



Responsibilities of Land Deed Officials In Disputes of Making Deeds of Sale and Purchase of Inherited Land

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Abstract: The purpose of this study is to find out the PPAT's responsibility in making the deed of sale and purchase of jointly owned land rights (boedel) which is in dispute and to find out the efforts of PPAT in completing the deed of sale and purchase of land which is still in the status of joint property rights (boedel). The research method used is sociological juridical, research based on a principle of law or regulation that applies to the reality that occurs in society or in practice as it is. The results of the study found that the PPAT's responsibility was in making the deed of sale and purchase of land Shared Property Rights (Boedel) Those Who Are Still Disputing will not continue in making the deed of sale and purchase when one of them still objected or is still in dispute because it is already contained in the laws and regulations but in other studies will still accept the disputed on the condition that mediation must be carried out so that the problem can be solved and PPAT's efforts in completing the deed of sale and purchase of land common property rights, namely by conducting deliberation.

Keywords: Sale and Purchase Deed; Inheritance Land; Responsibility.

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1. Introduction

Soil is an important factor in the life of humans and other creatures. In survival can not be separated from the problem of land.¹In the Big Indonesian Dictionary, it is also stated that the notion of soil is a surface of the earth or a layer in the earth that is above once.²

The definition of land can be seen in the provisions that have been regulated in Law Article 4 paragraph 1 of the Basic Agrarian Law which states that "On the basis of the right of control from the State as referred to in Article 2, it is determined that there are various types of rights over the earth's surface. , which is called land, which can be given to and owned by people, either alone or together with other people and legal entities.³

The land in this article is the surface of the earth. Where the meaning of the earth's surface as part of the land that can be dihacki by any person or legal entity. Therefore, it can be said that the rights that arise on the rights to the surface of the earth (land rights) including the buildings or objects contained therein are a legal issue. Legal issues can be said to be related to principles related to land and plants and buildings on them.

The word inheritance comes from the Arabic Al-mīrath, in Arabic it is the masdar form of the word waritha-yarithu-wirthan- mīrāthan,. Its meaning according to language is the transfer of something from one person to another. Or from one race to another.⁴

Meanwhile, in legal terminology, inheritance can be interpreted as a law that regulates the distribution of inheritance left by the heirs, knowing the parts received from the inheritance for each heir who is entitled to receive it.⁵Inheritance property which in fara'id terms is called tirkah (relic) is something left behind by the deceased, either in the form of money or other material which is justified by Islamic law to be passed on to his heirs.⁶

PPAT (Land Deed Making Officer) is one of the professions carried out by legal persons related to official documents regarding land. The general definition of PPAT is a public official who is authorized to make authentic deeds regarding certain legal actions regarding land rights or property rights of apartment units. The duties as PPAT are stipulated in PP No. 37 of 1998, PPAT is a public official appointed by the Head of BPN RI, given the authority to produce land deeds. A buyer must ensure in advance that the land to be purchased is not an object of dispute and is not in the period of

¹A Tresna Sastrawijaya, *Environmental Pollution*, PT Rineka Cipta, Jakarta, 2010, p. 77.

² Soil (Def. 1) (nd). In the Big Indonesian Dictionary (KBBI) Online. Accessed via <https://kbbi.web.id/tanah>, 14 December 2020.

³Article 4 paragraph (1) of Law no. 5 of 1960 concerning Basic Agrarian Regulations.

⁴Muhammad Ali Ash-Shabuni, *Distribution of Inheritance According to Islam*, (Jakarta: Gema Insani Press, 2011), P. 33.

⁵Ahmad Rofiq, *Islamic Law in Indonesia*, (Jakarta: PT Raja Grafindo Persada, Cet. IV, 2010), 355.

⁶Maman Abd Djalal, *Mawaris Law*, (Bandung: CV Pustaka Setia, 2011), 39

credit guarantee at the bank. The transfer of land in positive law comes from customary law, which is real and concrete (cash). With the transfer of rights as above, the land rights have been transferred to another party.⁷

PPAT has the authority to make 8 kinds of deeds as stipulated in PP No. 37 of 1998, namely the deed of sale and purchase, deed of exchange, deed of grant, deed of entry into the company (inbreng), deed of distribution of joint rights, deed of granting right to build or right to use land with right of ownership, deed of granting mortgage rights, and the deed of power of attorney imposes mortgage rights.⁸

The essence of the provisions made in this PPAT deed is the PPAT function which serves as a means of proof. Besides, it also applies legal consequences to a PPAT deed. A PPAT deed can have validity, if the deed has been made by the parties it is required to fulfill all the conditions contained in the provisions in the regulations regulated in Article 1320 of the Civil Code, such as having made an agreement between the binding parties, proficiency in an engagement, a certain thing, and a cause that is lawful.⁹

The mutually needy relationship between PPAT and the community and the state if it runs in accordance with the applicable legal corridors can create a positive relationship so that it is expected to provide order and security in the midst of society. PPAT in carrying out its duties and authorities in making the deed is indeed required to apply properly and correctly, which means that the deed made fulfills the legal will and the request of the interested parties because its position is in accordance with the rule of law and the will of the interested party in the true sense and does not invent exists on the deed he made and must explain or read out the contents of the deed according to the intentions agreed upon by both parties.

Presumably the PPAT must be more observant / thorough in carrying out its duties and authorities in paying attention in detail to the party who will sell whether the jointly owned land to be sold has been agreed upon by all parties or not. Therefore the importance of the role of PPAT as the maker of the deed of sale and purchase of land to be more thorough so that it can avoid problems in the future, in order to make it easier to register the transfer of land rights at the National Land Agency (BPN) office, so that it can be recorded in the certificate and its existence is recognized by the state on the status of jointly owned land when it is traded to the buyer.

Buying and selling is an activity that takes place and is inherent in every society in the State of Indonesia, therefore there are many rules that regulate buying and selling in Indonesia. Agreements made by the community in terms of buying and selling must be clear and have a legal basis.¹⁰ And based on the problems that the authors have

⁷Supriadi, *Agrarian Law*, Sinar Graphic, Jakarta, 2016, p. 3.

⁸Article 2 paragraph (2) of PP Number 37 of 1998 concerning the Regulation of the Position of PPAT.

⁹I Wayan Werasmana Sancaya. *Strength of Binding Nominee Agreements on Ownership of Land Rights*. Journal of Master of Law Udayana. Year 2013. p.6.

¹⁰Dolot Alhasni Bakung, "Implementation of Dispute Resolution Using Alternative Dispute Resolution Methods", *Abdimas Bongaya Journal*, Vol. 2 No. 1, p. 9.

described above, it is necessary to re-examine how the PPAT's responsibilities are in making the deed of sale and purchase of jointly owned land rights (boedel) which are still in dispute and PPAT's efforts in resolving cases of the deed of sale and purchase of land which still have the status of joint property rights. (boedel).

2. Method

This research uses the type of field research (field research), with a sociological juridical approach, namely an approach by looking at something legal reality in society. The data sources of this research are primary data and secondary data which are carried out by observation/interviews and reviewing from the literature, such as scientific books, legal journals and other research results.

3. Discussion

3.1. PPAT's Responsibility in Making the Deed of Sale and Purchase of Jointly Owned Land (Boedel) which is still in dispute.

The existence of land in Indonesia in people's lives has meaning and at the same time has a dual function, namely social assets, namely land is a means of binding social unity among the community for life and livelihood, and land as a capital asset, namely as a capital factor in development and has grown as an economic object. which is very important.¹¹

*Soil is defined as the body of the transformation of minerals and organic matter on the surface of the earth under the influence of various environmental factors. Juridical provision related to the existence of land in law number 5 of 1960 concerning Basic Regulations on Agrarian Principles (herein after referred to as UUPA). The control and arrangement by the state is directed to realize social justice for all Indonesian people. Therefore, clarity about the status of land ownership is very important to be studied further.*¹²

JHNieuwenhuisstates that the responsibility arises because of an act that violates the law onrechtmatige daad and is the cause of the loss, while the guilty person is called a schuld, then that person must be responsible for the loss.¹³

A person who carries out duties in a particular professional field must be able to be professionally responsible for the profession he or she bears. The PPAT procession contains the relationship between the community and PPAT in today's modern life where in every transaction it is impossible to avoid the role of PPAT as a public official

¹¹Nirwan Junus and Karlin Z. M, "Constitutional Reformulation of the Regulation of State Controlling Rights to Land in the 1945 Constitution", Journal of the Assembly, Vol. 149-169 Pg. 150.

¹²Moh. Taufiq Zulfikar Sarson, "The Legal Status Of Certified Land Ownership of People Inhabiting Around Limboto Lake", Indonesian Journal of Advocacy and Legal Service, Vol. 2 No. 1, p. 6.

¹³JH Nieuwenhuis, Principles of Engagement Law (Hoofdstukken Verbintenissenrecht), translation by Djasadin Saragih, Airlangga University Press, Surabaya, 2015, p. 115.

who has the task of serving not solely for his own interests, but for the benefit of the wider community.¹⁴ especially those related to civil matters.

The definition of Land Deed Maker Official (PPAT) is contained in several laws and regulations, namely based on Article 1 point 4 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects related to Land (UUHT), stating that "Officials Land Deed Maker, hereinafter referred to as PPAT is a public official who is authorized to make a deed of transfer of land rights, deed of encumbrance of Mortgage Rights, and deed of power of attorney. imposes Mortgage Rights according to the applicable laws and regulations".

PPAT's civil liability is related to gaps, omissions and/or negligence in making the deed of sale and purchase that deviates from the formal and material requirements. PPAT can not only be subject to administrative sanctions but also be sued for civil damages by the aggrieved parties. PPAT can be sued in a civil manner if the parties deny what is written in the deed. Based on these general principles, the authors assume that PPAT's actions which have caused a deed to be legally invalid can be considered as unlawful acts, if the actions taken by PPAT are contrary to the legal obligations of the parties; subjective rights of the parties; decency; propriety; thoroughness, and prudence. If the PPAT violates any of these criteria,

Accountability comes from the root word "responsibility" which has the prefix "per" and the suffix "an" which means something to be held accountable for.¹⁵ To be legally responsible means to take action because it is a consequence of the hub that regulates the order and can also be due to mistakes made by the legal subject for violating the rules of law.

Based on the object of the act, accountability is divided into two, namely accountability based on errors and absolute or absolute liability. Liability based on error occurs due to negligence committed by the individual who commits the violation and the act is intentionally carried out with the aim of causing harm. While absolute or absolute liability arises as a result of unintentional and unwanted violations by the perpetrator.

According to the legal dictionary, there are two terms that refer to the definition of responsibility as explained by HR personnel, namely liability (the state of being liable) and responsibility (the state or fact of being responsible).

Liability is a responsibility that is imposed on people because they cause losses, threats, crimes, costs or burdens because the person or subject of the law violates the law.¹⁶ contains the meaning of conditions to be subject to actual or potential obligations, conditions of being responsible for actual things such as losses, threats, crimes, costs, or burdens, conditions that create a duty to implement the law immediately or in the

¹⁴Iswantoro Dwi Yuwono, "Understanding Various Professional and Occupational Ethics, Yustisia Library, Yogyakarta" ,2013, page 172

¹⁵ Ministry of National Education, Big Indonesian Dictionary, Language Center, Fourth Edition, Gramedia Pustaka Utama, Jakarta, 2008, p. 1398.

¹⁶Ridwan HR, "State Administrative Law", Revised Edition, Eleventh Printing, Raja Grafindo Persada, Jakarta, 2014, p. 319.

future. . being responsible,¹⁷ which means the obligation to be responsible for the laws that are implemented, and to repair or otherwise provide compensation for any damage that has been caused. Responsibility responsibility is based on the existence of a statutory order to the subject person to carry out an act or prohibition. The subject must carry out the orders of the law and if it is violated, then the person concerned must bear the risk and the risk is called responsibility.

OP simorangkir said responsibility is the obligation to bear or shoulder everything that is his duty.¹⁸ A person as a legal subject every time he takes a legal action cannot be separated from his responsibility, either on behalf of his personal, professional or position attached to him. This responsibility arises because of a quality relationship between the party who entrusts it to carry out the duties and functions that are their authority or gets a mandate to carry out something based on a certain profession for the benefit of the party who gives the task or mandate.

According to Hans Kelsen, who describes the theory of liability in law, a concept related to the concept of legal obligation (responsibility) is the concept of legal responsibility (liability). A person who is legally responsible for certain actions that he can be subject to a sanction in case his actions are contrary to the law because of his own actions that make that person responsible. Normally, in a case the sanction imposed on the perpetrator (the delinquent) is due to his own actions which makes the person responsible.¹⁹

Civil sanctions are imposed on PPAT if the actions carried out cause harm, and are normatively subject to the provisions of Article 1365 of the Civil Code. However, if in carrying out the duties and positions the deed contains a legal defect, which is then declared inauthentic by a court decision, because it does not meet the formal and material requirements, so that the power of the deed is only under the hands, and will result in difficulties for the parties or persons entitled to the deed. deed to exercise their rights guaranteed by law, namely the right to use the deed as evidence of legal rights; postulates their rights, denies the rights of others while the imposition of criminal sanctions can be carried out as long as the PPAT has made a forged letter or falsified a deed with qualifications as a criminal act. The material requirements and formal requirements of the procedure for making the PPAT deed are formal aspects that must be passed in the making of the deed of sale and purchase of land related to the duties of the PPAT position. The imposition of criminal sanctions can be carried out as long as the limits are determined by the legislation related to PPAT, PJPPAT; The PPAT code of ethics, and the formulation contained in the Criminal Code (KUHP) were violated.

¹⁷Ibid

¹⁸Adjie, H, 2017. "Understanding and Mastering the Theory of Notary Deeds of Early Variety of Deeds". Semarang: Nuta Nusindo.

¹⁹Jimly Asshiddiqie and M. Ali Safa'at, Translation of Hans Kelsen's Theory of Law, Cet. 2nd, Constitution Press, Jakarta, 2012, p. 56.

In connection with this, the author is of the opinion that a PPAT cannot be held criminally responsible for the deed he made if the PPAT concerned has carried out his duties in accordance with the procedures as stipulated in the legislation, which are related to PPAT, PJPPAT, PPAT Code of Ethics, and PerkaBPN. . This is legitimized in Article 266 of the Criminal Code, where a PPAT cannot be subject to a crime on the basis of Article 266 of the Criminal Code if he has carried out his duties properly.²⁰

The position of PPAT in this case is the person who is only ordered (*manus ministra*) and in the context of making a deed of sale and purchase it is only a medium (tool) for the birth of an authentic deed, while the initiative arises from the parties / parties so that in this case PPAT is the party who ordered not the party who ordered. However, if a PPAT has knowingly and knowingly cooperated with an attorney, the PPAT may be subject to Article 263 paragraph (1) of the Criminal Code which is linked to Article 55 (1), namely participating in committing a crime. In addition, because the products produced by PPAT are subject to weighting as stipulated in Article 264 paragraph (1) letter a of the Criminal Code in conjunction with Article 55 paragraph (1) of the Criminal Code.

If the task or work entrusted to him has been carried out properly and is in accordance with the applicable legal corridors and does not cause a dispute, it can be said that the action has fulfilled the duties for which it is responsible. if the actions taken to meet the expectations of the party giving the mandate because in carrying out their duties they violate the applicable legal provisions, causing the risk of legal uncertainty and the potential for disputes to occur.

3.2. Efforts to Overcome Cases of Sexual Violence Against Children in Gorontalo District

PPAT's efforts in completing the deed of sale and purchase of land which are still jointly owned according to PPAT Ivana Iring Restu Lahay and according to PPAT Laura Giasi SH, M.Kn:

"According to PPAT Ivana Iring Restu, efforts have been made to complete the deed of sale and purchase of land which is still with the status of joint property, which depends on the condition, what is the condition of the ownership status, if for example he is still in the name of the deceased, it means that later he will have to change the name of the inheritance in the name of the children. children, after that they can release their land to be traded, if for example the certificate of ownership of the land rights is already in the name of the joint heirs, it means that the certificate has been made previously and the names that already have the certificate, so they must hold a deliberation between them whether it is approved or not"²¹According to the informant, one of the efforts in completing the sale and purchase certificates on land that is still

²⁰Interview with PPAT Laura Giasi

²¹Results of an interview with PPAT Ivana Iring Restu in Gorontalo City

jointly owned is by holding a discussion beforehand who will be included in the deed after which it can be determined who has the right to sell it, so that after the sale and purchase it is clear who will be the owner. the owner of the land so that the making of the deed will no longer cause problems.

*“Although mediation is an important part of efforts to resolve community disputes over land, in the process of implementing it is also necessary to pay attention to the provisions that are part of the regulations that must be obeyed and obeyed. As well as the provisions on the length of mediation are also a thing that needs to be considered because to ensure the effectiveness of mediation, consideration of the implementation time is also needed. Because the sooner it will be better for the parties to the dispute”.*²²

In the laws and regulations related to PPAT, it is regulated that in carrying out their duties and positions they are proven to have committed violations, PPATs may be subject to or sanctioned in the form of administrative sanctions, but do not regulate the existence of civil and criminal sanctions against PPATs, so if there is a violation that meets civil and criminal offenses. Criminal sanctions against the PPAT may be subject to civil sanctions contained in the Civil Code and criminal sanctions contained in the Criminal Code.²³

There are three types of legal systems that apply in Indonesia, namely the customary law system, civil law and Islamic law. All three have their own systems and separate regulations administered by different government officials and enforced by separate courts.²⁴

The form of PPAT's actions in providing legal protection to the parties in the sale and purchase agreement, and the process of transferring land rights, in principle, namely as long as the rights and obligations of the seller and buyer in the sale and purchase have been fulfilled in accordance with Article 52; Article 53, and Article 54 PERKABAN; the legal requirements of the sale and purchase agreement in accordance with Article 1320 of the Civil Code, and the fulfillment of three (3) provisions determined by customary law, namely cash, real, and clear. While the forms of obligations and rights of the seller and the buyer that need to be carried out by each party, in carrying out the buying and selling process, include:²⁵

1. Seller's Obligations.
 - a. The seller guarantees that the Legal Standing is fulfilled, namely:

²²Sri Listiani K. Umar, et al, “Authority Of the National Land Agency in The Implementation Of Mediation On Land Disputes In The City Of Gorontalo”, *Estudiante Law Journal*, Vol.1 (1), p. 46

²³I Gusti Bagus, YG, “Responsibility of PPAT for the Deed of Sale and Purchase of Land”, *IUS Journal*, Vol. 4(1), p. 69

²⁴Dolot Alhasni Bakung and Moh. Hidayat M, “Determination of Legal Protection for Neighboring Right Holders”, *Jalrev Journal*, Vol 2 No 1, p. 67.

²⁵Results of an interview with PPAT Ivana Iring Restu in Gorontalo City

- a) Delivery (levering) or transfer of ownership of the goods in a juridical manner, not just a feitelijk delivery;
 - b) The true seller is the sole or overall owner of the object of sale and purchase or the object of transfer of land rights;
 - c) If in the future there are lawsuits and demands from parties who feel aggrieved, because they feel they are entitled, have more rights, and are also entitled, then the seller is able to face or settle at the seller's expense until the buyer is free from this and it becomes completely safe;
 - b. The seller submits the object being traded, and guarantees the enjoyment of the goods, bears against hidden defects, and is entitled to receive payment for the price of the goods.
 - c. The seller guarantees the control of the object of sale and purchase or the transfer of rights is safe, secure, free from dispute, and the object is not being pledged as collateral.
2. Seller rights.
- a. Receive the payment price for the sale of the object of sale and purchase in accordance with the agreement of both parties, regarding the conditions and exchange rates of the goods traded;
 - b. Get the price of the object of sale and purchase or transfer of land rights in full,
 - c. The seller is also entitled to legal protection from the actions of buyers who have bad intentions,
 - d. The right to conduct proper self-defense in a dispute resolution due to the goods sold;
 - e. Rights are regulated in the provisions of laws and regulations.
3. The buyer's obligation is to pay in full the price of the object of sale and purchase (transfer of rights) on the land parcel as stipulated in the agreement,
4. Buyer Rights.
- a. Will not accept claims and demands of any kind and from anyone or any party in the purchase of the object or the transfer of rights to the sale and purchase is safe, there is legal certainty,
 - b. Receive delivery of goods (transfer of rights) or rights to land parcels that are the object of sale and purchase from the seller.

Meanwhile, according to the provisions of Article 1320 BW, to fulfill the requirements for the validity of a sale and purchase agreement, namely: 1) there is an agreement between the parties in the agreement; 2) the existence of the skills of the parties in the agreement; 3) a certain matter; 4) a lawful cause. The first (1) and second (2) requirements are related to the subject of the agreement, while the third (3) and fourth (4) conditions are related to the object of the agreement. Meanwhile, according to customary law, the legal act of transferring land rights due to buying and selling requires that it must meet 3 characteristics, namely cash; bright, real or real real. The PPAT's real action efforts in providing legal protection efforts to the parties prior to the making of the deed include:

- a. The parties must fulfill the formal requirements regarding the procedure for making the PPAT deed which is spread in various regulations related to PPAT, including Article 24 PP No. 37 of 1998, Article 51-55 PERKABAN No. 1 of 2006 concerning Provisions for the Implementation of PP No. 37 of 1998 concerning PJPPAT, and regulations relating to taxation.
- b. The parties must meet the material requirements for making a PPAT deed. in accordance with Article 97 paragraph (1) PMNA/Ka BPN 3/1997 which aims, namely:
- c. The deed of sale and purchase must be read out by the PPAT in detail and the PPAT must explain the purpose of the contents of the deed as a whole.
- d. The signing of the deed of sale and purchase is carried out by the parties simultaneously;
- e. Witnesses must be directly involved in a deed signing process;
- f. The value of the transaction price contained in the deed of sale and purchase must be the same as the actual transaction value.

Regarding the legal protection of PPATs themselves based on the regulations of their positions, the form of legal protection for PPATs in the realm of laws and regulations related to PPATs is more internal or administrative. Most of the regulations violated by PPAT are a standard measure of professionalism that all PPATs must comply with in making authentic deeds in the land sector. While the National Land Agency (BPN) as a State Administrative Officer, which is related to the existence of PPAT as a public official, the National Land Agency has the right to impose sanctions on PPAT if it violates the rules and regulations, by issuing a decree (KTUN), and if in In this case, PPAT is not satisfied with the decision handed down by BPN, then the decision will be a State Administrative dispute. Meanwhile, the efforts that can be made by PPAT in this case are to directly file a lawsuit to the State Administrative Court as a court or first-level examination.

4. Conclusion

Based on the discussion above, it can be concluded that PPAT Responsibilities In Making the Deed of Sale and Purchase of Jointly Owned Land (Boedel) which are still in dispute they will not continue in making the deed of sale when one of them still objected or is still in dispute because it is already contained in the legislation but in other studies they will still accept the dispute on the condition that mediation must be carried out so that the problem can be resolved. PPAT's efforts in completing the deed of sale and purchase of jointly owned land are by conducting deliberation

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