

# Liability of The Land Deed Making Officer (PPAT) as a General Officer for The Cancellation of The Sale and Purchase Deed Due to Unlawful Acts

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## ABSTRACT

The Land Deed Maker Official (PPAT) is a public official who is authorized to make authentic deeds regarding certain legal actions in terms of the transfer of land rights, one of which is the deed of sale and purchase. In relation to its authority, PPAT is required to be responsible for the deed made and must uphold the dignity of the profession. In carrying out his profession, there are still violations committed by PPAT such as making a sale and purchase deed that is illegal (onrechtmatige daad), which results in the deed being null and void by a court decision. The research method used is normative legal research. The results of this research discussion are PPAT's responsibility for unlawful acts in carrying out their profession, namely the imposition of administrative sanctions. As for the deed which is declared null and void by a court decision, it is deemed to have never existed. That is, from the beginning the law considered that there had never been a sale and purchase.

## ABSTRAK

Pejabat Pembuat Akta Tanah (PPAT) merupakan pejabat umum yang berwenang membuat akta-akta autentik mengenai perbuatan hukum tertentu dalam hal peralihan hak atas tanah, salah satunya yaitu akta jual beli. Sehubungan dengan kewenangannya, PPAT dituntut untuk bertanggung jawab terhadap akta yang dibuatnya dan harus menjunjung tinggi harkat dan martabat profesi. Dalam menjalankan profesinya, masih terjadi pelanggaran yang dilakukan PPAT seperti pembuatan akta jual beli dilakukan secara melawan hukum (onrechtmatige daad), yang mengakibatkan akta tersebut batal demi hukum oleh adanya suatu putusan pengadilan. Metode penelitian yang digunakan yaitu penelitian hukum normatif. Hasil pembahasan penelitian ini adalah tanggung jawab PPAT terhadap perbuatan melawan hukum dalam melaksanakan profesinya yaitu dengan pengenaan sanksi administratif. Sedangkan terhadap akta yang dinyatakan batal demi hukum oleh suatu putusan pengadilan, maka dianggap tidak pernah ada. Artinya, sejak semula hukum menganggap tidak pernah terjadi jual beli.

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## I. INTRODUCTION

Land Deed Making Officers (hereinafter referred to as PPAT) have legal ability in terms of issuing various authentic deeds, especially related to land rights and/ or house units that play an important role in the life of the nation and state. (Salim HS, 2019) This is as also contained in the provisions of Article 1 of Government Regulation Number 37 of 1998 Juncto Government Regulation Number 24

of 2016 concerning The Regulation of the Position of Land Deed Making Officers which states that "Land Deed Making Officers, hereinafter referred to as PPAT are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or Property Rights to Units of Flats".

Public officials who have the authority to issue an authentic deed, as long as it is not intended for other public officials for it, are referred to as PPAT. An authentic deed which is relevant in the formulation of Article 1868 of the Civil Code (hereinafter referred to as the Civil Code), which states that "An authentic deed is a deed that in the form prescribed by law, is made by or before the public servants in power for it at the place where the deed was made." (Kitab Undang-Undang Hukum Perdata, n.d.) To ensure the validity of the documents provided, all certification documents issued by PPAT must follow formal requirements.

The social and legal identity of society is intertwined in everyday life. A common form of legal relations is the purchase and sale of rights to land or units of flats. The sale of land on a clear common law system and paid in cash is a legal act of transfer of rights. Both parties (buyer and seller), The deed of sale and purchase signed by two witnesses and the official who issued the title deed shows that the transfer of title (sale) is lawful. A "cash" transaction occurs when the seller transfers ownership of the right to land or units of flats to the buyer and the buyer makes payment for the purchase. No matter how much money the buyer gives to the seller, there are no restrictions. In the common law system, the transfer of rights occurs when the buyer pays in full for the property, so the legal idea of submission as the execution of the legal obligations of the seller is not commonly recognized.

In addition, in addition to filling out the deed form, reading, and signing it, PPAT must be able to verify that the deed to be issued is in compliance with all current regulations as well. Private or public legal transactions benefit greatly from authentic deeds by PPAT because they are deeds whose validity is recognized by the state and of substantial significance. The most powerful and complete proof comes from the use of concrete deeds, which protect and guarantee all parties involved. There is a solid foundation or guidelines where in terms of recording the transfer of rights and the encumbrance of related rights given by using the PPAT deed to prove the implementation of certain legal acts related to land and recording changes in data generated by the act.

PPAT must have expertise in basic rights to ensure that their deeds do not result in any difficulties for any party later due to inaccuracies in their deeds. This is why they are appointed as official PPAT who have the authority to draw up deeds. In cases that have occurred, PPAT can result in the denial of one's rights or the imposition of responsibility on a person. The deed is authentic, in other words, the deed is read in front of the parties and witnesses so that the agreement to be signed can be freely decided by the parties. In the case of land registration, PPAT is obliged to carry out duties and authorities in accordance with laws and codes of ethics, including the right in terms of recording legal acts. Because of the official position of the PPAT and the valid value of the deeds it produces, this code of ethics is important because it gives the status of trust from the law and the public to the PPAT. Because it has a code of ethics, PPAT can do anything to protect morals, decency, and honor in accordance with their position.

Irawan Soerodjo said that to meet the formal standards for a valid deed, there must be 3 (three) elements following: (Irawan Soerodjo, 2003) To be valid, a document must conform to the form established by law, issued by or in front of a public official who has the authority to which the document is located and follow the established legal format. A deed is said to be authentic if it meets

all three conditions of authenticity of the deed as a whole. The non-fulfillment of one of the elements alone causes the authenticity of the deed to be lost, the function of the deed changes its evidentiary power as an underhand deed. Authentic deeds are documents issued by or in front of public officials, not because they follow the law.(Tobing, 1996).

An authentic deed explains what is recorded in a deed must be trusted by anyone including a judge, it is binding evidence. The judge must find the contents of a deed that is correct and reliable before it can be used as evidence. No additional evidence is needed to support a concrete deed. In other words, a real contract differs from a private contract in that it has the strength of physical evidence of form and substance. In order to guarantee legal certainty, a tangible instrument must be validly and unequivocally established by the parties producing it (*Rechtszekerheid*).(Dedy Pranomo, 2015).

One of the authentic deeds that are the authority of PPAT is the Deed of Sale and Purchase. The PPAT has the authority to legalize the sale and purchase of land through its legal product called the Deed of Sale and Purchase (hereinafter abbreviated as AJB). The authority of the PPAT makes the AJB a form of validity of buying and selling land. The AJB made by PPAT is an authentic deed.(Pugung, 2021) The deed of sale and purchase of PPAT regulates the rights and obligations of both parties, the seller submits to the rights to land and/or house units and gets a buyer who is obliged to pay and is entitled to both land and/or ownership of the house unit.(Salim HS, 2016).

The responsibility of the PPAT as a general official to approve the sale and purchase of municipal land. In its capacity as a state-mandated deed maker, the PPAT must follow a set of guidelines. PPAT must realize and fulfill all current laws and regulations and at all times in connection with their position as a general official who gets authority from the government. As contained in Article 3 letter f of the Code of Ethics of the Association of Land Deed-Making Officials, that "In carrying out their positions, PPAT is obliged to work responsibly, independently, honestly and impartially".(Kode Etik Ikatan Ikatan Pejabat Pembuat Akta Tanah Nomor 112/KEP4.1/IV/2017, n.d.).

When doing his job, a PPAT sometimes gets a problem which is related to an authentic deed that has been made by himself, as well as about the content of the deed that is sometimes disputed or there is doubt over its correctness, is allegedly contrary to law and justice, and is considered a loss by his client. However, there is still a PPAT in terms of carrying out his work, there are still those who are not professional. The impact of this unprofessional act is that a PPAT usually commits an act that causes losses from the parties and also the PPAT itself. The reason for this action is because a PPAT is just an ordinary human being who sometimes makes errors in the implementation of authentic deed making. Therefore, the deed can be declared null and void by the relevant court decision and there is a legal defect in the making of the deed as in making the authentic deed is done unlawfully (*onrechtmatige daad*).

One of the cases regarding unlawful acts (*onrechtmatige daad*) which are carried out by the PPAT in making a sale and purchase deed can be seen in the Review Decision Number 645 PK / Pdt / 2020. In the decision, the panel of judges ruled null and void and had no legal force against the sale and purchase deed that had been made by the PPAT and stated that the action taken by the PPAT concerned was an unlawful act (*onrechtmatige daad*). In this case, the making of the sale and purchase deed is carried out in a blank state, where the seller of the land who is still a joint heir has not reached an agreement in determining the location or location of the boundaries of the land division of inheritance between the heirs.

Based on this, we know that PPAT in making authentic deeds has been bound to the form and

content of PPAT deeds has been determined by the Government in the applicable laws and regulations. As Article 18 of the Regulation of the Head of the National Land Agency Number 4 of 1999 states that "The PPAT Deed is made by filling in the blanks of the deeds that are available in full with instructions for filling them". The deed is made using the correct event, status, and date, as well as documents known to be true for the PPAT that were in effect at the time the form was filled out. As a result, a sale and purchase deed with an empty state must be made that is not in accordance with the applicable rules and may cause disputes for the parties. In connection with the authority of PPAT, it can be held accountable for its actions/work if a deed is issued.

PPAT is tasked with ensuring that the public has the knowledge to get clear legal guidance. As an official, the PPAT is responsible to the deed and the profession as a whole. PPAT is responsible for the implementation of duties and obligations mandated by the authority granted to him by law. The mistakes made by PPAT in carrying out their responsibilities are to blame. Based on the description above, the problem is formulated as follows:

1. What is the responsibility of PPAT as a general official for the cancellation of the sale and purchase deed due to unlawful acts (*onrechtmatige daad*)?
2. What are the legal consequences of canceling the sale and purchase deed made by PPAT as a result of unlawful acts (*onrechtmatigedaad*)?

## II. RESEARCH METHODS

To achieve the desired results and goals, the research method is a method or way by which the target *audience* can understand related to this research. The method of collecting data for specific purposes and applications is known as the research method. (Sugiyono, 2011) Normative juridical research is the method used. This type of legal research is referred to as normative research, in which the law is viewed as a law or as a rule or norm that accurately represents the measure of human behavior being discussed. (Amiruddin dan Zainal Asikin, 2012) In this work, we use the legal approach of norms, that is, legal research involving legal norms. (Waluyo, 1997) As a result of this investigation, secondary sources of information in the form of legislation and legal theory, as well as a scientifically strong legal foundation, were examined. (Soerjono Soekanto; Sri Mamudji, 2009)

Researchers use a data collection method known as document research to collect specific data. Literature research is a method of collecting legal information from textual sources by analyzing its contents. (Soerjono Soekanto; Sri Mamudji, 2009) Therefore, the data analysis method used here is carried out qualitatively; the data is organized and then qualitatively examined to gain an understanding of the existing subject matter.

## III. RESULTS AND DISCUSSION

1. PPAT's Responsibilities as Public Officials Against Cancellation of Sale and Purchase Deeds Due to Unlawful Acts (*Onrechtmatige daad*)

One of the state organs established by law to enforce or enforce authentic deeds is PPAT as a public official. Officials who have the authority to make notarial deeds are known as public officials who are authorized to ratify certain legal documents, especially those concerning land rights or ownership of residential units. For the validity of the PPAT deed, in the process of making there must be 2 (two) witnesses where this is based on the existing laws and regulations where there is fulfillment of the requirements to be witnesses in legal actions.

What documents exist and what steps have been completed by the parties involved will be announced when the deed is signed. The contract of sale and purchase of land rights or property rights must be read out to the parties involved (buyers and sellers) and the PPAT must explain the contents and objectives of the contract implementation as well as the registration procedures to be carried out.

## 2. Unlawful Acts (*onrechtmatige daad*) PPAT

In this case, there is a transfer of property rights between the buyer and the seller, as evidenced by the implementation of the sale and purchase agreement through the PPAT, which shows the occurrence of the legal action. Documents supporting the preparation of the PPAT deed are obliged to be relevant to the current laws and regulations, and based on actual events, situations, and facts. In addition, the deed of sale and purchase made by the PPAT must be in the form regulated in the Regulation of the Head of the Land Agency of the Republic of Indonesia Number 8 of 2012. As for the form of the sale and purchase deed that has been stipulated in the laws and regulations, the sale and purchase deed cannot be signed in advance as long as it is still in the form of a blank blank blank. (Peraturan Kepala Badan Pertanahan Republik Indonesia Nomor 8 Tahun 2012 Entang Perubahan Atas Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Nomor 3 Tahun 1997 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tenta, n.d.)

The act of making a sale and purchase deed is carried out with a blank blank state, which is included in the act of being unlawful. The act has caused a loss for one of the parties, especially the buyer. If a mistake is made by the PPAT in making an authentic deed, then the PPAT as the maker may be subject to sanctions. The signing of a deed in a blank blank state, is not legally valid, because the blank in the blank state cannot be read or explained its contents to the parties. The PPAT has the obligation to read and explain the contents of the deed so that it can be known clearly and understood by the parties, so that the parties can make a determination related to whether to agree with the contents of the deed or not. The reading of this deed must be done by the PPAT concerned in order to fulfill the authentic nature of a deed.

## 3. PPAT Administrative Responsibility for Unlawful Acts in Carrying Out Their Positions

PPAT can be held accountable for both intentional and unintentional mistakes in terms of the implementation of a legal act. When enforcing violations of PPAT obligations, administrative responsibilities often take the form of sanctions. Based on the provisions of Article 13 of the Minister of ATR / BPN Regulation Number 2 of 2018 concerning the Development and Supervision of Land Deed Making Officials, the imposition of administrative sanctions on PPAT who commit violations, among others, as follows: "Written reprimand; temporary dismissal; respectful dismissal; or dismissal with disrespect". (Regulation of the Minister of ATR/BPN Number 2 of 2018 concerning the Guidance and Supervision of Land Deed Maker Officials, n.d.)

Furthermore, PPAT who have committed unlawful acts (*onrechtmatige daad*), can also be held accountable by the Association of Land Deed Making Officers (IPPAT) which is an association or organization for PPAT. The imposition of sanctions for members of the Association of Land-Making Officials (IPPAT) who have violated the code of ethics, namely: "Reprimand; warnings; schorsing (temporary dismissal) from membership of the IPPAT association; onzetting (dismissal) from IPPAT membership; disrespectful dismissal from ippat association membership".

Every PPAT who carries out the authority and duties of his position as a general official is required to join an organizational association for PPAT called the Association of Land Deed Making Officers, which is an obligation to comply with the PPAT Code of Ethics. As a result, the PPAT Supervisor, which consists of representatives of the government and the PPAT profession, prosecuted the PPAT as a member of IPPAT who was accused of violating the code of professional ethics. To supervise and direct PPAT, the Minister appoints a PPAT Supervisory Board. Directors and supervisors from the central, regional, and regional levels form the Board of Directors and the PPAT Supervisory Committee. The proposal is submitted to the Minister of ATR/Head of BPN based on the results of the examination. PPAT is sanctioned after receiving a recommendation from the minister.

#### 4. Legal Consequences of Cancellation of Sale and Purchase Deeds made by PPAT as a Result of Unlawful Acts (*Onrechtmatige daad*)

As buying and selling is a civil law act born from an agreement, it must meet the requirements as contained in the provisions of Article 1320 of the Civil Code, to state that the validity or not of an agreement requires four conditions, namely: "There is an agreement from the self-binding party (*de toestemming*); Ability to make an attachment (*de bekwaamheid*); A certain thing (*een bepaald onderwerp*); For the halal (*eene geoorloofde oorzaak*)".

If the terms of the agreement cannot be met, then there are 2 (two) possibilities for the agreement that has been carried out, namely: The contract may be terminated (cancelled) if the first and second conditions are not met; Without meeting the second and third objective conditions, this agreement is null and void, meaning that it will be void without further action from any party.

As the Supreme Court's Judicial Review Decision No. 645 PK/Pdt/2020, this may result in an agreement being void or non-binding on the parties because an authentic deed does not meet the objective requirements of the agreement. It is also impossible to establish the legality of an authentic deed with the perpetual benefit of *res judicata* because the PPAT violates state law, which requires all sales deeds to be made on blank blanks.

This results in a deed that it is not binding on the parties contained therein, as the provisions of Article 1335 of the Civil Code state that "An agreement without cause, or made for any false or prohibited cause, has no force". It is prohibited if it is for people who do not have permission to sell or buy land. As a result, the law assumes there has never been a transaction at all. (Nasrudin, 2022)

## IV. CONCLUSION

1. The Land Deed Making Officer, as a general officer, should be responsible for what has been done, whether it causes harm to other parties or not. In connection with the unlawful act (*onrechtmatige daad*) committed by the PPAT so as to result in the sale and purchase deed he made was declared null and void by a court decision, the PPAT concerned can be held accountable. The responsibility of PPAT can be carried out by imposing sanctions as contained in the Regulation of the Position of Land Deed Making Officers and can be subject to organizational sanctions from the Association of Land Deed Making Officers (IPPAT).
2. The legal consequence of the PPAT sale and purchase deed made unlawfully (*onrechhmatige daad*) is that the PPAT deed is considered to have never existed. That is, from the beginning, the law assumed that there had never been a trade.

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