

Responsibility Of Land Deed Officials (PPAT) Towards Disputes Between The Parties In Court Relating To Deeds They Have Made (Decision Study Number: 32/Pdt.G/2022/PN Pdg)

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Abstract. *This study aims to determine and analyze the position of PPAT regarding the deeds he made for the parties bound by the deed and the responsibility of PPAT towards disputes between the parties in court regarding the deeds he made (Decision Study Number: 32/Pdt.G/2022/Pn Pdg). The research approach method used in this thesis is the normative legal research method. The specification of this study is descriptive analysis. The type of data used in this study is primary data including 1)1945 Constitution; Civil Code;PP No. 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials; PP No. 24 of 2016 concerning Amendments to PP No. 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials and secondary and tertiary legal materials containing books and other supporting documents. Data collection for research with literature study The data analysis method used in analyzing the data is qualitative analysis. The results of the study show that the Position of PPAT regarding the deeds he made for the parties bound by the deed is that PPAT in carrying out his duties must be guided by a normative framework related to all actions to be taken to then be stated in the deed. The responsibility of PPAT for disputes between parties in court related to the deeds he made is divided into 3 (three) forms, namely:PPAT's civil, criminal and administrative responsibilities.*

Keywords: *Authentic; Deed; PPAT; Responsibility.*

1. Introduction

PPAT is a public official who has the authority over land rights or special laws according to Article 1 number 1 of Government Regulation No. 24 of 2016, concerning Amendments to Government Regulation No. 37 of 1998 concerning the Regulation of the Position of Land Deed Makers, stating that the Land Deed Maker Officer is a public official who has the authority to make authentic deeds

related to legal acts regarding land rights or ownership rights to apartment units. State officials/state administration (Minister of Agrarian Affairs and Spatial Planning/Head of National Land Affairs) are not authorized to participate or interfere or even determine certain legal acts in the land sector, the legal acts of which are the authority of the PPAT.

In making an authentic deed, the party concerned can give power of attorney to another person if they are deemed to have other interests or activities that cannot be abandoned. The granting of a power of attorney is an agreement from the person giving the power of attorney to another person as the recipient of the power of attorney, to carry out an act or action to be done "in the name" of the person giving the power of attorney.¹

PPAT as a public official in carrying out his profession and position must provide legal services to the community, and also has obligations stipulated by law in order to achieve legal certainty and protection. PPAT is a public official who is authorized to make authentic deeds that function as a means of proof. This authentic PPAT deed includes all acts, agreements, and provisions required by laws and regulations. In addition to those stipulated in the PPAT Regulation, he also has the authority to provide counseling related to the making of deeds. In addition to the authority stipulated in the PPAT Regulation, PPAT also has responsibilities as an office holder as stated in the PPAT Regulation.

An authentic deed is a deed in the form determined by law, made by or before public officials who have the authority to do so at the place where the deed is made (Article 1868 of the Civil Code). Thus, it is qualified as an authentic deed if the deed contains a signature, is a statement of a legal act and is used as evidence. The deed is made by a public official, the form is determined by laws and regulations and the official who makes the deed. The deed must be made in the form determined by law. Although the form of an authentic deed is not expressly determined in law, authentic deeds made by officials who make deeds according to public law, such as court verdicts, police investigation reports, and so on.

The PPAT Deed is an agreement between the parties that binds them to make it, therefore the requirements for the validity of an agreement must be met. Article 1320 of the Civil Code which regulates the requirements for the validity of an agreement, there are subjective requirements, namely requirements related to the subject who makes or makes the agreement, which consists of an agreement and being able to act to carry out a legal act, and objective requirements, namely requirements related to carrying out an act or related to the object that is made

¹Yahya Harahap, 1986, Legal Aspects of Contracts, Alumni, Bandung, p. 306.

a legal act by the parties, which consists of a certain thing and a reason that is not prohibited.²

The legal characteristics of a PPAT deed are deeds that must be made in a form that has been determined and in accordance with the PPAT Regulations. A PPAT deed is made because there is a request from the parties, and not the desire of the PPAT. Although the PPAT deed contains the name of the PPAT, in this case the PPAT does not have the position of a party together with the parties or the parties whose names are listed in the deed. A PPAT deed has perfect evidentiary power, anyone who is bound by a PPAT deed cannot be interpreted as anything other than what is stated in the deed, the cancellation of the binding power of a PPAT deed can only be done by agreement of the parties whose names are listed in the deed. If there is a disagreement, then the party who disagrees must submit an application to the general court so that the deed in question is no longer binding for certain reasons that can be proven.

PPAT is often used as a Defendant by other parties, who feel that the legal action they have taken in the deed is categorized as an action or legal act of PPAT together with other parties who are also mentioned in the deed. In the context of notarial law, the task of PPAT is only to formulate the wishes of the parties in the form of an authentic deed, by paying attention to applicable law. Based on this substance, it is clear that if the deed made by PPAT is problematic by the parties themselves, then PPAT does not need to be involved in this matter, because PPAT is not a party to the deed.

The denial can be done by filing a civil lawsuit against the PPAT to the court, and the parties are required to prove the things they want to deny, while the PPAT is required to defend these aspects. In this case, it is necessary to understand the legal principles of PPAT, namely the PPAT deed as an authentic deed, where the deed has perfect evidentiary power, so that if there is a person or party who wants to deny it or state that the deed is not true, then the party is obliged to prove his assessment or statement in accordance with the applicable legal regulations.

The importance of the role of PPAT in helping to create legal certainty and protection for the community, is more preventive in nature, or in the nature of preventing legal problems from occurring, by means of issuing authentic deeds made before him related to the legal status, rights and obligations of a person in law, and so on, which function as the most perfect evidence in court, in the event of a dispute over related rights and obligations.³An authentic deed made before

²Puspa Pasaribu Eva Achjani Zulfa, 2021, "Legal Consequences of Fake Identity in Credit Agreement Deeds Involving Third Party Collateral Providers", USM Law Review Journal, Vol. 04 No. 02, p. 546. <https://journals.usm.ac.id/index.php/julr/article/view/4050> accessed on July 20, 2024 at 22.00 WIB.

³Sjaifurrachman, 2011, Aspects of Notary's Accountability in Making Deeds, Mandar Maju, Bandung, p. 7.

the PPAT as a public official has 3 (three) functions for the parties who make it in the form of:⁴

1. As proof that the parties concerned have entered into certain agreements;
2. As evidence for the parties that what has been written in the agreement is the aim and desire of the parties;
3. As evidence to a third party that on a certain date, unless otherwise specified, the parties have entered into an agreement and that the contents of the agreement are in accordance with the wishes of the parties.

PPAT as a public official can be held responsible for the deeds he made. If the deed made later contains a dispute, then this needs to be questioned, the deed is the fault of the PPAT or the fault of the parties who did not provide the documents truthfully and the parties provided incorrect information without the knowledge of the PPAT or an agreement made between the PPAT and one of the parties appearing. If the deed made by the PPAT contains legal defects due to the PPAT's fault, either due to negligence or the intention of the PPAT himself, then the PPAT must provide accountability both morally and legally.

In practice, PPAT is made as a Co-defendant for the deed he made as can be seen in the decision of the Padang District Court Number: 32/Pdt.G/2022/Pn. Pdg. In the a quo case, there was a problem between the Plaintiff and members of his clan and the party who purchased the object of the case based on the Deed of Sale and Purchase made by the PPAT. The Plaintiff argued that the ownership of the clan's high central assets which were initially jointly owned and had the status of clan ownership rights based on the Certificate of Ownership (SHM) without the Plaintiff's knowledge was sold by members of his clan to other people.

Based on the Deed of Sale and Purchase made by the PPAT, the Plaintiff feels disadvantaged because he feels he has lost his rights to the land which is in fact a high ancestral property of the clan. Then in the a quo case there has been a change in the ownership status of the object of the case which was originally the property of the clan to the property of the Defendant who purchased the object of the case. Therefore, the Plaintiff asked the panel of judges to declare the deed of sale and purchase made by the Defendants before the PPAT null and void and to declare that the control of the object of the a quo case carried out by the defendant is an unlawful act (onrechtmatige daad).

2. Research Methods

The research approach method used in this thesis is normative legal research. Normative legal research uses normative case studies in the form of legal

⁴Salim, HS, 2006, Contract Law, Theory and Techniques of Contract Preparation, Sinar Grafika, Jakarta, p. 43.

behavioral products, for example studying laws. The main focus of the study is law conceptualized as norms or rules that apply in society and become a reference for everyone's behavior. So that normative legal research focuses on the inventory of positive law, legal principles and doctrines, legal discovery in cases in concreto, legal systematics, synchronization levels, comparative law and legal history.⁵ In relation to the above, the research approach used is the Case Approach. The case approach can be used in research conducted by practitioners or practitioners or theoretical or academic circles. Practitioners conduct research by identifying court decisions that have qualified jurisprudence to be used in concrete cases being handled.⁶

3. Results and Discussion

3.1. The Position of the Land Deed Making Official (PPAT) Regarding the Deed He Makes for the Parties Bound in the Deed

PPAT has the position of a public official who has the authority to make authentic deeds and other authorities as regulated in Government Regulation Number 24 of 2016. PPAT provides legal certainty for the parties from the deeds he makes. The function which is also the authority of PPAT as a public official is to make authentic deeds regarding all acts, agreements, and provisions required by laws and/or desired by the interested party to be stated in an authentic deed, guarantee the certainty of the date of making the deed, store the deed, provide copies and excerpts of the deed, all of which as long as the making of the deeds is not also assigned or excluded to other officials or other people determined by law.

PPAT is responsible for any errors or intentional violations in making authentic deeds. However, because their main responsibility is to record information submitted by the parties involved in the deed, they cannot be held responsible if an error occurs by the party conducting the transaction. Each party is responsible for the accuracy of the information they provide, and if there is an inconsistency, the responsibility is borne by the party providing the information. This principle is related to the Power of PPAT. In Article 4 of Government Regulation Number 37 of 1998, it is stated that PPAT has several authorities, including:⁷

1. Making deeds that only relate to land rights or ownership rights to apartment units in the work area;
2. Has the authority to make various types of deeds related to land rights and ownership rights to apartment units, such as exchange deeds, deeds of inclusion

⁵ Abdulkadir Muhammad, 2004, Law and Legal Research. 1st ed., PT. Citra Aditya Bakti; Bandung, matter.52.

⁶ Made Pasek Diantha, 2016, Normative Legal Research Methodology in Justification of Legal Theory, Prenada Media Group, Jakarta, matter.165.

⁷ Abdullah, N., & Chalim, M. A, 2017, Position and Authority of Notaries in Making Authentic Deeds, Jurnal Akta, Vol. 4 No. 4, pp. 655–664.

in companies, and deeds of division of joint rights, provided that not all objects are in its work area, but the objects of rights that are the subject of legal action in the deed are in its work area.

PPAT in carrying out its duties is based on Government Regulations and Code of Ethics, so supervision of PPAT has been given to the Honorary Council of the Association of Land Deed Making Officials (IPPAT), thus, if there is a dispute regarding the deed made by PPAT, then the IPPAT Honorary Council has the right to accompany PPAT in the judicial process, so that it is very helpful with the input provided by the IPPAT Honorary Council.

Basically, the legal relationship between the PPAT and the parties or the parties appearing who have made a deed before or made by the PPAT cannot be constructed at the beginning of the PPAT and the parties appearing in the relationship, because at that time there had been no problems whatsoever. To determine the form of the relationship between the PPAT and the parties or the parties appearing in relation to the provisions of Article 1869 of the Civil Code, that an authentic deed is degraded to having the power of proof as a private deed for the following reasons: (1). The lack of authority of the relevant public official, or (2). The inability of the relevant public official, or (3). Defects in its form, or because the PPAT deed was cancelled based on a court decision that has legal force, then this can be used as a basis for suing the PPAT as an unlawful act or in other words the relationship between the PPAT and the parties/parties appearing can be qualified as an unlawful act.

Regarding the authority of the PPAT in making the deed, this is regulated in Article 2. Government regulations Number 37 of 1998 about The Regulations for the Position of Land Deed Making Officials state that:

1) The PPAT's main duty is to carry out part of the land registration activities by making a deed as evidence that certain legal acts have been carried out regarding land rights or Ownership Rights for Apartment Units, which will be used as the basis for registering changes to land registration data resulting from said legal act.

2) The legal acts as referred to in paragraph (1) are as follows:

- a. buy and sell;
- b. exchange;
- c. grant;
- d. inflow into the company (inbreng);
- e. distribution of joint rights;

- f. granting of Building Use Rights/Use Rights over Freehold Land;
- g. granting of Mortgage Rights;
- h. granting power of attorney to impose mortgage rights.

PPAT is given the authority to make a deed by Government regulations Number 37 of 1998 about Regulations on the Position of Land Deed Officials so that this authority must be guided and based on these regulations so that there is no abuse of authority which will cause losses to the parties in the future.

3.2. Responsibility of Land Deed Making Officials (PPAT) for Disputes Between Parties in Court Regarding Deeds They Make (Decision Study Number: 32/Pdt.G/2022/Pn Pdg)

The PPAT must be responsible if there is an error or violation that is intentional by the PPAT in the deed he made. However, if the element of error or violation occurs from the parties appearing, then as long as the PPAT exercises his authority in accordance with the relevant PPAT regulations, he cannot be held responsible, because the PPAT only records what is conveyed by the parties to be stated in the deed. This does not mean that the PPAT is clean from the law, cannot be punished, or is immune to the law. The PPAT can be punished (criminal or civil) if it is proven in court that the PPAT intentionally and with full awareness, awareness and planning together with the parties/applicants or not in making the deed with the intent and purpose to benefit a particular appearer or harm another appearer. If this is proven, the PPAT must be punished.

If in another position, namely one party feels aggrieved by the deed made by the PPAT, then the party who feels aggrieved can file a lawsuit in the form of a claim for compensation to the PPAT concerned, with the plaintiff's obligation, namely in the lawsuit it must be proven that the loss is a direct result of the PPAT deed. In both positions, the plaintiff must be able to prove what was violated by the PPAT, from the external aspect, the formal aspect and the material aspect of the PPAT deed.

PPAT in carrying out his duties and position as a public official authorized to make authentic deeds is burdened with responsibility for his actions. This responsibility is as his willingness to carry out his obligations which include the material truth of the deeds he makes. PPAT is responsible for negligence and errors in the contents of the deeds made before him, but PPAT is only responsible for the formal form of authentic deeds as regulated by law. Responsibilities related to material truth include:⁸

⁸Abdul Ghofur Anshori, 2009, Indonesian Notary Institution, UII Press, Yogyakarta, p. 16.

1) The civil liability of PPAT for the material truth of the deeds he made. The legal construction used in civil liability for the material truth of the deeds made is the construction of an unlawful act.

2) The criminal liability of the PPAT for the material truth in the deeds he made. Regarding criminal provisions, it is not regulated in the Regulations on the Position of Land Deed Making Officials, but the criminal liability of the PPAT is imposed if the PPAT commits a criminal act that violates the law. The Law on the Position of PPAT and the Regulations on the Position of Land Deed Making Officials only regulate sanctions for violations committed and these sanctions can be in the form of the deed made by the PPAT not having authentic power or only having the power as a private deed or even the deed being legally cancelled by the Court.

3) Administrative Responsibilities

There is a very strong correlation between the Job Regulations of Land Deed Making Officials and their professional code of ethics. The professional code of ethics regulates PPAT internally and the Job Regulations of Land Deed Making Officials regulate externally. PPATs in carrying out their job duties must do the following:⁹

a) PPAT is required to make deeds properly and correctly. This means that the deeds made fulfill the general wishes and requests of the interested parties because of their position;

b) PPAT is required to produce a quality deed. This means that the deed made is in accordance with the rules of law and the wishes of the interested parties in the true sense, not made up. PPAT must explain to the interested parties the truth of the contents and procedures of the deed he made. And the deed has a positive impact, so that anyone will admit that the deed has perfect evidentiary power.

Related to the case as a civil case Number: 32/Pdt.G/2022/Pn Pdg The Plaintiff argued that the PPAT who was included in the a quo lawsuit had issued a Deed of Sale and Purchase Number 47/2017 without presenting the Plaintiff's Jurai, the late Kartini, the Heirs (Plaintiff). So in this case, in the author's opinion, there has been a denial of the principle of caution that must be possessed by the PPAT so that the party who feels aggrieved files a lawsuit for unlawful acts that have been committed by the defendant against the deed of sale and purchase made by the PPAT.

Furthermore, the legal consequences for PPAT who do not apply the principle of caution in recognizing the parties must be seen from their legal actions first.

⁹Abdul Ghofur Anshori, 2009, Indonesian Notary Institution, Legal and Ethical Perspectives, UII Press, Yogyakarta, p. 49.

Mistakes come from the parties such as falsification of documents and those who are present are not the actual parties, PPAT is not responsible for this. This is the responsibility of the parties themselves. Whereas if the mistake comes from PPAT, then they can be held accountable in civil, criminal and administrative matters.

Basically, the task of the PPAT is only to express the will of the parties, not to guarantee that the material of the data brought by the parties is true. Therefore, when carrying out the duties of the PPAT, it is necessary to implement the application of the principle of caution so as not to quickly believe the parties who want to prepare an authentic deed. Guided by the existing positive law, if a deed made by the PPAT contains elements of the crime of false information and false letters by the parties, then this action is contrary to Article 263, 264 and 266 of the Criminal Code, therefore in line with Article 1320 of the Civil Code paragraph (4), the legal consequences of the agreement on the contents of this authentic deed are null and void or void since the agreement was made (*nietigbaarheid*) and the deed made by the PPAT is degraded in its evidentiary value to a private deed from the previous authentic deed, but regarding the formal truth contained in the cover and the head of the deed, it remains binding on the parties.

Furthermore, based on Article 2 of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2022 concerning the Implementation of the Principle of Recognizing Service Users for Land Deed Making Officials, it states that:

- 1) PPAT is obliged to apply the Principle of Recognizing Service Users consistently and continuously based on this Ministerial Regulation.
- 2) The principles for recognizing service users as referred to in paragraph (1) at least contain:
 - a. identification of Service Users;
 - b. verification of Service Users; and
 - c. monitoring of Service User Transactions.
- 3) The application of the Principle of Recognizing Service Users as referred to in paragraph (2) is carried out by PPAT when:
 - a. conducting business relations with Service Users;
 - b. there are Financial Transactions in Rupiah and/or foreign currencies with a value of at least or equivalent to IDR 100,000,000.00 (one hundred million rupiah);
 - c. there are Suspicious Financial Transactions related to money laundering and/or terrorism financing crimes; or

4) the reporting party doubts the truth of the information reported by the Service User. PPAT who carries out business relations as referred to in paragraph (3) letter a is obliged to understand the profile, intent and purpose of the business relationship, and Transactions carried out by the Service User and Beneficial Owner through identification and verification.

5) The application of the Principle of Recognizing Service Users as referred to in paragraph (2) applies to PPATs in providing services in accordance with the provisions of laws and regulations carried out for and on behalf of Service Users.

Furthermore, based on Islamic law, there is a great emphasis on the concept of responsibility, but that does not mean that it pays less attention to individual freedom. In fact, Islam tries to establish the right balance between the two. Based on this view, modern civilization will be determined based on a series of steps to limit individual freedom appropriately so that the internal between maximizing self-interest will be balanced with the need to maximize social welfare.¹⁰

In Islam, responsibility is known as Mas'uliyah. Mas'uliyah or Accountability is a principle that requires a worker to always be alert and responsible for what they do or spend because they will be checked and questioned not only in the world but also on the day of reckoning. Responsibilities include several aspects, namely:¹¹

- 1) Responsibility between individuals (mas'uliyah al-afraad)
- 2) Responsibility to society (mas'uliyah al-mujtama') and
- 3) Responsibility of the government (mas'uliyah al-daulah).

So if it is associated with the responsibility of the PPAT for the deeds he has made in accordance with Islam, it is an absolute responsibility for the PPAT in carrying out his profession which will have an impact on the products he issues, whether the product is in accordance with what it should be or not, depending on the accuracy, understanding and implementation of the principle of caution by a PPAT in maintaining his professionalism.

4. Conclusion

The position of the PPAT regarding the deed he made for the parties bound by the deed is that the PPAT is a strong document maker in the legal process. In carrying out his duties, the PPAT must be guided by a normative framework

¹⁰Syed Nawed Haider Naqvi, 2003, Initiating Islamic Economics, translated by M. Syaiful Anam, Muhammad Ufuqul Mubin, Pustaka Pelajar, Yogyakarta, p. 46.

¹¹Abd. Shomad, 2010, Islamic Law, Kencana, Jakarta, p. 78.

related to all actions that will be taken to be stated in the deed. The PPAT must be able to maintain his good name and dignity. The PPAT also acts as a liaison between the parties who wish to bind themselves through an agreement stated in a deed by the PPAT. Furthermore, the PPAT's responsibility for disputes between the parties in court regarding the deed he made (case study of Decision Number: 32/Pdt.G/2022/Pn Pdg) is divided into 3 (three) forms, namely: PPAT's civil liability, PPAT's criminal liability and PPAT's administrative liability. Furthermore Application of the Principle of Service Users for PPAT as stated in the provisions of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 21 of 2022 concerning the Application of the Principle of Recognizing Service Users for Land Deed Making Officials. Related to the case as a civil case Number: 32/Pdt.G/2022/Pn Pdg the Plaintiff argued that the PPAT who was included in the a quo lawsuit had issued a Deed of Sale and Purchase Number 47/2017 without presenting the Plaintiff's Jurai, the Late Kartini, Heirs (Plaintiff). So in this case there has been a denial of the principle of caution that must be possessed by the PPAT so that the party who feels aggrieved files a lawsuit for unlawful acts that have been committed by the defendant against the deed of sale and purchase made by the PPAT.

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