

PPAT LIABILITY FOR FALSE INFORMATION IN MAKING LAND SALE AND PURCHASE DEED

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Abstract

In order to establish legal certainty regarding a legal act in the field of land and for land administration purposes, a public official with authority under the applicable laws and regulations is required to handle deeds related to land. The public official authorized to handle land matters in accordance with the laws and regulations is called the Land Deed Official (PPAT). This research will examine the role of PPAT in the creation of land sale deeds and explore how PPAT is held accountable for negligence in land sale deeds based on false information. The research methodology employed in this study is normative research. The findings of this research indicate that PPAT has the duty and authority to create land sale deeds, and the consequences of PPAT's negligence in creating land sale deeds based on false information include the right of affected parties to file claims for compensation against PPAT in the form of reimbursement of costs, compensation, and interest. PPAT is fully responsible for this matter.

Keywords: PPAT; Land Sale Deed; Fake

1. INTRODUCTION

Indonesia's population is increasing day by day so that the need for land as a place to live continues to increase. Land is not only used as a place to live and used for cultivation, but currently the use of land as a rental business, land as well. used for bank collateral purposes, and buying and selling.¹ Land has become a basic need that affects the interests of life of the community at large, and is the main capital in the form of natural resources for development. At this time land was the target of investment, causing an increase in land prices. These factors often lead to conflicts, disputes, and matters in land

Furthermore, the function of land has a very vital role for each person or legal entity as a guarantee of legal certainty. "In order to ensure legal protection and legal certainty for holders of compulsory land rights, there is a codified, complete and clear land law tool that regulates land registration."

In order to create legal certainty regarding a legal act in the land sector and for the implementation of land administration, a general official is needed in accordance with the laws and regulations authorized to handle deeds regarding land. The general officer who is authorized to handle land in accordance with laws and regulations is the Land Deed Making Officer (PPAT).

The above understanding is the authority of PPAT in addition to other authorities given related to these provisions is the authority to make authentic deeds regarding all deeds, agreements and provisions required by laws and regulations and / or desired by those interested to be stated in authentic deeds, guarantee the certainty of the date of making deeds, store deeds, copies and quotations of deeds, all of that as long as the making of the deeds is not also affirmed or exempted to other officials established by law

Article 1868 of the Civil Code only explains what is called an authentic deed, but does not explain who is meant by "General Official", nor does it explain where the limits of its authority are and what form according to the law in question, so that lawmakers 1 still have to make laws and regulations to regulate these matters, so that it can be said that the Regulation on Land Deed Making Officials (PPAT) is a regulation implementation of article 1868 of the Civil Code, it is the Notary Public who is meant by the General Officer.

Land Deed Making Officer (PPAT) in carrying out his duties and positions must adhere to the code of ethics of Land Deed Making Officer (PPAT) Number 112 / KEP-4.1 / IV / 2017, because without it the dignity and dignity of professionalism will be lost and no longer get the trust of the community. Land Deed Making Officials (PPAT) are also required to have high moral values, because with high morals, PPAT will not abuse the authority vested in them, so that Land Deed Making Officials (PPAT) will be able to maintain their dignity as a general official who provides services in accordance with applicable rules and does not damage the image of the Land Deed Making Officer (PPAT) itself

In addition, PPAT has been regulated in the Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to the Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials (hereinafter referred to as PP No. 24/2016 jo PP No.37/1998). Article 1 paragraph (1) of PP No.24/2016 jo PP No.37/1998 states that PPAT is a general official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or property rights to flats.

Since the enactment of Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as Law No. 5/1960), the transfer of land rights is based on the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2021 concerning the Third Amendment to the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as Regulation of ATR KBPN No.16/2021). In Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration juncto

Regulation ATR KBPN No.16/2021 (hereinafter referred to as PP No.24/1997 jo Regulation ATR KBPN No.16/2021), states that the transfer of land rights and property rights to apartment units through buying and selling, exchanging, grants, income in companies (inbreng) and other legal acts of transfer of rights, except for the transfer of rights through auction, it can only be registered if proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations

However, in practice, many dietmakn if there is a deed of Land Deed Making Officer (PPAT). Disputed by parties or other third parties, it is also often the Land Deed Making Officer (PPAT) is withdrawn as a party who participates in committing or assisting in committing a criminal act or legal act that violates civil provisions, namely making or giving false information into the deed of the Land Deed Making Officer (PPAT) and committing unlawful acts.

This often happens because the nature of the community is found that there are many parties who provide data and information that is not in accordance with reality to the Land Deed Making Officer (PPAT) in making a deed so that it can cause legal consequences for the Land Deed Making Officer (PPAT) concerned, even though the duty of a Land Deed Making Officer (PPAT) is to pour data and information provided by the parties without investigating further the correctness of the data. As we all know, the Land Deed Making Officer (PPAT) does not have the authority to investigate or seek material truth from the data and information provided by the parties (face). This has an impact on the deed he makes to be legally defective or null and void. On the other hand, the task of PPAT is only limited to ensuring the correctness of formal data. The PPAT only records what is stated by the facer and is not obliged to investigate the material truth shown by the face. This is based on the Jurisprudence of the Supreme Court of September 5, 1973 Number 702 K / SIP / 1973.

For the purpose of this research, it can be divided into 2, namely the first to find out the role of PPAT in making land sale and purchase deeds and the second to know and understand the form of PPAT liability for negligence in land sale and purchase deeds based on false information. Then this research is included in the type of normative legal research where this research describes, explains, analyzes the responsibility of PPAT for false information in making land sale and purchase deeds.

The approach in this study is intended to approach the legal issues studied, to then be studied from various legal aspects that have to do with the legal issues studied. The research approach used is a statutory approach and a conceptual approach.

2. RESULTS AND DISCUSSION

2.1 The Role of PPAT in Making Land Sale and Purchase Deed

To determine the identity of the individual who was later referred to as the Acting Land Deed Maker (PPAT), the government issued Agrarian Minister Regulation No. 10 of 1961 concerning the Appointment of Officials Referred to in Article 19 of Government Regulation No. 10 of 1961 concerning Land Registration and Agrarian Minister Regulation

No. 11 of 1961 concerning the Form of Deed (hereinafter abbreviated as PMA No. 11 of 1961).

The change in the term from "Acting Land Deed Maker" to "Land Deed Making Official" (PPAT) occurred with the issuance of the Regulation of the Head of the National Land Agency Number 1 of 1989 relating to the Instruction of the Minister of Home Affairs No. 16 of 1983 concerning Provisions for the Form and Use of Position Stamps, official seals, official letterheads, and agency signboards within Regional and Regional Government Organizations as well as the letter of the Minister of Agriculture and Agrarian Affairs dated May 8, 1984 No. Sekra 9/2/12 on Instructions for Acting Land Deed Makers to place office boards in front of their workplaces and regarding the form of acting offices. Since this regulation was enacted, the term "Acting Land Deed Maker" has changed to "Land Deed Making Officer."

In Article 3 of the Regulation of the Minister of Agrarian Affairs No. 10 of 1961 concerning the Appointment of Officials referred to in Article 19 of Government Regulation No. 10 of 1961 concerning Land Registration, it is explained that those who can be appointed as acting (and then PPAT) include:

1. Notary.
2. Employees and former employees within the Agrarian Department who are considered to have sufficient knowledge of land registration regulations and other regulations relating to the transfer of land rights.
3. Civil service officials who have performed their duties as an officer.
4. Other people who have passed the examination held by the Minister of Agrarian Affairs.

Based on Article 1 of Government Regulation No. 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer (PPAT), it is explained that:

1. Land Deed Making Officer (PPAT) is a general official who has the authority to make authentic deeds relating to certain legal deeds regarding land rights or Ownership Rights over Flats.
2. Temporary PPAT is a government official appointed because of his position to carry out the duties of PPAT by making a PPAT deed in areas that do not yet have sufficient PPAT.
3. Special PPAT is an official of the National Land Agency appointed because of his position to carry out the duties of the PPAT by making certain special PPAT deeds in the context of implementing certain government programs or tasks.

Based on Article 5 paragraph (3) of Government Regulation No. 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials (PPAT), the Minister can appoint certain officials as Temporary PPAT or Special PPAT to serve the community in

making PPAT deeds in areas that do not yet have sufficient PPAT or to serve certain groups of people in the preparation of certain PPAT deeds.

According to Article 1 of Law No. 30 of 2004 concerning the position of notary, a Notary Public is a public official who has the authority to make authentic deeds and other authorities as stipulated in the Law.

Overall, the Land Deed Making Officer (PPAT) is a general official who has authority in the land sector, and the deeds made by the PPAT are considered authentic deeds. That is, if there is a problem related to the deed made by the PPAT, the court does not need to check the correctness of the contents of the deed, the date it was signed, or the validity of the signatures of the parties involved, as long as there is no evidence of forgery, fraud, or other violations that can cause the deed to be declared void or must be canceled.

2.2 PPAT Liability for Negligence in Land Sale and Purchase Deed Based on False Information

In carrying out their duties, a PPAT receives supervision from the Minister through the Head of the BPN Regional Office or the Head of the Land Office. They are also assisted by the PPAT Board of Trustees and Supervisors, who conduct supervision with the aim of preventing violations and supervise that the PPAT continues to comply with regulations. If the PPAT violates the rules, it will be examined by the PPAT Board of Trustees and Supervisors.

Violations committed by PPAT, as described in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 2 of 2018, include various things such as violations in carrying out duties, not fulfilling obligations stipulated in the law, violating prohibitions in the law, or violating the Code of Ethics. For example, if the PPAT makes a deed with false information by the parties involved, this is considered a serious violation in carrying out the duties of the PPAT.

In the event of violations like this, PPAT may be subject to administrative sanctions in accordance with Article 13 of Regulation of ATR/BPN No. 2/2018. The sanction may take the form of a written reprimand, suspension, honorable dismissal, or dishonorable dismissal.

A Notary and PPAT in Palu City, referred to as Notary "N," also argued that making a land sale and purchase deed with false information by PPAT could be considered a serious violation in carrying out the duties of PPAT. This is in accordance with the provisions contained in Appendix II of Regulation of ATR/BPN No. 2/2018. The annex explains that PPAT that provides incorrect information in the deed resulting in land conflicts can be dishonorably dismissed.

The results of an interview with another PPAT, namely PPAT "D," also stated that negligence committed by PPAT can result in a decrease in status or other penalties.

To be considered a violation of the law, it is not necessary to meet all four criteria simultaneously. On the contrary, meeting one of these criteria alternatively is sufficient to

be considered an unlawful act. Unlawful acts committed by a PPAT may be subject to civil sanctions, referring to Article 1365 of the Civil Code (KUHPer), which states that every act that violates the law and causes harm to others requires the person responsible for the act to compensate for the losses incurred.

If the deed of land deed used as the basis for transferring land rights has a legal defect and is declared void by the court, this may cause difficulties for the client or the party entitled to the deed in exercising its rights. The injured party can file a claim for compensation to PPAT, including in the form of reimbursement of costs, damages, and interest. This claim must be based on a court decision that has the force of law (inkracht).

In an interview with PPAT "S," a Notary and PPAT in Palu City, the author asked whether a PPAT could be held criminally liable if he made a land sale and purchase deed based on false information. The answer to this question is that Government Regulation (PP) No. 24/2016 jo PP No. 37/1998 and laws and regulations related to the PPAT profession do not regulate criminal acts related to the PPAT position. Therefore, there is no provision in PP No. 24/2016 jo PP No. 37/1998 that can be used as a basis for prosecuting PPAT criminal liability in this regard.

Furthermore, the author asks the second question, namely what are the elements that can cause a PPAT to be criminally responsible. To be criminally accountable, a PPAT must meet the following elements:

- a. Have the ability to be responsible.
- b. There is an element of intentionality or negligence.
- c. There is no justification reason.

Therefore, the answer to the author's initial question, namely whether a PPAT can be held criminally liable if he makes a land sale and purchase deed based on false information, is as follows: A PPAT who is proven to intentionally or knowingly cooperate with the client to make a land sale and purchase deed based on false information will be personally responsible for the implementation of his duties and position in every deed making. This means that the PPAT can be criminally prosecuted based on the Criminal Code (KUHP). However, there are limitations that need to be considered in the punishment of PPAT, namely:

1. There is a legal action taken by a PPAT intentionally, consciously, and with a planned intention, that the deed made by the PPAT will be used as a basis for committing criminal acts.
2. Legal actions taken by PPAT in making deeds are not in accordance with the procedures for making deeds regulated in laws and regulations.
3. The legal action is not in accordance with the assessment carried out by the PPAT Board of Trustees and Supervisors. The provision of criminal sanctions against PPAT can be carried out if the PPAT violates the prohibitions stipulated in laws and

regulations, the PPAT code of ethics, and violates the provisions in the Criminal Code. These three elements must be met.

However, a PPAT may not be held criminally liable if the preparation of a land sale and purchase deed based on false information is caused by fraud or mistakes committed by the client. This is because PPAT only records what is stated by the client to be stated in the deed and is not obliged to investigate the material truth provided by the client. This principle is based on the Jurisprudence of the Supreme Court on September 5, 1973 Number 702 K / SIP / 1973. In the event that false information is submitted by the client, personal responsibility for the information lies with the client. In other words, a PPAT is only responsible if the fraud comes from himself or there is intentional or malicious intent coming from the PPAT.

3. CONCLUSION

Land Deed Making Officer (PPAT) is a general official who has authority in the land sector, and deeds made by PPAT are considered authentic deeds. That is, if there is a problem related to the deed made by the PPAT, the court does not need to check the correctness of the contents of the deed, the date it was signed, or the validity of the signatures of the parties involved, as long as there is no evidence of forgery, fraud, or other violations that can cause the deed to be declared void or must be canceled.

PPAT cannot be held criminally liable if the preparation of a land sale and purchase deed based on false information is caused by fraud or mistakes committed by the client. This is because PPAT only records what is stated by the client to be stated in the deed and is not obliged to investigate the material truth provided by the client. This principle is based on the Jurisprudence of the Supreme Court on September 5, 1973 Number 702 K / SIP / 1973. In the event that false information is submitted by the client, personal responsibility for the information lies with the client. In other words, a PPAT is only responsible if the fraud comes from himself or there is intentional or malicious intent coming from the PPAT.

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