims for compensation under Article 1320 of the Civil Code, as in the case of Semarang District Court Decision Number 773/Pid.B/2021/PN.Smg which annulled a land sale and purchase deed due to signature forgery.*

**Keywords:** Accountability; Forgery; Land Deed Making Officer.

## 1. Introduction

Transfer of Land Rights is the transfer of land rights from the old rights holder to the new rights holder. There are 2 (two) ways of transferring land rights, namely transfer and assignment. Transfer indicates the transfer of land rights without any legal action taken by the owner, for example through inheritance. Meanwhile, transfer indicates the transfer of land rights through a legal action taken by the owner, for example through a sale and purchase. The transfer of land from the owner to the recipient is accompanied by a legal handover (*juridische levering*), namely a handover that must fulfill legal formalities, including fulfilling requirements, carried out through established procedures, using documents made by/before the Land Deed Making Officer (PPAT).<sup>1</sup>

The high level of land buying and selling activity has triggered several irresponsible parties to commit fraud and seize land rights. This fraud occurs due to land sales without understanding the legal process of transferring land rights through a sale. Legal protection for victims of land cases resulting from abuse of power can be provided through civil liability. The injured party (victim) can demand repayment of their rights, or through legal protection through criminal liability. This criminal liability can be implemented through the application of (penal) punishment and non-penal (non-punishment) punishment, for example by implementing Article 14C of the Criminal Code (KUHP), namely through a conditional payment system in criminal land compensation.<sup>2</sup>The PPAT's responsibility for falsifying the land sale and purchase deed can be seen based on Decision Number 773/Pid.B/2021/PN Smg, stating that the PPAT in Semarang City has been legally and convincingly proven guilty of committing the crime of "ordering to do, and participating in the act of falsifying authentic documents" as per the primary indictment of the public prosecutor.<sup>3</sup>

Decision Number 773/Pid.B/2021/PN Smg, stated that the PPAT in Semarang City has been legally and convincingly proven guilty of committing the crime of "ordering to do, and participating in the act of falsifying authentic documents" as the primary charge of the public prosecutor. This problem arose and occurred in Semarang City, S and PH collaborated to build 4 (four) shophouses on land owned by S whose proof of ownership was a Certificate of Ownership (SHM) NO.2105/kel. Srandol Wetan. That in Decision Number 773/Pid.B/2021/PN Smg there is evidence of the results of the Criminalistic Laboratory examination Number 1403/DFT/2019 dated June 24, 2019, it was concluded that there were 3 signatures in the name of Suratinah contained in document 1 (one) bundle of Deed of Power of Attorney to Sell Number 53 for a plot of Freehold Land Number

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<sup>1</sup>Abdulkadir Muhammad, 1994, Property Law, First Edition, Citra Aditya Bakti, Bandung, pp. 55-56.

<sup>2</sup>Said Ilham Putra Phoenna. 2020. Responsibility of Notaries/Land Deed Officials for Sale and Purchase Deeds that are Made and Give Rise to Land Disputes. Thesis, Ar-Raniry State Islamic University. Banda Aceh. Page 2. Url :<https://Repository.Ar-Raniry.Ac.Id/Eprint/15096/1/Said%20ilham%20putra%20phoenna,%20150106125,%20fsh,%20ih,%20082271417900.Pdf> Accessed August 14, 2024

<sup>3</sup>Explanation of Decision Number 773/Pid.B/2021/PN Smg

5453/Srondol Wetan with an area of 134 m<sup>2</sup>, and Deed of Power of Attorney to Sell Number 54 for a plot of Freehold Land Number 5436/Srondol Wetan with an area of 89 m<sup>2</sup>, which were made before PPAT MH were non-identical or were signatures that were different from the comparative signature in the name of Suratinah.<sup>4</sup>

Based on this description, it appears that this situation is inconsistent with the principles set forth in the 1945 Constitution, which affirms that Indonesia is a constitutional state that guarantees and protects the rights of its citizens. One of these rights is the right to acquire, possess, and enjoy property rights, including land rights. Land rights are crucial for the Indonesian nation and people as an agrarian society. Problems arising from deeds drawn up by Land Deed Officials (PPAT) need to be examined more closely: are they caused by negligence or errors on the part of the PPAT themselves, or by dishonesty on the part of the parties involved, for example by failing to provide complete and accurate information or documents. If it turns out that the errors in the authentic deed stem from the parties providing false information or concealing important documents from the PPAT, then the deed can be considered legally flawed. In this case, parties who intentionally provide false or incomplete information are potentially subject to criminal prosecution by other parties who feel aggrieved by the deed.

## **2. Research Methods**

The type of research used in this study is normative juridical with a case study approach. The method used in this study is normative juridical or written legal research. The data types and sources used are secondary data, with data collection methods including literature research and documentation studies. Furthermore, the data were analyzed using qualitative analysis, namely, the data obtained is then analyzed qualitatively to achieve the objectives.

## **3. Results and Discussion**

### **3.1. Accountability of Land Deed Making Officials (PPAT) for Forgery of Land Sale and Purchase Deeds as the Basis for Transfer of Land Rights Based on Decision Number Study Decision Number 773/Pid.B/2021/PN Smg**

Responsibility in law is a condition in which a person is subject to legal consequences for an act he has committed, because he is considered a legal subject who is able to choose and understand the consequences of his actions, and does not have justification or excuse. In this context, responsibility is closely related to the basic structure of law, namely legal norms as rules that regulate behavior; legal acts as concrete actions of legal subjects; legal sanctions as consequences that arise if norms are violated; and fault (schuld) which is the

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<sup>4</sup>Decision Number 773/Pid.B/2021/PN Smg

main basis for imposing sanctions, especially in criminal law. Therefore, responsibility is not only repressive, but also reflects the principle of justice that demands that only parties who are truly guilty according to law can be held accountable.<sup>5</sup>

In the realm of civil and land law, this responsibility is very crucial, especially for officials who are given state authority, such as Land Deed Making Officials (PPAT). The main task of PPAT is to carry out some land registration activities, namely by preparing deeds as evidence that legal acts related to land rights have occurred. These deeds then become the basis for changes to land registration data at the National Land Agency (BPN). These legal acts include buying and selling, exchanges, gifts, contributions to companies (inbreng), distribution of joint rights, granting building use rights, granting use rights over land with ownership rights, granting mortgage rights, and granting power of attorney to encumber mortgage rights. The PPAT's work area is limited by the location of the land that is the object of the legal act. Based on Article 12 paragraph (1) of Government Regulation Number 37 of 1998, the PPAT's work area is adjusted to the work area of the district/city land office where the PPAT is appointed.<sup>6</sup>

The theory of legal responsibility states that every legal subject is obliged to be responsible for every legal act, whether due to error (schuld) or negligence (culpa). Sudikno Mertokusumo states that "Legal responsibility is the obligation to bear the consequences of a legal act committed, whether done intentionally or due to negligence." Great authority demands balanced responsibility. In this case, the PPAT is not only tasked with making authentic deeds, but is also responsible for the formal and procedural validity of the documents used in the deed-making process.<sup>7</sup> Thus, if a PPAT is negligent in verifying the authenticity of a document or continues to make a deed even though he knows there is a dispute, he can be held legally responsible.

Accountability according to Philipus M. Hadjon, the Land Deed Making Officer (PPAT) who has committed a violation of the law, can also be held responsible for the following: can be divided into:

- a. Administrative liability occurs when a PPAT violates office regulations, such as exceeding their work area or failing to report forged documents. Administrative sanctions can include a written warning, temporary suspension, or revocation of their office permit.
- b. Civil liability occurs when the PPAT's negligence results in losses for one of the parties. In this case, the PPAT can be sued in court to obtain compensation for the injured party.

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<sup>5</sup> Jimly Asshddiqie, M.Ali Safaat, et.al. 2006. Hans Kelsen's Theory of Law. Secretariat General of the Registrar's Office of the Constitutional Court of the Republic of Indonesia. Jakarta. pp. 61-63

<sup>6</sup> Soetomo, 1981, Guidelines for Land Sale and Purchase, Transfer of Rights and Certificates, Brawijaya University Publishing Institute, Malang, p. 16.

<sup>7</sup> Sudikno Mertokusumo, 2005, Indonesian Civil Procedure Law: An Introduction, Liberty, Yogyakarta, p. 72

c. Criminal liability applies if the Land Deed Official actively participates in a crime, such as falsifying data or drafting a deed based on forged documents. This is regulated in Article 55 of the Criminal Code, which states that anyone who participates in a crime can be subject to the same penalties as the main perpetrator.<sup>8</sup>

The responsibility of the Land Deed Making Officer (PPAT) is seen in the Semarang District Court Decision Number 773/Pid.B/2021/PN.Smg revealing a case of forgery of authentic deeds by a Notary/PPAT with the initials MH, who instructed his staff, FEW, to make four Deeds of Power of Attorney to Sell without the presence or approval of the landowner with the initials S. S's signature on the deed was forged and used to sell two plots of land owned by him for IDR 1.75 billion. Forensic results proved the discrepancy between the signatures in the two deeds, becoming important evidence in the trial. The District Court sentenced MH and FEW to prison, but on appeal, FEW was acquitted because he only served administrative duties. The Supreme Court then rejected the cassation of both parties, so that the appeal decision became legally binding.

The theory of legal certainty emphasizes that the law must be enforced firmly, consistently, and predictably by every citizen. In this case, the Panel of Judges carefully interpreted the elements in Article 264 paragraph (1) in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code by referring to:<sup>9</sup>

- a. Formal definition of an authentic deed (based on law and expert opinion),
- b. Concrete evidence in the form of forensic laboratory results showing that the signatures are not identical,
- c. Testimonies from witnesses and defendants that strengthen objective findings,
- d. legal doctrine that strengthens the interpretation of the meaning of "forgery" in the context of authentic deeds.

The judge relied on written law and rejected the subjective argument of the defendant's legal counsel (who claimed the forgery was merely an administrative error). In this way, the principles of legality and non-retroactivity were maintained, in line with the doctrine of legal certainty in continental legal systems like Indonesia. Criminal liability is directly related to the principle of individualization of culpability, namely that each person can only be punished if:<sup>10</sup>

- a. He is legally competent (able to take responsibility for his actions),

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<sup>8</sup>Philipus M. Hadjon, 2002, Introduction to State Administrative Law, Ghalia Indonesia, Jakarta, pp. 155-157.

<sup>9</sup>Explanation of Article 264 paragraph (1) in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code

<sup>10</sup>Barda Nawawi. 2012. Summary of Advanced Criminal Law Lectures. Diponegoro University Publishing Agency. Semarang. p. 88

- b. His actions fulfill the elements of a crime, and
- c. There is no excuse or justification.

The panel of judges explicitly stated that there was no justification or excuse found in the defendants, and that both defendants were consciously and actively involved in creating the forged deed. In fact, the roles of each defendant were clearly distinguished: one ordered, the other carried out. This demonstrates a fair and proportional application of the theory of criminal responsibility. The judges did not generalize responsibility, but instead identified the primary perpetrator and the secondary perpetrator. This assessment is in accordance with the principle of *nulla poena sine culpa* (no punishment without fault).<sup>11</sup>

Based on the theory of legal certainty, there is conformity with criminal elements (Article 264 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code) including:

- a. Elements of Legal Subjects (Whoever)
- b. Elements of Legal Subjects (Whoever)
- c. Objective Element: Forgery of Authentic Deed
- d. Elements of Loss
- e. Elements of Participation (Article 55 paragraph (1) 1st of the Criminal Code)
- f. Compliance with the Principle of Legality
- g. The judge's considerations for mitigating and aggravating factors

The panel of judges also cited Van Bemmelen's opinion to strengthen its argument that both material and intellectual forgery are punishable under Article 264 of the Criminal Code. This applies if there is an intent to use the forged document as if it were genuine and unfalsified. Van Bemmelen differentiates material and intellectual forgery based on their purpose and legal consequences:

- a. Material Forgery: The perpetrator almost always has the goal of having the forged document used as if it were genuine.
- b. Intellectual Forgery: The primary focus is on the falsehood or untruth of the information contained in the document, rather than on the physical alteration of the document itself.<sup>12</sup>

The judge's considerations in Semarang District Court Decision Number 773/Pid.B/2021/PN.Smg focused on the Land Deed Official (PPAT)'s culpability in the criminal act of falsifying authentic deeds and its impact on the transfer of land rights. The legal facts in this decision underscore the importance of integrity and compliance with applicable legal procedures in the preparation of authentic deeds. This court decision emphasizes the legal consequences of deed

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<sup>11</sup>Sudarto.2013. Criminal Law I.Sudarto Foundation, Faculty of Law, Diponegoro University, Semarang.p.189

<sup>12</sup>Ibid. p. 46

falsification and the importance of notaries or PPATs being held accountable if they violate the law. In the decision, Notary MH is described as "an actor involved in the preparation of fake authentic deeds, or the forgery of authentic deeds that can give rise to rights, obligations, or debt relief. This deed is then used as evidence with the aim of making it appear as if its contents are true and not falsified, which ultimately can cause harm."

The actual act committed by the PPAT was falsifying an authentic deed. As an authorized official, the PPAT is responsible for ensuring the validity and accuracy of the deed. Forging an authentic deed is an unlawful act because it violates the PPAT's legal obligation to create the deed in accordance with legal procedures. This action can be seen as an act that can be accounted for under criminal law, because it causes detrimental legal consequences, namely the unauthorized transfer of land rights. Therefore, The criminal article that can be used to carry out the prosecution is Article 266 paragraph (1) of the Criminal Code. Furthermore, the evidence The Beginning which is sufficient according to Article 266 paragraph (1) of the Criminal Code.

Based on this case, the Land Deed Official (PPAT) is responsible for his actions in drafting the deed by including false information. According to Hans Kelsen, failure to exercise the legally required care is called negligence, which is often considered a form of error (*culpa*), although not as serious as intentional error.<sup>13</sup> This oversight leads to harmful consequences, even though the perpetrator did not anticipate or intend those consequences, whether with or without malice. In this case, accountability encompasses both liability and responsibility. Liability refers to the responsibility or risk arising from the action, while responsibility refers to the obligation to be accountable for an action, including decisions or judgments made.<sup>14</sup> Thus, if we look at the responsibilities of the Land Deed Making Officer (PPAT) in civil, criminal and administrative aspects.

The judge's considerations in the Semarang District Court Decision Number 773/Pid.B/2021/PN.Smg are in accordance with statutory regulations because:

- a. Fulfill all elements of the primary charge systematically.
- b. Using valid evidence and appropriate standards of proof.
- c. Taking into account sociological aspects (aggravating/mitigating factors) in accordance with the Criminal Procedure Code.
- d. Minor flaws in the use of foreign jurisprudence do not diminish the overall validity of the decision. Because the decision remains based on national law and

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<sup>13</sup>Jimly Asshddiqie, M.Ali Safaat, et.al. 2006. Hans Kelsen's Theory of Law. Jakarta: Secretariat General of the Registrar's Office of the Constitutional Court of the Republic of Indonesia. Jakarta. p. 60

<sup>14</sup>Elisabeth Ayustina Putri Sonbai, Ni Luh Made Mahendrawati, Ida Bagus Agung Putra Santika, Principles of Prudence for Notaries in Carrying Out Their Positions Based on the Notary Law, Literasi Nusantara Abadi, Malang, p. 116



the elements of the crime have been legally proven, the decision remains valid and legally acceptable.

This decision reflects substantive justice for the victim, because even though the loss has not yet occurred, the victim's legal rights have been violated. For the defendant, the judge applied retributive and corrective justice, taking into account the respective roles and mitigating factors. In addition to criminal sanctions, the PPAT can also be subject to administrative sanctions and compensation for the losses incurred. This decision demonstrates that the law is enforced fairly, proportionally, and humanely, and strengthens public trust in the land system.

### **3.2. The legal consequences of authentic deeds made by land deed making officials (PPAT) contain elements of the crime of Authentic Forgery.**

Legal certainty is realized through formal and material provisions that regulate the creation of deeds, including the requirement for their creation by public officials who have authority, such as Notaries and Land Deed Officials (PPAT), as stipulated in Article 1868 of the Civil Code. This ensures that the authentic deed has perfect evidentiary power, both formally, materially, and externally. The deed must be drawn up by a public official who has authority in a designated place, with the authority including the parties, type of deed, time, and location. Notary and PPAT have the importance of drafting an authentic deed in the civil realm. A deed drafted by a person is valid and has perfect evidentiary force, providing legal protection. According to Irawan Soeirodjo, there are three essential elements for an authentic deed to meet the applicable formal requirements:

- a. In the format regulated by law
- b. Compiled by the general officials who are *beirweinang*.
- c. A deed drawn up by or before a public official who has the authority to do so and in the place where the deed is made

The Land Deed Making Official's Deed (PPAT) is an authentic deed that reflects the formal truth in accordance with the information provided by the parties to the Land Deed Making Official. The Land Deed Drafting Officer is responsible for ensuring that the contents of the deed are clearly understood by the parties, by means of reading it and provide access to information, including relevant regulations.<sup>15</sup> Based on this, according to the author, in order for a deed to obtain authentic status like a deed made by Official The Land Deed Maker, in accordance with Article 1868 of the Civil Code, the deed must meet the following requirements:

- a. The deed must be made by or in the presence of a public official, in this case the deed made by the Land Deed Official relating to agreements and regulations.

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<sup>15</sup>I Made Hendra Kusuma, 2019, *Notary Problems in Practice* (Collection of Papers), PT Alumni, Bandung, p. 9



b. The deed must comply with the form stipulated by law, so that if it does not comply with these provisions, the deed may lose its authentic status.

A deed made by a Land Deed Official has perfect and binding evidentiary power because it combines several powers. However, if one element of this power is defective, the deed no longer has perfect and binding evidentiary power. The evidentiary power of a deed made by a Land Deed Making Officer consists of three aspects.<sup>16</sup>

- a. The formal evidentiary force is to prove that between the parties, they have clearly stated what is written in the deed.
- b. The power of material evidence is to prove that the events recorded in the deed actually occurred in accordance with what is stated in the deed.
- c. The power of external proof is to prove not only between the parties involved, but also to third parties, that on the date stated in the deed, they were present before a public official and revealed what was written in the deed.

In exercising their authority, Land Deed Officials (PPAT) are required to create deeds in accordance with the provisions stipulated in laws and regulations. Failure to comply with one or more of these provisions can result in the deed being void or annulled. Regarding the cancellation of a deed, it is important to understand the requirements for a valid agreement, as stipulated in Article 1320 of the Civil Code. The first two requirements are called subjective requirements because they relate to the parties involved in the agreement, while the last two are called objective requirements because they relate to the parties involved. If any of the conditions are not met, the agreement is null and void, meaning it is as if it never existed and does not create any obligations.

The legal responsibility of the deed making official is very important, Deed making officials, such as Notaries and Land Deed Making Officials (PPAT), have very strict legal obligations in making authentic deeds. They must comply with all procedures and provisions of the law that regulate the procedures for making deeds, starting from ensuring the identity of the parties, verifying the accuracy of the information, to explaining the contents of the deed completely so that all parties understand what they are signing, including: Ensuring the accuracy of the contents of the deed; Providing clear explanations; Complying with formal procedures; Maintaining the integrity of the document.

Based on these regulations, if a PPAT deed contains elements of a criminal act such as a fake letter or false information, the deed violates Articles 263, 264, and 266 of the Criminal Code. Based on Article 1320 paragraph (4) of the Civil Code, the legal consequences of an authentic deed containing false information are that it can give rise to a dispute that can be brought to court, and the injured

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<sup>16</sup>Kholida, Putra Halomoan Hasibuan, et.al. 2024, Notaries and Land Deed Officials in Indonesia: Application of Theory and Practice in Making Deeds, Semesta Aksara, Yogyakarta, p. 32

party has the right to file a lawsuit for compensation.<sup>17</sup> A land sale and purchase deed was annulled because the Land Deed Official (PPAT) forged the signatures of the parties involved. This occurred because one of the parties was uncooperative in issuing the certificate, leading the PPAT to forge it. As a result, a lawsuit was filed, and the deed was annulled by the court. Cancellation of a contract due to error, duress, or fraud restores all parties and the property to its original condition. In an agreement, the injured party must prove that the agreement is invalid or legally flawed. This cancellation can be filed with the District Court based on applicable legal provisions. Factors that may lead to the cancellation of a land sale and purchase agreement include:

- a. Failure to fulfill the formal requirements stipulated by law in the agreement
- b. Failure to fulfill the valid conditions of the agreement;
- c. Fulfillment of the conditions for cancellation in a conditional agreement;
- d. Cancellation by a third party on the basis of valid legal action.

Jurisprudence of the Supreme Court of the Republic of Indonesia in the Cassation Level Decision number Decision number 1209 K/Pid/2022, several factors that can cause Cancellation of a land sale and purchase agreement bound by a sale and purchase deed issued by the Land Deed Making Officer (PPAT), including:<sup>18</sup>

- a. The deed was cancelled because it did not fulfill the objective requirements for a valid agreement, namely the agreement of the parties as regulated in Article 1320 of the Civil Code.
- b. The deed was cancelled because it did not fulfill the objective requirements for a valid agreement, namely certain matters as regulated in Article 1320 of the Civil Code.
- c. The deed was cancelled because it did not fulfill the objective requirements for a valid agreement, namely a lawful cause as regulated in Article 1320 of the Civil Code.
- d. The deed was cancelled because it contained legal defects.

#### **4. Conclusion**

Based on the research results, it was concluded that Land Deed Officials (PPAT) who falsify authentic deeds can be held accountable under civil, criminal, and administrative laws. This action can lead to disputes and even the cancellation of agreements in court, as reflected in Semarang District Court Decision No. 773/Pid.B/2021/PN.Smg. Therefore, the government needs to strengthen oversight through regular inspections and guidance, while the Head of the BPN Regional Office and the Land Office need to improve audits and transaction verification. PPATs are also required to be more careful in verifying the validity of

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<sup>17</sup>Niken Ariska Handayani, Aminah, 2023, Notary's Responsibility Regarding False Information in the Deeds He Draws Up, *Humani*, Vol. 13,, Page 123

<sup>18</sup> Decision Number 1209 K/Pid/2022,

the parties' documents. With this synergy, it is hoped that an orderly, fair, and trustworthy land system will be created.

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