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# Normative Review of Legal Liability for Notaries or Officials of Land Deed Makers in Falsification of Land Rights Transfer (Case Study of Land Transfer Rights Belonging to the Actress Nirina Zubir Family)

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### **Abstract**

*The legal fact of the Nirina Zubir case is that there was a transfer of land rights belonging to her mother by her household assistant. The process of transferring rights which was allegedly carried out by elements of the land mafia made researchers interested in studying more deeply. The involvement of the land deed maker/notary in this case is because the perpetrator changes the name of the deed and sells the deed by buying and selling with a sale and purchase deed made before the PPAT. The existence of a Notary/Official Making Land Deed is very important in order to create legal certainty over land rights owned. In carrying out the functions and positions of a notary, it is regulated in the notary code of ethics in accordance with applicable laws. This research uses normative research methods. The data used are primary data and secondary data. Notary/Land Deed Making Official who makes an authentic deed on land with a process that is not in accordance with applicable regulations and has the potential to harm other parties may be subject to sanctions in the form of administrative sanctions, civil sanctions and criminal sanctions. The imposition of sanctions on the Notary/PPAT is expected so that in carrying out his work the Notary/PPAT must be more careful and thorough so as not to harm the parties with an interest in the deed.*

**Keywords:** *Notaries; Deeds of Sale and Purchase; PPAT; Sanctions.*

## **A. Introduction**

One of the exciting cases in the late 2021 period is the case of takeover of nirina Zubir's mother's assets. Nirina Zubir's case stems from losing a land certificate, which must then be taken care of by involving a domestic helper (ART). However, the loss of land certificates was engineered by the domestic helper (referring the maid) which later changed the ownership name of land certificates.<sup>1</sup> The beginning of this case can happen when Nirina Zubir's mother, Named Cut Indria Marzuki, lost her land certificate and then asked her maid to help take care of it. But the maid abused and changed the name of ownership of six land and building assets previously in the name of Cut Indria Marzuki with a total value of Rp 17 billion.

Furthermore, the entire assets, two land certificates belonging to Cut Indria Marzuki, have been sold to third parties, and the domestic helper has mortgaged four-building assets to the Bank. The police determined five suspects from this case, three of whom were notaries / PPAT (Land Deed Making Officers) suspected of falsifying letters in transferring land rights, and a husband and wife who were former ART from Nirina Zubir's family.

<sup>1</sup> CNN Indonesia, "Kronologi Lengkap Kasus Mafia Tanah Nirina Zubir."

In this case, there are two perpetrators, namely household assistants and notaries / PPAT. Perpetrators of land dispute cases already have a plan and cooperate with relevant officials because they need people who have authority in carrying out their actions. Therefore, they cannot act alone. The transfer of rights can occur due to buying and selling, grants, inheritances, and court rulings. Then all those processes must go through a notary. In this case, the notary / PPAT certainly has an essential role in violating the operational standards of procedures in managing the transfer of rights.

Notary / PPAT acts as a general officer who has the authority to make land accession and needs to have skills and expertise in his field so that the deed he makes does not cause problems in the future. Regarding land rights, the community needs legal certainty, namely the right to manage the land owned and the owner who owns the land.<sup>2</sup> In this case, the role of notaries / PPAT is in the spotlight, because in the event of falsification of documents or false information of landowner data and signatures of land deed making officials (PPAT) to obtain legality from the necessary data. The perpetrators are subject to Article 263 of the Criminal Code, Article 266, Article 327 and Article 3, Article 4, Article 5 of Law Number 8 of 2010. The case of transferring land asset rights experienced by Nirina Zubir became a fascinating study material. Not only because the celebrity occurred, but the legal facts presented in this case became a deep contemplation. Those who live in big cities and certainly have legal awareness of the assets they have can become victims; of course, the potential for the same problem will be even more significant if it occurs to ordinary citizens who live far from the city and the legal understanding of the assets they have is still low.

From the description conveyed, the problem studied in this study by the author is How can what legal liability sanctions be given to notaries / PPAT if proven to be consensual in the case of falsification of land rights transfer?

## **B. Literature review**

Primary legal material is a legal material that is authoritative, meaning it has authority.<sup>3</sup> Laws and regulations related to the problems presented, namely: a. Criminal Code; b. Constitution of the Republic of Indonesia of 1945; c. Law No. 5 of 1960 concerning The Basic Rules of Agrarian Principles; d. Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning Notary Positions; e. Government Regulation No. 24 of 1997 concerning Land Registration; f. Regulation of the Head of the National Land Agency Nomor 1 of 2006 concerning Provisions for the Implementation of Government Regulation No. 37 of 1998 concerning Regulation of the Position of Land Deed Maker; g. Decree of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 112 of 2017 concerning the Code of Ethics of the Association of Land Deed Making Officials.

Secondary legal materials in the form of all publications on the law that are not official documents that include textbooks, legal dictionaries, legal journals, and comments on court decisions related to Notaries / PPAT if proven to be consensual in the case of falsification of

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<sup>2</sup> Sry Wahyuni; Baso Madiong; Zulkifli Makkawaru, "Analisis Wewenang Notaris Dalam Pembuatan Akta Perjanjian Pengikatan Jual Beli Hak Milik Atas Tanah Di Kota Makassar," *Jurnal Paradigma Administrasi Negara*, 2021.

<sup>3</sup> Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Perdana Media Group, 2010).

land rights transfer. The purpose of this study is to analyze the responsibility of the Notary / PPAT for the act of falsifying land rights documents made and the legal impact of how it will occur on the validity.

### C. Research Methods

In this study, the author used normative legal research methodology. This research method is legal research that uses its analysis with applicable and relevant laws and regulations where the focus of research on legal problems or problems.<sup>4</sup> With this method the legal case being studied boils down to a more objective result.

### D. Results and Discussion

#### 1. Notary Professional Ethics / Official Certifier of Title Deeds

The plaintiff of Article 1 number 1 of Law No. 2 of 2014 concerning Amendments to Law No. 30 of 2004 concerning The Position of Notary (from now on referred to as UUJN) states that: "Notaries are general officials authorized to do deeds and have other authorities as intended in this Law or based on other laws." As a general official, this means that the notary has the right to act in truth. The notary can only exercise his office in all the territories designated for him and only within the jurisdiction of which he is authorized.

Notaries in carrying out their functions and positions are obliged to apply the precautionary principle with the aim of protecting the interests of the people who use their services. In applying the principle of prudence it is expected that the notary in working remains in terms of truth. So that people strongly believe in using the services of notaries. Often in legal problems caused because the notary lacks caution in making a deed against the data of the parties to make a deed so as to cause a crime in the form of false documents or information made by a notary.<sup>5</sup>

Before carrying out his position, the notary must swear an oath / promise according to his religion in front of the Minister stipulated in article 4 paragraph (2) of Law No. 30 of 2004 concerning the Position of Notary. PPAT was inaugurated by taking the oath of office as stipulated in Article 34 paragraph (1) of The Land Acquisition No. 1 of 2006 concerning Provisions for the Implementation of Government Regulation No. 37 of 1998 concerning The Regulation of the Land Deed Making Department. With the regulation of the notary profession code of ethics, it is expected that the notary will keep the contents of the deed and information obtained from the implementation of his position. Making deeds is a very confidential thing because it contains things that are very personal. To maintain such confidentiality, there needs to be an attitude owned by the notary with the intention and honest to always maintain the deed.

The government has guaranteed legal certainty regarding land registration stipulated in PP No. 24 of 1997 concerning Land Registration by making it clear that PPAT is a general leader who has the authority to make certain land deeds. PPAT has duties and authorities listed in Pp No. 37 of 1997, among others: In Article 37 paragraph (1) regarding the transfer of rights, "Transfer of land rights and property rights to units of flats through buying and selling, exchanging, grants, income in companies and other legal acts of transfer of rights, unless the

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<sup>4</sup> Henry Lbn Toruan Donald, "Legalitas Keberadaan Majelis Pengawas Notaris Dan Majelis Kehormatan Notaris," *Jurnal Penelitian Hukum De Jure*, 2020.

<sup>5</sup> Fikri Ariesta Rahman, "Penerapan Prinsip Kehati-Hatian Notaris Dalam Mengenal Para Penghadap," *Lex Renaissance* 3, no. 2 (2018): 15.

transfer of rights through auction can only be registered if proven by a deed made by the authorized PPAT according to the provisions of the laws and regulations that are authorized according to the provisions of the laws and regulations that are authorized according to the provisions of the laws and regulations. happened." Furthermore, the making of the contract can be seen in Article 38 paragraph (1), "The making of the deed as intended in Article 37 paragraph (1) is attended by the parties who perform the legal acts concerned and witnessed by at least 2 (two) witnesses who are eligible to act as witnesses in the act of law."

The Civil Code (KUH Sipil) regulates civil legal liability. Accountability is born out of law as an act against the law as well as from treaties, as well as from civil code in other countries with continental European legal systems. Thus the model of legal responsibility born as a result of unlawful acts according to the Civil Code is as follows: "liability with the element of error (intentionality and negligence) as stipulated in article 1365 of the Civil Code, liability with the element of error, especially the element of negligence, as stipulated in article 1365 of the Civil Code and absolute responsibility (without error) in a very limited sense found in article 1367 of the Civil Code."

In the case of the land mafia, it is not uncommon for BPN employees to play a role in manufacturing fake land certificates. The Ministry of Agrarian Affairs and Spatial Planning / National Land Agency (ATR / BPN), by Presidential Regulation No. 17 of 2015, has the duty to assist the president in running the government by conducting government affairs in the field of agrarian / land and spatial planning. Decree of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency No. 112 of 2017 concerning the Code of Ethics of the Association of Land Deed Making Officials. Chapter 3, Article 3 explained the obligations, prohibitions, and things excluded in the PPAT code of ethics. A PPAT must remind his partner if he has done/found errors in the deed mentioned and immediately apparent to the client because this can be a tool for other parties to sign a deed made by someone else as a deed made by the PPAT concerned.

## **2. Violation of the Code of Professional Ethics in the Case of Nirina**

In the case of Nirina Zubir, it can be identified that PPAT individuals who are part of the land mafia have violated the professional code of ethics for a PPAT. As a notary, such incidents can harm one's good name, and such negligence should not happen by checking the existing letters, especially for deceased owners. The heir must know and approve the certificate if you are going to make a name change. In this case, the Notary / PPAT performed an unprofessional act when on duty to assist the perpetrator in the case of falsification of land deeds owned by Nirina Zubir's family.

Once Nirina tells the chronology of herself could be a victim of the land mafia case. The seeds of the problem arise when Nirina's biological mother hires a personal assistant or a maid in her home that she trusts very much. Great trust is pinned in the perpetrator so that Nirina's mother never puts concerns about overall authentic certificates known to be stored. It consists of 6 land certificates of assets belonging to the Nirina family with details of 3 assets in the name of Nirina's mother, two assets belonging to Nirina's sister, and one asset owned by Nirina herself.<sup>6</sup>

The perpetrator carried out the crime in 2017, where the perpetrator said the six certificates were missing, unknown to his whereabouts. Of course, Nirina's mother felt worried and confused about it. And the perpetrator offers a trusted notary service that can take care of

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<sup>6</sup> CNN Indonesia, "Kronologi Lengkap Kasus Mafia Tanah Nirina Zubir."

the loss of the 6 certificates that disappeared. The mother accepted the offer and entrusted the perpetrator to take care of all the needs needed to reissue the lost certificate.

But according to Nirina, both her mother, brother and he never signed a single letter related to the need to manage the 6 (six) lost land certificates. When the case has entered the legal realm for legal processing, it is known that all data belonging to Nirina and her mother and brother, such as ID cards and other documents, have been falsified by the perpetrator for the process of transferring the 6 (six) sertifikat to be on behalf of the perpetrator and the perpetrator's husband. Even the signatures in the related files, according to Nirina's statement after being tested for matches at the Police lab, also resulted in all signatures that had been forged. So that all files, including the Deed of Sale and Purchase (AJB), which is also made and issued by the relevant PPAT, are also suspected of being falsified or only in the form of figures.

Looking at the case of Nirina Zubir, where her land certificate was engineered or embezzled by her domestic assistant is against the law. The act rests on article 28, letter H of the Constitution of the Republic of Indonesia of 1945. The amendment explained, "everyone has the right to have private property rights, and such property rights must not be arbitrarily taken over by anyone." 1960 concerning the Basic Rules of Agrarian Principles (UUPA) stated in Article 19 states that to create certainty of land law by the government, land registration is held. According to the provisions regulated by Government Regulations in all areas of the Republic of Indonesia." It is clearly expressed that being certified for the right of assets to our land is essential because the certificate is a valid proof and authentic deed against the ownership of an object, namely land protected by the Law.<sup>7</sup>

The legal protection of land rights certificate holders needs to be considered because it is inseparable from the crime of falsifying documents; it is a criminal act. Referring to article 263, paragraph (1) and paragraph (2) of the Criminal Code, which states, "whoever makes a fake letter or falsifies a letter that may cause a right, engagement or intended as evidence of something to use or tell others to use the letter as if the contents are true and not and not fake, threatened if the use can cause harm, for falsification of letters, with a maximum imprisonment of six years." Furthermore, paragraph (2) is explained, "threatened with the same criminal, anyone who deliberately uses a fake letter or forged as if true, if the use of the letter can cause harm." Falsifying signatures also includes the understanding of counterfeiting the letter of this article."

Based on the theory, liability is a consequence of a necessity for a person due to his moral and ethical actions that give birth to legal obligations to him as a consequence of his actions. The act of a Notary who makes a deed of power of attorney for the deed of sale and purchase under the hand is a personal responsibility for the Notary / PPAT itself. Notaries /PPAT are responsible for sanctions such as administrative sanctions, civil sanctions, and even criminal sanctions. By the laws and regulations subject to sanctions.

### **3. Criminal Liability**

In the case above, it can be concluded that the Notary / PPAT knows that the right used to make a Deed of Sale and purchase agreement based on unauthorized documents cannot be used as a basis for creating an authentic deed. However, the Notary / PPAT still makes an authentic deed based on the deed under the hand stipulated in article 55 paragraph (1) number 1, Jo. Article 264 paragraph (1) of the Criminal Code reads that any Notary / Land Official who

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<sup>7</sup> Ni Putu Mirayanthi Utami, "A Peran Notaris Dalam Mendukung Investasi Di Era Masyarakat Ekonomi ASEAN (MEA)," *Acta Comitatus* (Universitas Udayana, 2020).

commits, orders, and participates in making a false letter made with an authentic deed is threatened with imprisonment for a maximum of eight years.<sup>8</sup>

The transfer of land rights is regulated in articles 1541 to 1546, where there is a transition due to exchange is at the time when 2 (two) or who both have a piece of land rights want to exchange the rights to the land they own by then both facing PPAT to make a deed of exchange, therefore in the exchange agreement there is a transition on the exchange agreement between property rights over land and land rights.<sup>9</sup>

Taking into account the provisions of Article 266 paragraph (1) of the Criminal Code, "as for the elements, namely: a. Whosoever; b Ordering to put false statements into an authentic deed; c. to use or have others use the deed as if the information were by the truth." Then pay attention to the sound of Article 55 paragraph (1) to the 1st Criminal Code, stipulating that as perpetrators of criminal acts, namely: a. those who do, b. those who tell to do, and c. those who participate in doing deeds, it can be concluded that the elements of the law, namely:

1.whoever ; 2. Ordering to put false statements into an authentic deed; 3. With the intention of using or telling others to use the deed as if the information is in accordance with the truth; 4. The culprit: a. Those who do; b. Those who tell them to do; c. Those who do.

In article 266, paragraph 1 of the Criminal Code mentions the word "who becomes seek (perpetrator), that is, who tells of entering false information", and the word "telling" is an essential part (bestanddel) contained in the Article. The deed maker, in this case, namely a Notary, is not a subject (perpetrator) in Article 266 paragraph (1) of the Criminal Code. However, the Parties who make authentic certificates are the subjects (perpetrators) because they are the ones who as instructed to enter false statements. The Notary official cannot be declared as the perpetrator (told to do) according to Article 266 paragraph (1) of the Criminal Code, but he is only "the one who is told to do". Then, based on Article 266 paragraph (1) of the Criminal Code, the action of the subject (perpetrator) is to send a false statement into an authentic certificate, so that the word "tell" in Article 266 paragraph (1) of the Criminal Code is interpreted that the will is only in the complainant (perpetrator / subject), while in those who are told there is no will to enter false statements and so on.

#### **4. The penalty**

The penalty for Notaries / PPAT, according to Wibawa (2019), namely for parties who are harmed because of actions committed by Notaries / PPAT, can be reported to PPAT MPD / MPP, which will then be called to the Notary / PPAT to be asked for clarification on the authentic deed made by him submitted and recognized the truth. Sanctions against Land Notaries /PPAT will be determined by the MPD after the trial and decide the actions of the Notary / PPAT that are appropriate or not to the code of ethics and other laws and regulations.<sup>10</sup>

According to Rasyid (2021), against Notaries / PPAT who commit acts in violation of UUJN and PP Land Deed Making Officers can be subject to sanctions stipulated in the code of ethics such as reprimands, warnings, dismissals, temporary dismissals, and so on. From the above

<sup>8</sup> Kadek Cahya Susila Wibawa, "Menakar Kewenangan Dan Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Dalam Perspektif Bestuurs Bevoegdheid," *Jurnal CREPIDO*, 2019.

<sup>9</sup> Fransiscus Xavierius Arsin, *Buku ajar Teknik Pembuatan Akta PPAT, Program magister Kenotariatan Universitas Indonesia*, 2021, hlm. 73.

<sup>10</sup> Wibawa, "Menakar Kewenangan Dan Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Dalam Perspektif Bestuurs Bevoegdheid."

explanation and about article 85 UUJN Jo. Article 6 paragraph (1) of the Notary Code of Ethics Jo. Article 6 paragraph (1) of the Code of Ethics of the Land Deed Making Officer, then the proper administrative sanction as a Notary / PPAT who has made an authentic deed under the hand is the termination of membership disrespectfully.<sup>11</sup>

The unlawful act that causes damages is regulated in Article 1365 of the Civil Code, which specifies: "Any unlawful act that brings harm to another person, obliges the person who for wrongly issued the loss, to replace the loss. If you pay attention to the provisions of Article 1365 of the Civil Code above, there are elements as follows: 1. Unlawful acts; 2. There must be an error; 3. There must be losses caused; 4. There is a causal relationship between deeds and losses.<sup>12</sup>

In article 84, UUJN (Notary Department Law) reads that notaries who commit acts of violation to make authentic deeds become the power of evidence as deeds under the hand or become null and void acts, then against the parties who are harmed by notary acts can demand reimbursement, compensation, and interest to notaries who have committed acts that harm the parties. Meanwhile, in article 10 PP PPAT Jo. Article 28 paragraph (1) and (2) Number 1 of 2006, notaries who have made authentic deeds carried out under the hand include having committed serious violations that are included in the classification where the Official Land Deed makes authentic deeds on the ground to parties who are not authorized to perform legal acts according to the deed he made. The cancellation of the Law on The Power of Sale and Purchase also applies to the Deed of Sale and Purchase carried out where the deed of sale and purchase becomes invalid or null and void, where later notary / PPAT can also be a defendant or participate defendant in the civil court process with the defendant in the form of payment and compensation in the case of inattention and thoroughness that results in harm to the parties after the court ruling.

## E. Conclusion

A notary is an official who helps the government to make authentic deeds and has the authority as intended in the applicable Law. Notaries must be professional because as an interpretation of the government to serve the community in making deeds. Notaries, as general officials carrying out the profession, need to get protection and guarantees to achieve legal certainty. But the position of notary should not be misused to commit crimes that harm the community and damage the good name of the government.

If the notary/PPAT act has been proven at the court hearing that his actions have harmed the parties by making an authentic deed with the deed underhand can be convicted: Administrative Sanctions: The notary / PPAT is subject to disrespectful sanctions for violating the notary and PPAT code of ethics. Civil Sanctions: Of severe violations committed by notaries / Land Officials will be penalized for disrespecting the position and replaced with costs, compensation, and interest to the aggrieved party as a form of responsibility. Criminal Sanctions: Notaries / PPAT who are proven to have committed violations of the law that meet

<sup>11</sup> Mim Nasrah Rasyid; Muhammad Jufri Dewa; and Muhammad Sabaruddin Sinapoy, "Analisis Hukum Penjatuhan Sanksi Administratif Terhadap Notaris Oleh Majelis Pengawas Notaris," *Halu Oleo Legal Research*, 2021.

<sup>12</sup> *Kitab Undang-Undang Hukum Perdata*, n.d.

the elements of prohibited acts which in this case are falsification of authentic deeds, the Notary / PPAT is threatened with imprisonment for a maximum of eight years according to article 55 paragraph (1) Number 1 jo. Article 264 paragraph (1) of the Criminal Code.

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