

## The Legal Protection for Land Deed Officials Regarding the Making of Deeds Based on Incorrect Information by the Parties

Siswanti\*)

\*) Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: [siswantisarminingrum@gmail.com](mailto:siswantisarminingrum@gmail.com)

**Abstract.** *This research has the following objectives, namely first, to guarantee legal certainty over authentic deeds made by the Land Deed Deed Official (PPA)T against incorrect information on the parties; secondly, to provide legal protection for the Land Deed Making Officer (PPAT) who draws up an authentic deed in the form of a sale and purchase deed based on incorrect information from the parties; third, an example of waiver of rights if it turns out that there is incorrect information from the parties in accordance with Article 51 paragraph 2 of the Criminal Code. This study uses a normative juridical research approach, and the theory used in this paper is Gustav Radbruch's Legal Certainty Theory and Philip M. Hadjon's Legal Protection. The research results conclude. 1) The deed of the official making the land deed (PPAT) will not have legal certainty if the authentic deed is not in accordance with the applicable provisions or is carried out against the law. 2) Legal protection for the Land Deed Making Officer (PPAT) who draws up a deed on the basis of incorrect information from the parties is only based on the right of refusal, if he does not have bad rights then the right of refusal does not apply. A notarial deed made based on a letter or document from the parties which is known to be fake after the deed is made remains an authentic deed as long as the notary in making the deed meets the formal requirements of a deed is said to be an authentic deed. If the notary commits negligence so that he does not meet the formal requirements of an authentic deed, then the deed made by a degraded notary only has the power of proof as an underhand deed. Notarial deeds that are degraded into private deeds are regulated in Article 41, Article 44 paragraph (5), Article 48 paragraph (3), Article 49 paragraph (4), Article 50 paragraph (5), Article 51 paragraph (4). If the negligence committed by a notary results in losses for the parties, the parties can claim fees, compensation and interest from the notary*

**Keywords:** *Certainty; Deed; Protection.*

## 1. Introduction

The deed made before the PPAT in the context of transferring land rights is also inseparable because the PPAT deed is an authentic deed, and as an authentic deed there are strict requirements in terms of the procedure for making, the form and formalities that must be carried out so that the deed has the right to be called an authentic deed very important. The procedure for making a PPAT deed is made in the form determined by the Minister using the form provided, regulated in Article 21 of the PPAT Position Regulations Jo. Article 96 paragraph (2) Regulation of the Minister of Agrarian Affairs/Head of BPN RI No. 3 of 1997 concerning Provisions for Implementation of PP No. 24 of 1997 concerning Land Registration (hereinafter abbreviated as PMNA/Ka BPN 3/1997).

Proving that the deed made by the PPAT has the power regarding the certainty of a person's legal rights and obligations in social life, the PPAT has an important role in helping create legal certainty and protection for the community. This is proven by means of issuing an authentic deed made before him related to the legal status, rights and obligations of a person in law and serves as the most perfect evidence in court, in the event of a dispute over the rights and obligations related to it.

The role of the PPAT can also be seen from its capacity in providing legal advice, by helping the government explain to parties who transfer land and buildings regarding the obligation to pay Income Tax (PPH) from the acquisition of land and buildings and from parties who receive transfers of land and buildings regarding Transfer of Rights Fees of land and buildings (BPHTB).<sup>1</sup>

PPAT is often involved in legal cases either as a witness or as a suspect. This is due to an error in the deed made either due to the mistake of the PPAT itself or the fault of the parties or one of the parties who did not provide actual information or documents (lack of good faith from the parties or one of the parties). In addition, it can also be caused because there has been an agreement between the PPAT and one of the parties which causes harm to the other party.

Sometimes the parties or appearers provide incorrect (false) information/statements to the PPAT. PPAT does not know that the statement/statement is false. The PPAT stated the statement/statement in the form of a PPAT deed. Furthermore, other parties who felt disadvantaged disputed the PPAT deed, and even reported the PPAT to law enforcement officials on the basis of committing a crime. If the PPAT commits a crime, then of course it can be held accountable under criminal law. This is in line with Hans

---

<sup>1</sup>Wawan Setiawan, 1991, Responsibilities of Notaries in Making Deeds, Papers in the One-Day National Seminar of the Diponegoro University Notary Student Association

Kelsen's view that the concept related to legal obligations is the concept of legal responsibility, that is, a person is legally responsible for a certain act or that person bears legal responsibility.

Statements or statements and the wishes of the parties expressed before the PPAT are the basic material for the PPAT to make a deed in accordance with the wishes of the parties who appear before the PPAT, without any information or statements and the wishes of the parties it is impossible for the PPAT to make a deed. Even if there is a statement or statement that is suspected of being false, it is included in an authentic deed, it does not cause the deed to be fake, and does not mean that the PPAT includes or includes false information in the PPAT deed. Materially, the falsification of this matter is the responsibility of the parties concerned, and the legal action that must be taken is to cancel the deed in question through a civil lawsuit. In this regard, the author wishes to conduct a more in-depth discussion and research related to the title.

## **2. Research Methods**

This research is a normative juridical law research with statutory approach and conceptual approach. The data used in this study is secondary data, besides that it is also primary data as a complement in this study. As for the data sources obtained through library research methods and field research. library research is a method of collecting secondary data by studying primary legal materials and secondary legal materials

## **3. Results and Discussion**

### **3.1. The Legal Position of the Deed of Officials Making Land Deeds Based on Incorrect Statements of the Parties**

Based on the duties of the Land Deed Making Officer (PPAT), one of which is making land sale and purchase deeds so that the importance of the function of the deed made by the Land Deed Making Officer (PPAT), the position of the Land Deed Making Officer (PPAT) is very important in helping create legal certainty and legal protection for the community. The Land Deed Making Officer (PPAT) in the realm of preventing legal problems through an authentic deed which he made as the most perfect piece of evidence has doubtful credibility.<sup>2</sup>

Through an authentic deed made by the Land Deed Official (PPAT), it is hoped that rights and obligations can be clearly defined, to guarantee legal certainty, and at the same time it is also expected to avoid disputes. Even though the

---

<sup>2</sup>Nico, 2003, Responsibilities of a Notary as a Public Official, Center for Documentation and Studies of Business Law (CDBSL), Yogyakarta, p. 56

dispute cannot be avoided, in the process of resolving the dispute, an authentic deed which is the strongest written evidence and is fulfilled makes a real contribution to solving cases cheaply and quickly. This is due to the authentic deed made by the PPAT or Notary to make an authentic deed that is legally binding on interested appearers.<sup>3</sup>

The Land Deed Making Officer (PPAT) in making a deed can be distinguished between the parties (*partij akte*) and the official deed (*ambtelijke akte*). Deed of parties or appearers or appearers or *partij deed* is a deed made by the Land Deed Making Officer (PPAT) based on the will of the parties/ appearers/ appearers who come before the Land Deed Making Officer (PPAT) to make a deed. In this case the Land Deed Making Officer (PPAT) is only limited to writing down the will of the parties, so the responsibility for the contents of the deed is the responsibility of the appearer and the Land Deed Making Officer (PPAT) is not responsible for the contents of the deed he made.<sup>4</sup>

PPAT in carrying out their duties can apply the precautionary principle, have sharp thinking and can provide legal counseling, so that PPAT has the courage to take action appropriately. The precautionary principle as stated in the PPAT's oath of office in Article 34 paragraph (1) *Perkaban* Number 1 of 2006.

In reality, a lot that happens in society is to realize what is the goal and desire for the sake of getting benefits or facilitating the process, some people take the process by justifying all means and have even violated the rule of law. Many of the parties or one of the parties provided false or inaccurate data, information and statements to the Land Deed Making Officer (PPAT) in making Authentic Deeds. Meanwhile, as is known, the Land Deed Making Officer (PPAT) does not have the authority to trace or investigate and/or seek material truth from the data, information and information submitted by the Parties.<sup>5</sup>

A deed made on the basis of false information or documents is a party deed. The Land Deed Making Officer (PPAT) in making party deeds records and puts down the wishes and agreements desired by the parties into the form of an authentic deed then the notary adjusts it to the form of the deed determined by the Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Agrarian Regulation Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration. Deviations from the

---

<sup>3</sup>Deviana Yuanitasari, 2017, *The Role Of Public Notary In Providing Legal Protection On Standard Contracts For Indonesian Consumers*, *Sriwijaya Law Review*, Vol 1 Issue 2, p. 179

<sup>4</sup>Mulyoto, 2010, *Criminalization of Notaries in Making Deeds of Limited Liability Companies*, *Cakrawala Media*, Yogyakarta, p. 46

<sup>5</sup>Putri AR, 2011, *Legal Protection of Notaries Indicators of Notary's Position Duties Which Implicate Criminal Acts*, *PT Softmedia*, Jakarta, p. 7

procedures and procedures for making an authentic deed will bring legal consequences to the strength of the proof of the deed.

The responsibility of the Land Deed Making Officer (PPAT) when associated with his position has the principle of responsibility based on error (based on fault of liability). In making authentic deeds, the Land Deed Making Officer (PPAT) must be responsible if there is an error or violation of the deed he made. However, if the violation occurs as a result of the parties, the Land Deed Making Officer (PPAT) cannot be held accountable, because the Land Deed Making Officer (PPAT) only writes based on the wishes of the parties which will be set forth in the deed. The Land Deed Making Officer (PPAT) is only based on what happened, seen and experienced based on the formal requirements for making authentic deeds, the Land Deed Making Officer (PPAT) is not required by regulations to investigate the material truth and identity of the appearer.

### **3.2. Legal protection for PPATs for making deeds based on incorrect information by the parties**

The legal protection for the deeds he made related to the liability of the PPAT Notary in civil terms, with the lack of caution and seriousness carried out by the PPAT Notary, actually the PPAT has led himself to an act that must be accounted for by law. If a mistake made by a Notary can be proven, then the PPAT Notary may be subject to sanctions in the form of threats as determined by law.

Anindyah said that: keeping confidential about the deed made in order to protect the interests of the parties related to the deed he made, keeping the minutes of the deed or other supporting documents as well as the PPAT Notary protocol in their storage. Legal protection can also provide protection for public officials who are harmed by other people and this protection is given so that they can carry out their duties and positions to the fullest. Even though in carrying out and providing legal protection, a place or container is needed in its implementation which is often referred to as a means of legal protection.

PPAT based Based on Regulation of the Head of the National Land Agency of the Republic of Indonesia (Perkaban RI) No. 1 of 2006 concerning Provisions for the Implementation of Government Regulation No. 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds (PJPPAT) it is known that if the seller's or buyer's obligations have been fulfilled in accordance with Article 52, and Article 54 Perkaban RI No. 1 of 2006 concerning the provisions for the implementation of the PJPPAT which explains the terms of the validity of the sale and purchase agreement and applicable customary law in the form of cash, real and clear, the PPAT can provide action in the form of legal protection for the parties involved in the land sale and purchase agreement. Obligations that

should have been carried out by the seller or buyer include (1) Buyer's Obligations, (2) Seller's Obligations, (3) Buyer's Rights,

PPAT's actions in providing legal protection to various parties before the deed was made, (Aditama 2018) explain which include:

- 1) Both parties must be able to fulfill and carry out the formal requirements regarding the making of a PPAT deed
- 2) The PPAT must read and explain in detail the contents of the agreement stated in the desired deed.
- 3) Both parties must sign the agreement simultaneously
- 4) There were witnesses at the time the deed was signed.
- 5) The actual transaction value must match what is stated on the deed.

If a lawsuit arises due to a criminal act by the Land Deed Making Officer (PPAT), the police will not necessarily summon or drag the Land Deed Making Officer (PPAT) into the deed he made, but must go through an institution, in this case, the PPAT Guidance and Supervision. If there is an allegation of a crime committed by the Land Deed Official (PPAT), then it will be carried out with an examination from the MPPD (Regional PPAT Supervisory Board) level domiciled at the Land Office. Where the alleged violation of the implementation of the position of the PPAT MPPD followed up on the findings of the BPN Regional Office or the Land Office by forming and assigning a team of MPPD examiners to conduct an examination by summoning the PPAT for questioning.

The statement of the reported party is set forth in the Minutes and the results of the MPPD inspection are drawn up in the form of an Audit Results Report which is submitted to the Head of the Land Office. The ebut result report contains reasons and grounds for providing recommendations in awarding decisions and types of sanctions against PPAT such as giving written warning sanctions, imposing sanctions on temporary dismissal, honorable discharge and dishonorable dismissal.

The form of legal protection provided by the Land Deed Making Officer (PPAT) in carrying out his position is based on Article 4 of Permen ATR/Head of BPN Number 2 of 2018, guidance and supervision of PPAT is carried out by the Minister, where regarding the guidance and supervision in the regions it is carried out by Head of BPN Regional Office and Head of Land Office. The supervisory function referred to in this new Ministerial Regulation includes supervising the implementation of PPAT positions and enforcement of legal

regulations in accordance with the provisions of the laws and regulations in the field of PPAT, as stipulated in Article 8 of Permen ATR/Head of BPN Number 2 of 2018. Furthermore, according to Article 12 paragraph (1) the same regulations related to supervision in the form of enforcement of legal rules in accordance with statutory provisions in the PPAT field are carried out according to findings from the Ministry regarding violations of the implementation of the PPAT position or there have been complaints about alleged violations committed by the PPAT. The violations referred to are as referred to in Article 12 paragraph (2) which include violations of the PPAT's office implementation, not carrying out obligations regulated in laws and regulations, violating prohibition provisions regulated in laws and regulations, and violating the Code of Ethics. Complaints as referred to in Article 12 paragraph (1) above, according to paragraph (3) of the same Article, can originate from the public, either individuals or legal entities and/or IPPAT. Permen ATR/Head of BPN Number 2 of 2018 is a form of repressive legal protection for PPATs through legal assistance after being processed in court, namely legal assistance for PPATs who are involved in legal issues, as stipulated in Article 50, which states that the Ministry, the Assembly PPAT and IPPAT supervisors and supervisors can provide legal assistance to PPATs who are summoned as witnesses or suspects by investigators. PPATs who are summoned as witnesses or suspects by investigators can apply for legal assistance. The legal aid in question is that it can be in the form of advice, input or assistance in terms of investigations and or expert testimony in court.

Supervision of the Land Deed Making Officer (PPAT) itself must be carried out properly by various parties in relation to the professional organization of the Land Deed Making Official (PPAT), namely the Association of Land Deed Making Officials (IPPAT), in this case it is in accordance with Article 65 to Article 68 Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 concerning provisions for the implementation of Government Regulation Number 37 of 1998 concerning Promotion of Positions for Officials Making Land Deeds (PJPPAT). In addition, it was also explained that if there has been a violation of the professional code of ethics, the Land Deed Official (PPAT) may have his term of office honorably terminated by the Head of the National Land Agency (BPN).<sup>6</sup>

#### **4. Conclusion**

The actions of the Land Deed Making Officer (PPAT) in providing legal protection to various parties before the deed is made, explains that: 1) both parties must be able to fulfill and carry out the formal requirements regarding the making of a

---

<sup>6</sup>Sonya Putri Oktavia, M Sarno, Budi Santoso, Adya Paramita Prabandari, 2021, The Role of PPAT in Providing Legal Protection for Parties to the Transfer of Land Rights through Sale and Purchase, Notary Volume 14 Number 2 E-ISSN:2686-2425 ISSN: 2086- 1702, p. 765

PPAT deed, 2)The Land Deed Making Officer must read out in detail the contents of the agreement stated in the sale and purchase deed, 3)Both parties must sign the agreement simultaneously, (4) There were witnesses when the deed was signed, (5) The actual transaction value must match the transaction stated on the deed.

## 5. References

### Journals:

Deviana Yuanitasari, (2017), *"The Role of Public Notary In Providing Legal Protection On Standar Contract For Indonesia Consumers"*, Sriwijaya Law Review, Vol. 1 Issue 2, p. 179

Nico, (2003), *"Tanggung Jawab Notaris Selaku Pejabat Umum"*, Center For Documentaration and Studies of Business Law, p. 56

Sonya Putri Oktavia M Sarno, Budi Santoso, Adya Paramita Prabandari, (2021), *"Peran PPAT Dalam Melakukan Perlindungan Hukum Bagi Para Pihak Pada Peralihan Hak Atas Tanah Melalui Jual Beli"*, Notarius Volume 14 No. 2 E-ISSN:2686-2425 ISSN: 2086-1702, p.765

Wawan Setiawan, (1991), *"Tanggung Jawab Notaris Dalam Pembuatan Akta"*, Makalah Dalam Seminar Nasional Sehari Ikatan Mahasiswa Notariat Universitas Diponegoro, tanpa halaman

### Books:

Adjie, Habib, (2008), *Sanksi Perdata Administrative terhadap Notaris Sebagai Pejabat Publik*, Revika Aditama, Bandung

*Berimplikasi Perbuatan Pidana*, PT Softmedia, Jakarta

Mulyoto, (2010), *Kriminalisasi Notaris Dalam Pembuatan Akta Perseroan Terbatas*, Cakrawala Media,

Putri AR, (2011), *Perlindungan Hukum Terhadap Notaris Indikator Tugas-Tugas Jabatan Notaris Yang*

Yogyakarta

### Regulation:

Criminal Code



Regulation of the minister of law and human rights Number 7 of 2016 concerning the Honorary Council of Notaries, State Gazette Number 180.2016

Regulation of the minister of law and human rights Number 7 of 2016 concerning the Honorary Council of Notaries, State Gazette Number 180.2016.

PP No. 24 of 1997 concerning Land Registration

Regulation of the Head of the National Land Agency Number 1 of 2006 concerning

Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Positions of Officials Making Land Deeds.