

# Responsibility of Land Deed Officials for False Information on The Selling Buying Deed (Case Study Court Decision No Number 66/PDT.G/2016/PN TSM)

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## ABSTRACT

There is a lawsuit starts from the debt of the seller to the buyer of IDR 720,000,000 (seven hundred and twenty million Rupiah). From the proceeds of the debt, the seller guarantees the land to the bank under the name of the buyer, with the sole purpose of returning the land when in is paid off. Over time the land was not returned and the seller filed a lawsuit against the buyer. The official who made the land deed who made the Sale and Purchase Deed also become a Co-Defendant to be held accountable for the Sale and Purchase Deed Number 401/2012 dated August 8, 2012. To answer this problem, the author uses the normative juridical method. From the results of this study, it shows that the official making the land deed in making the Sale and Purchase Deed has done it legally and is not responsible for the false information. the official making the land deed is only responsible for formal and material data and applies the precautionary principle.

## ABSTRAK

Adanya gugatan yang dimulai dari telah dilakukan hutang penjual kepada pembeli sebesar Rp 720.000.000,- (tujuh ratus dua puluh juta Rupiah). Dari hasil hutang tersebut, penjual menjaminkan tanahnya kepada bank dengan atas nama pembeli dengan semata-mata akan dikembalikan tanah tersebut ketika sudah lunas. Seiring berjalan waktu tanah tersebut tidaklah dikembalikan dan penjual mengajukan gugatannya kepada pembeli. PPAT yang membuat Akta Jual Beli tersebut pun menjadi Turut Tergugat untuk dimintakan pertanggung jawaban atas Akta Jual Beli Nomor 401/2012 tanggal 08 Agustus 2012. Untuk menjawab permasalahan ini, penulis menggunakan metode yuridis normatif. Dari hasil penelitian ini, menunjukkan bahwa PPAT dalam pembuatan Akta Jual Beli telah melakukan secara sah dan tidak bertanggung jawab atas keterangan palsu tersebut. PPAT hanya bertanggung jawab data secara formil dan materil serta menerapkan prinsip kehati-hatian

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## I. INTRODUCTION

Every legal profession is basically a noble, respectable profession. The legal profession is honorable because it applies the principles of honesty, authenticity, responsibility, independence, morals, and the principle of moral courage. (Abdulkadir Muhammad, 2006) Legal professions such as advocates, notaries, Land Deed Making Officers (hereinafter referred to as "PPAT"), judges, prosecutors are professions that prioritize these values.

PPAT and Notary are two of the professions that get authority from the government to make authentic deeds. When the deed has been made by a Notary and/or PPAT, the deed will be a deed that is accounted for by the Notary and/or PPAT for his life. PPAT in its appointment, cannot be done carelessly, and must meet certain requirements. The requirements for the appointment of PPAT as stated in Article 6 of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Making Officers (hereinafter referred to as "PP PJPAT") namely: Indonesian nationality; Be at least 30 (thirty) years old; Good behavior stated by a certificate made by the local Police Agency; Has never been sentenced to imprisonment for committing a crime based on a Court ruling that has acquired permanent legal force; Physically and spiritually healthy; Pass a notarial specialist education program or PPAT special education program organized by a higher education institution; and Pass the exam organized by the Office of the Minister of State of Agrarian Affairs/National Land Agency.

It is this need for documents in society that underlies every birth of business relations in civil law.(Sjaifurrachman; Habib Adjie, 2011) With these various conditions, PPAT is created to be a qualified person and able to make deeds for the benefit of the community. However, with these requirements, it does not reduce the rights and obligations of PPAT as a legal subject. PPAT is essentially a legal subject. The subject of the Law has rights and obligations. In the event that the PPAT commits a violation, the PPAT will not escape legal action.

Everyone in the exchange sometimes makes an act of buying and selling. A sale and purchase is an agreement by which the one party (in this case the Seller) undertakes to deliver an item that is his property or under his control with the second party (in this case the Buyer) who undertakes to pay the price for the goods at the agreed price.(R. Subekti, 2014) In the Civil Code (hereinafter referred to as "**KUHPer**") provides a definition related to buying and selling, namely an agreement with which one party binds himself to hand over an item, and the other party pays the promised price.(Kitab Undang-Undang Hukum Perdata, n.d.) In the world of PPAT, the act of buying and selling must meet the principles of light and cash.(Maria S. W. Sumarjono, 2001) The meaning is that the act was done blatantly or not done in secret, while cash means that two legal acts were carried out simultaneously, namely: The Seller transfers juridical control of its land to the buyer for eternity; and The buyer pays the price (in part or in full) to the seller.(Ghazahra Vesti Rana dan Tiurma Mangihut Pitta Allagan, 2021)

If it has not fulfilled the principles of light and cash, then it is not considered valid to buy and sell. The Law in Indonesia related to 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 the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as "Permen ATR Number 16 of 2021"). In The Minister of Atr Regulation Number 16 of 2021, explaining that the transfer of land rights and property rights to flats can be through several things such as (1) buying and selling, (2) exchange, (3) grants, (4) income in the company (inbreng), and (5) other legal actions, except transfer of rights through auctions.

In making their deeds, PPAT must pay attention to matters in the applicable regulations and the applicable code of ethics so that they cannot fall into errors and legal cases. In the case of judgment number 66/Pdt.G/2016/PN Tsm, there was an alleged false statement given by the appellant to the PPAT which caused the suit which in its content asked to provide a null and void statement of sale and purchase deed number 401/2012 dated August 08, 2012 due to the false information.

On the basis of the above problems, it can be formulated as follows: How is the validity of the sale and purchase deed that is sued due to false information in Decision Number and How is the notary's responsibility for the deed which turns out to contain false information by the interceptor?

## II. RESEARCH METHOD

The research method used in this study is normative juridical. In this method, conducting literature law research where library materials are basic data in research science which is classified as secondary data. (Soerjono Soekanto; Sri Mamudji, 2009) In using this method for research, you will get answers to the problems contained in this study, such as notary responsibilities in Government Regulations on Land Deed Making Officials, Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Makers, Code of Ethics for the Association of Land Deed Making Officials, and all the regulations that exist related to this study.

## III. RESULT AND DISCUSSION

### 1. Position Case

Initially, the Plaintiff filed a lawsuit against the Defendant, in which case the Notary and the PPAT became the Co-Defendant. The suit was made because the Plaintiff was the owner of a piece of land with Title Certificate No. 1969/Tawang Sari Village covering an area of 360 M2 (three hundred and sixty square meters) in the name of the Plaintiff (hereinafter referred to as "**SHM**"). Plaintiffs who have debts with Defendants I and II amounting to Rp 720,000,000,- (seven hundred and twenty million Rupiah). On the basis of the debt, the Plaintiff pledged the land and buildings to Bank X. Defendant I who was one of the customers of Bank X also offered to reverse the name of shm to the name of Defendant I for the sake of performance and was collateralized by the Defendants Certificate with a Credit Ceiling of Rp 850,000,000,- (eight hundred and fifty million Rupiah) and it was approved by the Plaintiff. The Credit Ceiling was given Rp 720,000,000 (seven hundred and twenty million Rupiah) and the remaining money was returned to the Plaintiff. However, in reality, the Plaintiff was asked to pay installments of Rp 14,000,000 (fourteen million Rupiah) per month for a year to the Defendants. In order to be able to make payment of the debt, the Defendants circumvented through binding the sale and purchase before Defendant I by deed No. 27 dated October 24, 2012, the essence of which in this Deed is that the Plaintiff after making repayment of the debt to Bank X, the Plaintiff was able to own the land along with the building and its Certificate from the hands of the Defendants. After payment was made by the Plaintiff, and there was an agreement, a Deed of Sale and Purchase No. 401/2012 dated August 8, 2012, which contained a Sale and Purchase between the Plaintiff and the Defendant. Then the Defendants intended to vacate the land on the pretext that it had been legally purchased by Defendant I. This is what led to the lawsuit, which was related to the unlawful acts committed by the Defendants. PPAT is requested to also be responsible for the Deed of Sale and Purchase No. 401/2012 which has been made by PPAT as Defendant I.

### 2. Requirements for Making a PPAT Deed

PPAT in making a deed regarding land rights, must comply with Article 1868 of the Civil Code, which contains the following:

“An authentic deed is a deed made in the form prescribed by the Act, made by or in the presence of public servants in power for the place where the deed was made by him.”

The PPAT deed is an authentic deed as proof that legal actions have been carried out. (Kuwuryan, 2015)

The requirements for making deeds of Land Deed Making Officers (hereinafter referred to as "PPAT") are contained in Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Making Officers (**hereinafter referred to as "PP PJPAT"**) and Perkaban 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Makers (hereinafter referred to as "**Perkaban Number 1 of 2006**"). It is explained that in making the PPAT Deed, it must meet the composition as in Perkaban 8 of 2012 concerning Amendments 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 in making deeds such as:

a. Cover of PPAT Deed

In the cover of this deed contains the physical deed of ppatt which consists of the cover of the deed and the formulit of the deed.

b. PPAT Deed Header

In this PPAT deed header, it contains (1) the Place of Position of the PPAT, (2) the Name of the PPAT, (3) the PPAT Work Area, (4) the Appointment Decree, the number, and date of the PPAT Appointment Decree, and (5) the Office Address and telephone number of the PPAT.

c. Beginning of PPAT Deed

In the beginning of the PPAT deed, it contains (1) the title of the deed or the head of the deed, (2) the deed number, (3) The day, date, month, and year of the deed were made, (4) The full name of the PPAT and the authority of the PPAT in making the deed in this case was written the decree for the appointment of the PPAT.

d. Deed Body In the deed body,

it contains (1) the compensatory of the interceptors whose contents are the position of the interceptor in acting and/or the authority of the interceptor; (2) The contents of the deed which in this case contains from the wishes of the appellants. In the content of the deed are described the main things that are part of the deed.

e. End and Closing of the Deed In the end and closing of the deed, it contains outlining the identity of the witnesses, the reading and signing of the deed, the sheet of the deed to be signed, and the signatures of the appellants, the approvers (if required), the witnesses and the PPAT.(Hatta Isnaini Wahyu Utomo, 2020)

### **3. Validity of Deed of Sale and Purchase Number 401 of 2022 dated August 8, 2022**

Article 1338 of the Penal Code provides an explanation that any agreement that has been made by the parties, then by law the agreement is valid. Moreover, the Penal Code provides an affirmation in Article 1320 providing valid conditions, namely: (1) the agreement of those who bind themselves; (2) the ability to make attachments; (3) a particular thing; and (4) a lawful cause. If you look at the Deed of Sale and Purchase that has been carried out by the Plaintiff and Defendant, which in this case from the beginning the parties have agreed consciously to carry out the Deed of Sale and Purchase, then it is not appropriate to say that the Deed of Sale and Purchase No. 401/2012 dated August 08, 2012 is invalid.

Buying and selling essentially has legal consequences, namely: The sale and purchase of land cannot be cancelled, because the deed and transfer of rights have been completed; and If the newly paid price is partially paid it will not have any effect on the transfer of its rights, because it has qualified for cash, and the remaining price that has not been paid by the buyer is owed by the buyer.(Desvia Winanda, 2020)

By doing these 2 (two) legal consequences, the principle of "cash" applied in buying and selling has been fulfilled, even though the price has not been paid off. Moreover, when the principle of light and cash has been fulfilled, the PPAT must immediately submit the deed made to the Land Office to be able to immediately carry out the registration process for the transfer of rights, especially due to buying and selling. The function of the PPAT deed made is: As evidence that it is true that the legal acts in question have been committed; As one of the absolute conditions for the transfer of rights process.(Noor, 2016)

To carry out the transfer of rights, it is necessary to register the transfer of rights. In carrying out its registration, PPAT submits the deed that has been made and the supporting documents needed for registration of land rights transfer to the land office no later than 7 (seven) working days from the signing of the deed.(Noor, 2016) The documents that must be submitted to the land office are as berikut: Application for registration of the transfer of rights signed by the beneficiary (in this case it

is the buyer) or his attorney; A written Power of Attorney from the beneficiary (in this case it is the buyer) if the one applying for registration of the transfer of rights is not the beneficiary of the thing (in this case it is the buyer); Deed of Sale and Purchase made by PPAT which in this case covers the working area and the location of the land; Proof of identity of the parties (both buyer and seller); Certificate of title to the original land that is the object of sale and purchase; Permission to transfer rights (if required); Proof of repayment of payment of duties on acquisition of rights to land and buildings (BPHTB); and Proof of repayment of income tax payments (PPH), if there is a tax that is still owed. (Santoso Urip, 2019)

In addition, there are conditions that need to be met by the applicant before the sale and purchase deed can be processed by the PPAT, such as formal requirements and material requirements.

a. Formal Terms

The formal requirement is a formality requirement that must be met in the buying and selling transaction. In Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, the condition that must be met to be said to be valid is the deed itself. Only PPAT is authorized to make a deed based on the applicable laws and regulations.

b. Material Terms

The material condition is a condition of the subject or person who is entitled to make a sale and purchase (in this case it is between the seller and the buyer), and the object being traded so that in the future it cannot be disputed. (Rondonuwu, 2017) To find out whether the subject is entitled or not, it can be seen from his authority in acting. In this case, in carrying out his actions, the seller if he makes a sale and purchase of land, then his ownership must be shown his authority. The one who has the right to sell the right to a piece of land is the person listed by name in the Certificate. (Saranaung, 2017)

If the owner of the land is only alone, then there is no need to ask for approval from any party to sell the land. However, if the owner of the land is a common property, then all parties concerned must be present. Against the object of the land, it should not be in legal disputes. Likewise, the buyer must have the right to buy the land. The right in question is that the buyer must be an Indonesian citizen as stated in Article 21 of Law Number 5 of 1960 concerning Agrarian Principles, and/or legal entities that have been determined by the government that can have Property Rights along with their conditions.

After the formal and material conditions have been met, the seller and buyer can be declared valid to sell the land. In addition, considering that the Deed of Sale and Purchase has also been explained clearly and clearly that it has been explained from the beginning in Article 1 of the Deed of Sale and Purchase in Perkaban 8 of 2012 concerning Amendments 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, namely:

"From today the object of sale and purchase described in this deed has become the property of the Second Party and therefore all profits obtained from, and any loss/burden on the object of sale and purchase shall be the burden/right of the Second Party".

In this article, it has been strengthened that every sale and purchase deed when it has been ratified before the PPAT, then by law the deed becomes valid. Moreover, in the deed it was stated and emphasized in Article 6 of the Deed of Sale and Purchase Number 401/2012 dated August 8, 2012, that:

*"The First Party and the Second Party shall not enter into any claim or re-action regarding what it bought for sale."*

It is strengthened by Article 7 of the Deed of Sale and Purchase Number 401/2012 dated August 8, 2012 containing:

*"The Parties hereby declare also that what is set forth in this deed is true."*

By providing these statements, the transfer of rights and obligations to the land in this case the land of sale and purchase is valid for the sake of law, even if there is a statement that turns out to be incorrect described by the appellants.

#### **4. PPAT's responsibility related to authentic deeds containing false information**

**PPAT** is a general official who is authorized to make authentic deeds regarding legal acts regarding land rights or Property Rights to Flats Units. (Rudi Indrajaya; et.al, 2020) PPAT in its duties, according to Article 2 paragraph (1) PP PJPAT, also has the duty to carry out some land registration activities by making deeds as evidence of certain legal actions regarding land rights or Property Rights to Flats Units which will be used as the basis for registration of changes in registration data caused by the legal act. Acts of false information given on authentic deeds can not only be invalidated legally, but also criminally infringe.

PPAT in its function is to make authentic deeds related to land rights. (Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 2016 Tentang Perubahan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pembuat Akta Tanah, n.d.) Making the authentic deed, PPAT also carried out some of the land registration activities by making a deed as proof of the legal action. (Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 2016 Tentang Perubahan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pembuat Akta Tanah, n.d.) The legal act in question consists of: Selling; Exchange Exchange; Grant; Income into the Company (inbrenng); Division of Common Rights; Granting of Building Use Rights / Right of Use on Property Rights land; Grant of Dependent Rights; Grant of Power of Attorney to Impose Dependent Rights. (Peraturan Pemerintah Republik Indonesia Nomor 24 Tahun 2016 Tentang Perubahan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pembuat Akta Tanah, n.d.; Perkaban 1 Tahun 2006 Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pembuat Akta Tanah, n.d.)

In this case, the PPAT made an authentic deed for the legal action taken between the Plaintiff and the Defendants, namely Purchase and Sale. PPAT in carrying out legal actions, must pay attention to the basic principles of PPAT, namely:

##### 1. Precautionary Principle

Basically, the principle of prudence has a meaning, namely that in carrying out an action, there must be an action full of careful attitude. (Usman, 2003) *Black'Law Dictionary* also defines that:

*"carefulnees, precaution, attentiveness, and good judgement, as applied to action or of care reconduct. That degree of care required by the exigencies or circumstances under which it is to be exercised. This term, in the language of the law, is commonly associated with care and diligence as constricted with negligence."* (Black, 1968)

In this case, the implementation of the precautionary principle is stated as stated in Article **22 OF PP PJPAT**, namely, the PPAT Deed must be read/explained its contents to the parties attended by at least 2 (two) witnesses before being signed immediately by the parties, witnesses, and the PPAT who made the deed. This is also strengthened in Article 53 paragraph (2) of Perkaban 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Makers (hereinafter referred to as "**Perkaban 1 Tahun 2006**") namely providing an explanation that when the PPAT does a deed, it must be witnessed by 2 (two) witnesses who are in giving a testimony about: Identity and limiting capacity; The presence of the parties or their proxies; The correctness of the physical data and juridical data of the object of legal action in the case of the object before it was registered; The existence of

documents shown in the making of the deed; The legal action has been carried out by the parties concerned.

## 2. Principles of Legal Certainty

In applying this principle, PPAT conducts land registration to provide legal certainty and protection to land rights holders, flats units, and other registered matters to prove themselves as the rights holder easily. (Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah, n.d.)

PPAT, in doing authentic deeds, must also pay attention to the Code of Ethics of Land Deed Making Officers. In carrying out their position, PPAT must article 3 of the PPAT Code of Ethics clearly outline what things must be done by the PPAT to perform its obligations, namely in this case; it is to uphold the basis of the State and applicable laws and act by the meaning of the oath of office and the code of ethics (Kode Etik Ikatan Pejabat Pembuat Akta Tanah, Lampiran Keputusan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 112/KEP-4.1/IV/2017, n.d.). In addition, in carrying out their position, they must also be full of responsibility, independent, honest, and impartial. (Kode Etik Ikatan Pejabat Pembuat Akta Tanah, Lampiran Keputusan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 112/KEP-4.1/IV/2017, n.d.)

PPAT does not run by the PPAT code of ethics, then the PPAT can be subject to sanctions in the form of: Rebuke; Commemoration; Schering (*temporary dismissal*) from membership of the IPPAT association; Onsetting (*dismissal*) from membership of the IPPAT association; and Disrespectful dismissal from ippat association membership. (Kode Etik Ikatan Pejabat Pembuat Akta Tanah, Lampiran Keputusan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 112/KEP-4.1/IV/2017, n.d.)

The PPAT, in carrying out its duties, must include principles. The principle that PPAT, namely, in this case, must apply is the Precautionary Principle. PPAT, who do not know about the agreement entered into between the Plaintiff and Defendants, cannot legally be included in the matter. PPAT's task is to do a deed that has taken the right action, namely making a Deed of Sale and Purchase No. 402/2012. PPAT has been carried out by the code of ethics and applicable principles; in this case, PPAT has applied the principle of prudence. The PPAT only records what the complainant describes in the deed, and the PPAT does not have the right to investigate the material truths that the interceptor has described. When the interceptor has outlined things before the PPAT, the existence of false information is the responsibility of the interceptor unless the PPAT cooperates with the interceptor to make the false information. If there is such cooperation, it is purely from the wishes of the PPAT and can be said to violate the code of ethics and principles and the PP PP PPJAT. Therefore, PPAT cannot be held accountable due to the Sale and Purchase Deed.

## IV. CONCLUSION

Based on the discussion above, it can be concluded that:

1. PPAT, in making the Deed of Sale and Purchase, has done legally and appropriately by meeting the formal and material requirements in making the Deed of Sale and Purchase Number 401/2012 dated August 8, 2012. The PPAT has also been valid in the making of the Deed of Sale and Purchase Number 401/2012 dated August 8, 2012, because, at the time of signing this Deed of Sale and Purchase, it has been elaborated as in Article 1, Article 6, Article 7 of the Deed of Sale and Purchase Number 401/2012.
2. The responsibility of the PPAT in doing the deed should be based on principles, which in this case is the principle of prudence. The implementation of this precautionary principle can be seen from the PPAT, which checks the identity and capacity of the interceptor, the correctness of physical data and juridical data on the object of legal acts, the existence of documents, to the implementation of legal actions. PPAT must also pay attention to the Code of Ethics in their responsibilities. In the case of decision No. 66/Pdt.G/2016/PN Tsm, PPAT has carried out its responsibilities by taking into account these principles and the code of ethics so that, therefore,

for the false information is the personal responsibility of the interceptors and the PPAT cannot be held accountable for the information.

## V. ADVICE

Based on the above conclusions, the author can advise before committing legal acts, there are times when every interceptor when he will carry out legal acts is based on trust and a statement letter is made between the seller and the buyer not to do the act of breaking the promise.

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