

Responsibility of Land Deed Making Officials (PPAT) for Sale and Purchase Deeds (Ajb) for Government Redistribution Land Objects

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Abstract. *This study aims to analyze: 1) The responsibility of the Land Deed Making Officer (PPAT) for the Sale and Purchase Deed (AJB) for government redistribution land objects. 2) The legal consequences arising from the Sale and Purchase Deed (AJB) issued by the Land Deed Making Officer (PPAT) for redistributed land. This type of research is normative legal research. The approach method in this study is the Legislation approach (statue approach). The type of data in this study is secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses library techniques (study document). The analysis in this study is descriptive qualitative. The results of the study concluded: 1) The responsibility of the Land Deed Making Officer (PPAT) for the Sale and Purchase Deed (AJB) for government redistribution land objects that do not meet the requirements, PPATs who are proven to have violated can be subject to administrative sanctions by the PPAT Advisory and Supervisory Board, and be held accountable for civil liability through a lawsuit for damages by the injured party. Even in certain cases, the actions of PPAT can be subject to criminal sanctions if accompanied by elements of fraud, forgery, or abuse of authority. Therefore, PPAT is required to implement the principle of due diligence and comply with legal provisions substantially and procedurally to ensure that the deeds they make are valid and do not cause detrimental legal consequences. 2) The legal consequences arising from the Deed of Sale and Purchase (AJB) issued by the Land Deed Making Officer (PPAT) for redistributed land that is still in the period of prohibition on transfer without the Minister's permission are acts that are contrary to legal provisions, especially Article 25 of Presidential Regulation Number 86 of 2018. Such a deed has the potential to be null and void because it is made for an object that cannot be legally transferred. As a legal consequence, the deed loses its power as an authentic deed and only has value as a deed under hand, or is even*

considered to have never existed. In addition, administrative sanctions can arise for PPAT, including warnings to temporary or permanent dismissal, as well as the possibility of civil liability if a party is harmed. In certain cases, the actions of PPAT can also be subject to criminal sanctions if it is proven that they knew about the prohibition but still facilitated the transfer of rights.

Keywords: *Deed of Sale and Purchase; PPAT; Land Redistribution.*

1. Introduction

Land is a gift from God Almighty to every human being on the face of the earth because land has many benefits in it, land must be managed, utilized, and maintained as well as possible as a resource to achieve the goal of being a prosperous country.¹Land plays a central role in the life and economy of Indonesia. The rapid development in various areas of life has caused land to become a commodity that has a very high economic value and is difficult to control.²This has caused many people to be interested in investing by buying land, considering that the prices continue to soar every year.

The concept of land according to Law Number 5 of 1960 concerning Basic Agrarian Regulations is the surface of the earth, including the body of the earth beneath it and that which is under water. Article 2 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) states that the earth, water and space, including the natural resources contained therein, are at the highest level controlled by the state. The meaning of the state controlling the land does not mean that the land is owned by the state, but rather the state has the power to regulates the distribution of land rights that can be granted and the legal relationships that arise over land.³ Land rights are the right to control land by the state which is granted to a person, a group of people, or a legal entity, whether an Indonesian citizen or a foreign citizen.⁴Land rights are rights that give authority to the rights holder (either an individual individually, a group of people together or a legal entity) to use, in the sense of controlling, using and/or taking advantage of a particular area of land.⁵Basically all land rights can be transferred

¹Heru Kurniawan, 2016, Reconstruction and Reactualization of Islamic Social Ecological Literacy, Research Journal Volume 13 Number 2, page 201

²Adrian Sutedi, 2018, Transfer of Land Rights and Registration, Sinar Grafika, Jakarta, p.22

³Hardianto Djanggih, 2017, Legal Aspects of Land Acquisition for the Implementation of Development for Public Interest, Pandecta: Journal of Legal Science Research, Volume 12 Number 2, p. 165

⁴Urip Santoso, 2010, Agrarian Law and Land Rights, Kencana, Jakarta, p.87

⁵Ibid., p. 82

or assigned. Transfer is the transfer of land rights by law, by itself, there is no legal act that is intended to transfer the rights to another party.⁶

Transfer of land rights can be done by means of transfer of rights such as sale and purchase, exchange, gift, auction, inheritance, transfer of rights due to merger or amalgamation and other transfers of rights. This is regulated in Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 which states that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company and other legal acts of transfer of rights, except for transfer of rights through auction can only be registered if proven by a deed made by an authorized Land Deed Making Officer (PPAT) according to the provisions of applicable laws and regulations.

PPAT is a public official who is given the authority to make deeds. Transfer land rights, deeds of land encumbrance, and deeds of power of attorney to encumber mortgage rights according to applicable laws and regulations. Boedi Harsono stated that a public official is someone appointed by the government with the task and authority to provide services to the public in certain fields.⁷

The PPAT deed is one of the data sources for maintaining land registration data. Therefore, it must be made in such a way that it can be used as a strong basis for registering the transfer and encumbrance of the rights concerned. Therefore, the PPAT is responsible for matching the data contained in the certificate with the lists available at the Land Office. In the applicable Laws and Regulations, the Land Deed Making Officer (PPAT) is an official who is authorized to make deeds of transfer of land rights and other deeds whose forms have been determined.⁸The PPAT deed is made as evidence of a certain legal act regarding land located in their respective work areas. In this case, the deed made by the PPAT is an authentic deed.⁹

The implementation of the transfer of land rights based on the principles of agrarian reform cannot be separated from how the land redistribution program is implemented. Redistributionlandis the distribution of land as a land reform object by the government to farmers or tenant farmers who meet the requirements.¹⁰The land redistribution program is basically based on the situation where most of the agricultural land is owned by only a few people, and

⁶Erna Sri Wibawanti, R. Murjiyanto, 2013, Land Rights and Their Transfer, Liberty Yogyakarta, p.119.

⁷Salim HS, 2016, Land Deed Making Techniques for Land Deed Making Officials, Rajawali Pers, Jakarta, p. 87.

⁸Setyaningsih, 2018, The Role of Notaries in Making Deeds of Granting Mortgage Rights (APHT) Against Credit Agreements Between Creditors and Debtors With Mortgage Guarantee in Purwokerto, Volume 5, Number 1, Journal of Deeds, Faculty of Law, Unissula University, Semarang, p. 190

⁹Satrio J., 2007, Law on Guarantee of Property Rights, Citra Aditya Bakti, Bandung, p.329.

¹⁰National Land Agency of the Republic of Indonesia, 2014, Implementation Guidelines (Juklak) for Land Redistribution Activities for Land Reform Objects, p. 4.

small parts of the agricultural land are owned by the majority of the people, especially farmers who depend heavily on the agricultural businesses they manage for their livelihoods and make serious use of them.¹¹

Land redistribution by the government is one of the efforts to improve land ownership inequality and improve community welfare. This process involves the transfer of land rights from the government to individuals or community groups, which often requires formal legitimacy in the form of a Deed of Sale and Purchase (AJB) made by a Land Deed Making Officer (PPAT). PPAT has a very important responsibility in ensuring the validity and authenticity of the AJB, especially considering that land objects originating from government redistribution often involve complex ownership histories and strict legal regulations. PPAT's responsibilities include document verification, ensuring that all legal requirements are met, and ensuring that the sale and purchase process runs in accordance with applicable regulations. However, in practice, there are various challenges that can affect the implementation of PPAT's duties.

2. Research Methods

This type of research is normative legal research. The approach method in this research is the statute approach. The type of data in this research is secondary data sourced from primary, secondary and tertiary legal materials. The data collection method uses library techniques (study document). The analysis in this research is descriptive qualitative.

3. Results and Discussion

3.1. Responsibility of Land Deed Making Officials (PPAT) for Sale and Purchase Deeds (AJB) for Government Redistribution Land Objects

Land plays an important role as one of the essential production factors for people's lives. Its availability supports various aspects of needs, from the provision of water, food, to housing facilities. Along with the increasing needs of the community, the demand for land also increases, while the availability of land in a number of areas is increasingly limited. This condition triggers competition, as well as opening up promising business opportunities in the land sector. For some areas that have a high population growth rate, the need for land to be used for building housing is increasing, especially since land values always grow every year.¹²

The Land Deed Making Officer (PPAT) is a public official appointed by the government to carry out part of the state's authority in terms of making

¹¹Arie Sukanti Hutagalung, 1985, Land Redistribution Program in Indonesia, A Means Towards Fulfilling the Problem of Land Control and Land Ownership, CV. Rajawali, Jakarta, p.58.

¹²Putri Lilasari, 2022, Legal Responsibility for Losses Due to Default in Land Sale and Purchase Agreements, Indonesia Journal of Law and Social-Political Governance, Volume 2, Number 2, p.566

authentic deeds related to the transfer of land rights.¹³ According to Article 1 paragraph (1) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on Land Deed Making Officials, PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units.¹⁴ In carrying out his duties, the PPAT also carries out some land registration activities, where the deed he makes is proof that... a legal act is carried out which serves as the basis for registering changes to land registration data resulting from that legal act.¹⁵

The deed made by the Land Deed Official is one of the main sources in terms of land registration in Indonesia. PPAT has been known since the enactment of Government Regulation Number 10 of 1961 concerning Land Registration, which is a land regulation as the implementing UUPA. To guarantee legal certainty that a legal act has been carried out regarding the transfer or burden by the parties, the transfer of rights must be made with an authentic deed where the deed must be made before an official appointed/authorized for that purpose so that it can be used as perfect evidence. This is intended to guarantee legal certainty regarding rights and obligations and even legal consequences by the parties.¹⁶

One of the important objects that must be given special attention by PPAT is land resulting from government redistribution.

Land redistribution in Indonesia has actually been running since 1961, but the achievement of its implementation is still considered less than optimal. The lack of information on land governance, accompanied by political and institutional changes, has made this policy more widely used by parties who have access to information, such as land traders, stakeholders, or corporations. Meanwhile, grassroots communities actually lack adequate understanding and information, so that their bargaining position in land ownership resulting from redistribution is weak. Although there are communities who work on redistributed land, only a few continue the process of managing ownership rights to certification.

Based on the agrarian reform policy, land redistribution is one of the strategic instruments to improve the socio-economic conditions of the community, especially landless farmers. However, in the field, the implementation of land redistribution faces various serious challenges, especially in terms of supervision,

¹³Solahudin Pugung, 2021, Regarding Land and the Law of Its Sale and Purchase and the Responsibility of PPAT for Deeds Containing Defects from the Perspective of the Rule of Law, Budi Utama, Yogyakarta, p.30.

¹⁴Article 1 paragraph (1) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on Land Deed Making Officials

¹⁵Rudi Indrajaya et al., 2020, Notaries and PPAT: An Introduction, Refika Aditama, Bandung, p. 62

¹⁶Istanti, Akhmad Khisni, Legal Consequences of Land Sale and Purchase Deeds Before Ppat Which Are Not Made in Accordance with PPAT Deed Making Procedures, Jurnal Akta, Volume 4 Number 2 June 2017, Unissula, p. 274

legal socialization, and land bureaucracy. One of the consequences of weak supervision and minimal legal understanding among the community is the emergence of the practice of transferring rights to redistributed land, both underhand and through formal legal instruments such as the Deed of Sale and Purchase (AJB) made by the Land Deed Making Officer (PPAT).

There are still practices of PPATs who continue to make Deeds of Sale and Purchase (AJB) for government redistribution land, even though the land is legally prohibited from being transferred within a certain period of time without permission. Examples of cases occurred in Mamuju, Gunungkidul, Pasuruan, and Buleleng, for economic, social, or administrative negligence reasons. PPATs in this case are at risk of facing legal sanctions for violating statutory provisions, especially PP No. 224 of 1961, Permen ATR/BPN No. 9 of 1999, and Perpres No. 86 of 2018.

Legal Implications and Forms of Accountability:

1. Individual Accountability

PPAT is required to guarantee the formal and substantive legality of the deed. If they still make AJB on redistributed land without permission, they are fully responsible individually for violations of administrative law, such as in the Mamuju case.

2. Collective Accountability (But Leading to the Individual)

Although it often involves other parties such as village officials or BPN officials, legally the responsibility remains with the PPAT because the deed is only valid if signed by him. The Pasuruan case shows this.

3. Fault Liability

If the PPAT consciously violates the law for personal gain or to speed up transactions, then he can be subject to administrative, civil (PMH) sanctions, or even criminal sanctions if there is an element of fraud or forgery, as in the Gunungkidul case.

4. Strict Liability

Even without intent, PPAT is still responsible if he neglects to verify the land status. Ignorance is not an excuse. In the case of Buleleng, the involvement of PPAT without due diligence can result in sanctions even without bad intentions.

These cases emphasize the need for strengthening supervision, as well as enforcing the principle of legal accountability for PPAT both administratively, civilly, and criminally. Hans Kelsen's theory provides a normative basis that every violation of legal norms, whether with or without error, must still be accounted for for the sake of legal certainty and protection of the common people.

Overall, the theory of responsibility according to Hans Kelsen provides a strong normative framework for assessing the legal actions of PPAT in cases of violation of the procedure for transferring rights to redistributed land. Responsibility that is individual in nature, cannot be transferred collectively, and remains valid both

on the basis of fault and without fault, shows that the position of PPAT is not merely administrative, but has serious legal consequences. Therefore, the application of this theory is very relevant as a basis for strengthening integrity and accountability in the national land system.

An authentic deed which is complete (binding) evidence means that the truth of the things written in the deed is considered true, as long as the truth is that no other party can prove otherwise. An authentic deed can be degraded into a private deed when the requirements in the authentic deed are not met, both material requirements and formal requirements. Testing whether the authentic deed meets these requirements is the authority of the court to examine. The court in examining to cancel a deed depends on the request of the party filing the lawsuit or application, because the cancellation of a deed is part of civil law so that the court is in principle passive, only examining and trying what is submitted by the plaintiff.¹⁷ The court in canceling an authentic deed bases it on the applicable law, whether the authentic deed was made in violation of statutory provisions or not, is against the law or not.

Based on the theory of responsibility, PPAT in carrying out his duties and positions as a public official authorized to make authentic deeds does have 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.¹⁸ If there is a party who feels aggrieved as a direct result of a deed, then the person concerned can sue civilly against the official who made the deed. Thus, the claim for reimbursement of costs, damages and interest against the PPAT is not based on the assessment or position of a piece of evidence that has changed due to violating the provisions but rather on the legal relationship that exists or occurs between the PPAT and the parties.

3.2. Legal Consequences Arising from the Deed of Sale and Purchase (AJB) Issued by the Land Deed Making Officer (PPAT) for Redistributed Land

Legal consequences are consequences caused by the law to an act carried out by a legal subject.¹⁹ The legal consequences can take the following forms:

1. The birth, change or disappearance of a legal state
2. The birth, change or disappearance of a legal relationship between two or more legal subjects, where the rights and obligations of one party clash with the rights and obligations of another party.
3. Sanctions are imposed if an unlawful act is carried out.²⁰

¹⁷Soegeng Ari, Gunarto, Legal Consequences of Authentic Deeds Being Degraded to Private Deeds, Jurnal Akta, Volume 4 Number 3 of 2017, Unissula, p.325

¹⁸Ibid., p. 451

¹⁹Ahmadi Miru, 2007, Contract Law and Contract Drafting, Raja Grafindo Persada, Jakarta, p.192.

In this context, the provisions stipulated in Article 25 of Presidential Regulation Number 86 of 2018 concerning Agrarian Reform are an important reference for assessing whether an act against a redistributed land object can give rise to certain legal consequences. Article 25 of Presidential Regulation Number 86 of 2018 concerning Agrarian Reformsay that:

1. Subjects of Agrarian Reform as referred to in Article 12 are prohibited from neglecting TORA.
2. In the event that the Subject of Agrarian Reform transfers rights to TORA or changes the function of TORA, it is mandatory to obtain permission from the Minister through the Head of the local Land Office.

Article 25 of Presidential Regulation Number 86 of 2018 concerning Agrarian Reform regulates the obligations and prohibitions for agrarian reform subjects (TORA recipients). This article states that redistribution recipients are prohibited from neglecting TORA and if they wish to transfer rights or change the function of redistributed land, they must obtain permission from the Minister through the Head of the local Land Office. This means that land that has been given in the agrarian reform program cannot be sold or transferred freely, every transfer of rights must go through official approval. Thus, the sale and purchase agreement (AJB) for redistributed land without permission from the BPN/Minister clearly violates the binding provisions of agrarian law.

Consequence laws or consequences arising from the Deed of Sale and Purchase (AJB) which issued by the Land Deed Making Officer (PPAT) for Redistributed Land, namely:

1. Administrative consequences

Administratively, the illegal AJB cannot be recorded or processed by the Land Office. Certificates of rights arising from unauthorized sales and purchases can be canceled through the certificate cancellation mechanism due to procedural defects. In addition, officials involved such as PPAT who issued the deed can be subject to state administrative sanctions, PPAT permits can be revoked or given a warning. In other words, land books and certificates resulting from illegal AJB are considered invalid and the PPAT can be subject to administrative sanctions.

2. Civil consequences

A deed of sale and purchase made in violation of the provisions of Article 25 of Presidential Regulation Number 86 of 2018 concerning Agrarian Reform is considered null and void because its purpose and conditions violate agrarian law. In civil law (Article 1320 of the Civil Code), a sale and purchase agreement is void if "one party is not free to enter into a contract" because it is prohibited by law. Without permission, the transfer of rights is illegal so that the AJB does not legally transfer ownership rights. As a result, the land rights remain with the original recipient (government/farmers) and the buyer does not receive the

²⁰Soeroso. Op.Cit, p. 296.

recognized rights. The TORA recipient who sells the land can be sued for returning the land or compensation for the transfer without legal basis. In short, illegal land buyers are not entitled to a certificate and can be canceled civilly.

3. Criminal consequences

The issuance of an illegal AJB can ensnare perpetrators of agrarian and general crimes. PPAT or other parties who falsify documents or ignore authority can be charged under the Criminal Code. The crime of falsifying documents with a sentence of 7 (seven) years is as regulated in the provisions of Article 266 paragraph (1) of the Criminal Code which states that, "Anyone who orders the insertion of false information into an authentic deed regarding something whose truth must be stated by the deed, with the intention of using or ordering someone else to use the deed as if the information is in accordance with the truth, is threatened, if the use can cause harm, with a maximum prison sentence of seven years."

The deed made by the Land Deed Official is one of the main sources in terms of land registration in Indonesia. PPAT has been known since the enactment of Government Regulation Number 10 of 1961 concerning Land Registration, which is a land regulation as the implementing UUPA. To guarantee legal certainty that a legal act has been carried out regarding the transfer or burden by the parties, the transfer of rights must be made with an authentic deed where the deed must be made before an official appointed/authorized for that purpose so that it can be used as perfect evidence. This is intended to guarantee legal certainty regarding rights and obligations and even legal consequences by the parties.²¹

The state's obligation to realize legal certainty is the embodiment of the state's goals based on the values of social justice for all Indonesian people. Thus, realizing legal certainty is the state's duty and responsibility that must be realized by state administrators. The 1945 Constitution of the Republic of Indonesia (UUD 1945) has expressly provided a guarantee of protection and legal certainty for everyone, namely that everyone has the right to recognition, guarantee, protection, and fair legal certainty and equal treatment before the law.²²

4. Conclusion

The responsibility of the Land Deed Making Officer (PPAT) for the Sale and Purchase Deed (AJB) for government redistributed land objects is a form of legal responsibility for the authority of the position he holds as a public official. The deed made by the PPAT has perfect evidentiary force as an authentic deed, but if the deed is prepared on the basis of a land object that legally does not meet the requirements for transfer, such as redistributed land that is still in the period of

²¹Istanti and Akhmad Khisni, 2017, Legal Consequences of Land Sale and Purchase Deeds Before Ppat Which Are Not Made in Accordance with PPAT Deed Making Procedures, Jurnal Akta, Volume 4 Number 2, Unissula, p. 274

²²Draft Law on the Position of Land Deed Making Official, Academic Manuscript, Expert Body of the People's Representative Council of the Republic of Indonesia, 2019, p.106

prohibition on transfer without the Minister's permission. PPATs who are proven to have violated the law can be subject to administrative sanctions by the BPN Regional Office or the PPAT Advisory and Supervisory Board, and are held civilly liable through a lawsuit for damages by the injured party. Even in certain cases, the actions of the PPAT can be subject to criminal sanctions if accompanied by elements of fraud, forgery, or abuse of authority. Therefore, PPATs are required to carry out the principle of caution (due diligence) and comply with legal provisions substantially and procedurally to ensure that the deed they make is valid and does not cause detrimental legal consequences.

The legal consequences arising from the Deed of Sale and Purchase (AJB) issued by the Land Deed Making Officer (PPAT) for redistributed land that is still within the period of prohibition of transfer without the Minister's permission are acts that are contrary to legal provisions, especially Article 25 of Presidential Regulation Number 86 of 2018. Such a deed has the potential to be null and void because it is made for an object that cannot be legally transferred. As a legal consequence, the deed loses its power as an authentic deed and only has value as a deed under hand, or is even considered to have never existed. In addition, administrative sanctions may arise for the PPAT, including warnings to temporary or permanent dismissal, as well as the possibility of civil liability if a party is harmed. In certain cases, the PPAT's actions can also be subject to criminal sanctions if it is proven that he knew about the prohibition but still facilitated the transfer of rights.

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The 1945 Constitution of the Republic of Indonesia