

Responsibilities of Notaries/PPAT in Ensuring Legal Certainty Regarding The Delivery of Land Rights Certificates by Developers to Buyers

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Abstract. *This study examines the responsibilities of Notaries and Land Deed Officials (PPAT) in ensuring legal certainty regarding the transfer of land title certificates by developers to buyers. Problems often arise when developers fail to hand over certificates even though buyers have fully paid their obligations, thus creating legal uncertainty and harming consumers. This study uses a normative juridical method with a statute approach. Data were obtained through literature review and analyzed qualitatively using descriptive-analytical methods. The results show that Notaries/PPATs have the responsibility to ensure that the deeds they make meet formal and material requirements, and play a preventive role in protecting buyers' rights. Therefore, strengthening regulations and oversight mechanisms is needed to ensure legal certainty.*

Keywords: Certificate; Developer; Legal Certainty; Notary; PPAT.

1. Introduction

Indonesia is a country based on law as stated in Article 1 paragraph (3) of the 1945 Constitution.¹ Consequently, all aspects of social, national, and state life must be based on law to achieve justice, legal certainty, and benefit. One area requiring legal certainty is land, given its strategic position, both economically, socially, and culturally. Land is not only valuable as an economic asset, but also linked to a community's social identity. Therefore, the Basic Agrarian Law (UUPA) No. 5 of 1960 mandates a land registration system to ensure legal certainty of land rights. The product of land registration is a certificate, which serves as strong proof of title. Land certificates are a crucial instrument for ensuring a sense of security for

¹The 1945 Constitution of the Republic of Indonesia.

rights holders and preventing land disputes.² As housing demand increases, particularly in urban areas, the property business managed by developers is growing rapidly. The transaction model generally involves a house or plot purchase agreement with installments. However, in practice, numerous problems arise, one of which is the delay or failure of developers to hand over land title certificates to buyers, even though payment obligations have been fully paid.

This phenomenon creates legal uncertainty and harms the public. Buyers who have fulfilled their financial obligations cannot enjoy their full legal rights because they lack a certificate as proof of legal ownership. The classic excuses often cited by developers include the master certificate still being held as collateral at the bank, the land division process not yet completed, or ongoing administrative issues with the National Land Agency (BPN). Empirical data shows this problem is very serious. In 2019, PT Bank Tabungan Negara (BTN) reported that approximately 120,000 housing units remained uncertified due to the negligence of more than 4,000 developers. A similar case occurred in Bukit Swiss Jonggol, Bogor Regency, where several consumers did not receive certificates even though their house payments had been paid in full since 2019. This situation illustrates the weakness of the consumer legal protection system in the property sector.

It is in this context that the role of Notaries and Land Deed Making Officials (PPAT) becomes very important. According to Article 15 paragraph (1) of Law No. 2 of 2014 concerning the Position of Notaries, Notaries are authorized to make authentic deeds related to agreements, including Sales and Purchase Agreements (PPJB).³ Meanwhile, Article 2 of PP No. 37 of 1998 confirms that PPAT has the authority to make authentic deeds regarding certain legal acts regarding land rights, such as buying and selling, exchanging, granting, and so on.⁴ A notary plays a role from the initial stages of the transaction, ensuring the PPJB is valid, contains no detrimental clauses, and protects the buyer's interests. Meanwhile, the PPAT plays a crucial role during the transfer of rights, drawing up a Deed of Sale and Purchase (AJB) as the basis for the transfer of title at the National Land Agency (BPN) and issuing a certificate in the buyer's name. Therefore, these two officials serve as gatekeepers of legal certainty in land transactions.

However, in practice, PPATs are often viewed as mere administrative officials who merely record transactions. However, based on Hans Kelsen's theory of legal responsibility, public officials can be held accountable if their negligence results in losses. Similarly, according to Philipus M. Hadjon's theory of legal protection, legal protection can be preventive (dispute prevention) or repressive (dispute

²Law Number 5 of 1960 concerning Basic Agrarian Regulations.

³Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary.

⁴Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials.

resolution). In this context, PPATs should function preventively by ensuring all legal requirements are met before the deed is drawn up.⁵ The developer's delay in handing over the certificates indicates a legal loophole. On the one hand, the developer is obligated to hand over the certificate to the buyer after full payment. However, on the other hand, the lack of a mechanism to force the developer to fulfill this obligation leaves the buyer in a vulnerable position. If this problem is allowed to persist, it will erode public trust in the law and harm consumers.

2. Research Methods

This research uses a normative legal research method with a statutory and conceptual approach. The legal materials used include primary legal materials in the form of relevant laws and regulations, secondary legal materials in the form of literature, journals, and expert opinions, and tertiary legal materials such as legal dictionaries and encyclopedias.⁶

The collection of legal materials was carried out through literature studies, then analyzed qualitatively using descriptive-analytical techniques, namely describing and explaining the applicable legal provisions and connecting them with land practices in cases of delays in the submission of land title certificates by developers.

3. Results and Discussion

3.1. The legal responsibility of Notaries/PPAT in guaranteeing legal certainty regarding the transfer of land title certificates

Notaries and Land Deed Officials (PPAT) are public officials authorized by law to create authentic deeds. Article 1868 of the Civil Code stipulates that an authentic deed is one drawn up by or before an authorized public official, in a form prescribed by law. Therefore, deeds drawn up by notaries and PPATs have full evidentiary force and are an important instrument in ensuring legal certainty.

In land sales and purchases through developers, a notary typically plays a role from the initial stage, particularly in drafting the Sales and Purchase Agreement (PPJB). The PPJB serves to provide legal certainty for the parties before the object of the agreement can be fully transferred through a Deed of Sale and Purchase (AJB). Meanwhile, the Land Deed Official (PPAT) has the authority to draft the AJB, which serves as the basis for the transfer of land rights and serves as the basis for registration at the National Land Agency (BPN) until the certificate is issued in the buyer's name. Thus, notaries and PPATs not only perform administrative functions

⁵Hadjon, Philipus M., (1987). *Perlindungan Hukum bagi Rakyat di Indonesia*. Surabaya: Bina Ilmu

⁶Peter Mahmud Marzuki, (2009), *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group, p. 356.

but also play a crucial role in providing legal certainty and protecting the buyer's rights.⁷

Based on Article 1320 of the Civil Code, a land sale and purchase agreement is valid if it meets the requirements for a valid agreement, namely agreement, capacity, a specific object, and a lawful cause. Once these requirements are met, Article 1338 of the Civil Code confirms that a legally made agreement is valid as law for the parties. This means that a developer who has agreed to sell land or a house to a buyer is obliged to submit a land title certificate as a form of implementation of the agreement. If this obligation is not fulfilled, the developer can be considered in default and the buyer has the right to demand compensation. In addition, Article 1365 of the Civil Code⁸ regulates that every unlawful act that causes loss to another person requires the guilty party to compensate for the loss.

In this context, PPATs are also not exempt from legal responsibility. The PPAT's legal responsibility can be divided into three aspects:

- a) Civil liability occurs if the PPAT fails to fulfill their obligations and causes losses to the buyer. For example, the PPAT may still prepare a Deed of Sale and Purchase (AJB) despite knowing that the land is still being pledged to the bank, preventing the certificate from being handed over to the buyer.
- b) Administrative liability occurs if the PPAT violates the terms of his/her position. This is regulated in Article 27 of Government Regulation No. 37 of 1998 concerning PPAT, which allows for sanctions ranging from warnings, temporary suspension, to permanent dismissal. For example, if the PPAT drafts a deed without the presence of the parties or without valid documents.⁹
- c) Criminal liability occurs if the Land Deed Official (PPAT) is proven to have intentionally committed an unlawful act, such as falsifying a deed or collaborating with a developer to harm the buyer. In this case, the PPAT can be subject to criminal sanctions in accordance with the provisions of the Criminal Code.

Thus, the legal responsibility of a Notary/PPAT is not limited to merely the administrative preparation of deeds. Furthermore, the Notary/PPAT has a preventive responsibility to ensure all legal aspects are met, thus protecting the buyer's rights and ensuring legal certainty.

⁷Afdal Aperta Safatullah & Mahlil Adriaman, (2025), "Urgensi Perjanjian Pengikatan Jual Beli dalam Menjamin Perlindungan Hukum bagi Penjual dan Pembeli dalam Transaksi Tanah," *IURIS NOTITIA: Jurnal Ilmu Hukum*, Vol. 3 No. 1.

⁸Civil Code Article 1365

⁹Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials.

3.2. Legal solutions that can be applied to protect the rights of buyers in the event of obstacles in the handover of land title certificates by developers.

Delays in the delivery of land title certificates in sales transactions with developers are a classic problem that continues to frequently occur in land practices in Indonesia. This problem is not caused by a single factor, but rather the result of a combination of legal, administrative, technical, and financial constraints. In many cases, the master land certificate used as collateral for bank loans is the main cause of delays, because until the loan is repaid, the certificate cannot be transferred or divided and then registered in the buyer's name. Furthermore, the process of dividing a master certificate covering a large area into smaller plots often takes a long time, requiring re-measurement, boundary determination, and approval by the National Land Agency (BPN). If discrepancies between physical and legal data are found, this process can be delayed for months or even years.

Land disputes, whether due to third-party claims, overlapping certificates, or court proceedings, are often the cause of delays. As long as the legal status of the land remains unclear, the National Land Agency (BPN) cannot issue or transfer certificates to buyers. Furthermore, administrative negligence on the part of developers exacerbates the situation, such as when legal documents such as building permits, site plan approvals, or agreements are incomplete. This negligence often arises because developers prioritize the physical construction of the project over administrative requirements. Equally important, the developer's financial situation is also often a trigger for delays, as certificate processing is costly. When the property market is sluggish or a project experiences losses, certificate processing is often delayed until the developer obtains additional funding. Furthermore, bureaucratic factors at the BPN also contribute to the long process of certificate issuance, given the limited human resources, long queues, and policy changes that affect service delivery.

From these various factors, it's clear that the delay in certificate delivery isn't solely due to developer negligence, but rather a multidimensional issue involving many aspects. However, the party most disadvantaged remains the buyer, because without a valid certificate, ownership of the land or building they purchased lacks legal proof. This creates legal uncertainty and the potential for future disputes.

In the context of legal protection, the role of the Land Deed Official (PPAT) is crucial. Referring to the Legal Protection Theory proposed by Philipus M. Hadjon, legal protection can be divided into two categories: preventive and repressive. Preventive protection is implemented before a dispute arises, with the aim of preventing losses. Repressive protection, on the other hand, is implemented after rights have been violated, through efforts to restore or resolve the dispute.

In the preventive phase, Land Deed Officials (PPAT) play a strategic role as officials who ensure that legal requirements are met before a deed is drawn up. PPATs must apply the principle of prudence, including examining the original certificate, proof of tax payments, and the land status to ensure there are no encumbrances, disputes, or encumbrances. Furthermore, the PPJB, drawn up in the form of an authentic deed before a notary, also serves as an important protection instrument.¹⁰ A PPJB not only provides legal certainty for the parties but can also include protective clauses, such as a deadline for certificate submission, fines for delays, or the buyer's right to cancel the agreement. These clauses strengthen the buyer's bargaining position, minimizing the risk of loss from the outset.

The PPAT's preventive role is also reflected in its capacity as a legal educator. PPATs are obligated to explain to the parties the risks of delays, potential administrative obstacles at the National Land Agency (BPN), and legal action that can be taken if the developer fails to fulfill its obligations. This legal education is crucial for buyers to fully understand the consequences of the transaction and ensure their decisions are based on adequate legal awareness.¹¹

If preventive measures are ineffective, repressive mechanisms become the instruments used. In situations where the certificate is not delivered according to the agreement, the buyer can file a lawsuit for breach of contract under Article 1243 of the Civil Code to claim compensation, both material and immaterial. Furthermore, if the delay is caused by the negligence of the Land Deed Official (PPAT), for example, continuing to draw up a deed of sale despite knowing there are legal obstacles, the PPAT can be held accountable under Article 1365 of the Civil Code concerning unlawful acts. Repressive mechanisms are not only carried out through litigation in court, but can also be pursued non-litigation through mediation, where the PPAT has the potential to act as a facilitator or expert witness who provides information regarding the legal procedures that should be followed.

In addition to preventive and repressive protection, supervision also plays a crucial role in ensuring compliance by developers and Land Deed Officials (PPAT). Internal supervision is carried out by professional organizations such as the Association of Land Deed Officials (IPPAT), through the enforcement of codes of ethics, professional sanction mechanisms, and internal audits. Meanwhile, external supervision is carried out by the National Land Agency (BPN) through file inspections, deed audits, and cross-agency coordination to prevent practices that are detrimental to buyers.¹² Digitization of land services and data transparency are

¹⁰Katrine Novia & Pieter Everhardus Latumeten, (2023), "Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah dalam Pendaftaran Hak Tanggungan," *Binamulia Hukum*, Vol. 12 No. 1.

¹¹Arsiendy Aulia, (2022), "Prinsip Kehati-hatian PPAT dalam Proses Pengikatan Jual Beli Tanah sebagai Perwujudan Kepastian Hukum," *Recital Review*, Vol. 4 No. 1.

¹²Miftahul Huda & Ani Suhaini, (2024), "Otoritas Majelis Pembinaan dan Pengawasan Daerah terhadap Pelanggaran Etika yang Dilakukan oleh Pejabat yang Bertugas dalam Pembuatan Akta Tanah," *Jurnal Ilmu Hukum Kyadiren*, Vol. 5 No. 2.

also important tools that can strengthen oversight and prevent unauthorized delays.

From this description, it can be concluded that delays in the delivery of land title certificates are a complex issue, but ultimately, buyers remain in the most vulnerable position. Therefore, the role of Land Deed Officials (PPAT) as the vanguard of legal protection is essential, through preventive measures, repressive measures, and multi-layered oversight. Only in this way can the principle of legal certainty be realized, and buyers' rights as consumers optimally protected.

4. Conclusion

Based on the research results, it can be concluded that delays in the handover of land title certificates by developers remain a common problem in land practices in Indonesia. This problem is not only caused by developer negligence, but is also influenced by various factors, such as the status of the certificate being pledged at the bank, the lengthy process of splitting the master certificate, land disputes, administrative negligence, developer financial constraints, and bureaucratic obstacles at the National Land Agency (BPN). These delays cause losses for buyers, both material and immaterial, because their ownership rights have not received legal certainty. This has implications for disrupting the principle of legal certainty, one of the main pillars of the Indonesian agrarian legal system. In this context, the Land Deed Official (PPAT) plays a crucial role. PPATs are not only responsible for administrative matters but can also be held liable under civil and criminal law if proven negligent or in violation of the law. Furthermore, PPATs play a role in providing legal protection for buyers, both through preventive measures such as applying the principle of prudence and drafting an authentic Sales and Purchase Agreement (PPJB), and through repressive measures such as providing expert testimony in court. Thus, PPATs are at the forefront in ensuring that buyers' rights are protected and the principle of legal certainty is maintained.

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