



The application of the prudential principle in the implementation of the duties and authorities of land deed making officials in making sale and purchase deeds

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Abstract

The making of the Land Deed Maker Official (PPAT) sale and purchase deed must be based on the precautionary principle so that the deed made can be as perfect evidence if the information and documents provided by the false witnesses will be a problem for PPAT. The purpose of this study is to analyse the application of the precautionary principle based on the provisions of government regulations and codes of ethics in carrying out the duties and authorities of PPAT and to analyse the role of PPAT officials in making the Deed of Sale and Purchase of Land applying the precautionary principle. The method in this research is empirical juridical. The results of the research are; PPAT has a role to determine an action that can be stated in the Deed or not, PPAT in carrying out its duties and authorities must be based on the precautionary principle, with the precautionary principle it can protect PPAT from problems, maintain the dignity of the PPAT position itself. And can increase the public's sense of trust in making the deed of sale and purchase.

Keywords: sale and purchase deed; precautionary principle; role, PPAT

Introduction

Land is a basic right of every human being, the existence of the land itself is legally guaranteed in the laws and regulations in Indonesia. The form of legal protection by the state regarding land use, land rights and transfer of ownership of land rights is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA). Therefore, the community seeks the transfer of ownership of land rights as a form of legal certainty in owning certain land (Veronica, 2019) ^[14].

In order to achieve order in the land sector, especially in the field of implementing Land Registration and in making Authentic Deeds, the government is assisted by the Land Deed Maker Official (PPAT). PPAT is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units. The authentic deed that "will be made by PPAT both from its form and the conditions have been determined by law, so that the authentic deed can be a legal certainty and perfect evidence for the parties who have agreed to express their will in the form of an authentic deed (Utomo, 2020) ^[4]. A deed is said to be "authentic deed must meet several criteria, including: "made in a form that has been determined by law, by an authorized official or in the presence of an authorized official, has perfect evidentiary power, and if the truth is denied, then the The disclaimer must be able to prove the untruth that is being denied" (Ali, 2019).

As for the types and forms of Deeds made by PPAT, which are related to land to be used as the basis for registering changes to land registration data, according to Article 95 paragraph (1) and paragraph (2) of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of PP 24 of 1997, among others: Deed of Sale and Purchase; Deed of Exchange; Grant Deed; Deed of Entry into the Company; Deed of Sharing of Joint Rights; Deed of Granting Mortgage; Deed of Granting of Building Use Rights on Owned Land; Deed of Granting Right of Use on Owned Land.

The PPAT deed is domiciled as an authentic deed, the sale and purchase deed made before the PPAT is considered an authentic deed that has perfect evidence strength. Therefore, to be able to make a deed of sale and purchase of land as perfect evidence, it is necessary to pay attention to the provisions governing the procedure for making the deed, the principle of prudence is related to accuracy, accuracy (Manuaba, 2017-2018) ^[7].

PPAT has a role before making the deed, must examine all facts and documents provided by the parties to him in accordance with the provisions of the applicable laws and regulations; Ensure and examine all completeness and validity of evidence or documents shown to PPAT; and hearing the statements or statements of the appearers must be carried out as a basis for consideration to be stated in the deed.

One of the provisions that must be carried out by PPAT in making the deed of sale and purchase The PPAT deed must be read and explained to the appearers in the presence of at least 2 (two) witnesses before the deed is signed immediately by the appearers, witnesses and PPAT, this is the PPAT principle of prudence in making the deed,

not only that PPAT must also ensure that the parties appear before the PPAT; PPAT is also required to read and explain the contents of the deed, which must be carried out by PPAT so that it is in accordance with the precautionary principle; By applying the precautionary principle, PPAT can avoid and prevent errors that cause problems in making authentic deeds.

The PPAT is obliged to read and explain the contents of the deed to ensure that the appearers have fully understood what is contained in the deed (Utomo, 2020)^[4]. PPAT is required to provide the best possible service to people who need his services, in terms of knowing the appearers who attend the office, PPAT must really be able to know the appearers, so that there are no mistakes in recognizing and carrying out their duties in terms of making a deed (Helena, 2017)^[3].

An example is the case of the District Court of Banda Aceh City No. 324 / Pid.B / 2010 / PN. BNA) in which it was alleged that PPAT did not apply the precautionary principle in making the deed of sale and purchase between Sanusi (the seller) and Irwansyah (the buyer). This case began with Sanusi selling a plot of coconut plantation land covering an area of 4.3 hectares located in Lam Ujong Village, Baitussalam District, Aceh Besar District based on the Faraidh Letter of Decision of the Religious Court/Syar'iyah Court in Koeta Radja on Monday, November 7, 1960 to Irwansyah before one of the PPATs in Aceh Besar and the Sale and Purchase Deed was signed by the seller, Sanusi, the first party who sold the land, Irwansyah as the second party who bought the land, the PPAT, and the village head of Lam Ujong. After the deed of sale and purchase was issued by the PPAT, Irwansyah began to divide the land into several plots of land with different areas, then Irwansyah sold the land that had been divided into several other people.

The sale and purchase of the land that has been divided into lots is carried out in front of one of the PPATs in Aceh Besar and witnessed by the headman of Lam Ujong. That after the land in the plots were sold, new facts were found that the land that had been sold by Irwansyah belonged to the heirs (late) T. Sulaiman Aziz and based on the Letter of Peace between the Religious Assets Agency and the family of (late) T. Sulaiman Aziz in 2005 and has been distributed to his heirs including T. Nasir, and several of his younger siblings. Each of the heirs has a valid certificate issued by the Aceh Besar District National Land Agency (BPN).

Based on the description of the background above, the author raises several issues that will be discussed further with the journal title, "The Application of the Prudential Principle in Executing the Duties and Authorities of Land Deed Making Officials in Making Sale and Purchase Deeds".

Previous research has shown that there have been several other studies discussing the "Principle of Prudence, namely Hendry Dwicahyo Wanda, (Journal of Legal Problems, Volume 46 Number. 2, April 2017,) regarding "Prudential Principles of Land Deed Maker Officials in Management Transfer of Land "Letter C", discusses the position and legal force of Letter C as evidence of land ownership and the implementation of the PPAT precautionary principle in the management of land transfer Letter C, the difference in this research is the focus on the application of the precautionary principle based on the provisions of government regulations. The code of ethics in carrying out the duties and authorities of the PPAT and the role of the PPAT in making the Deed of Sale and Purchase of Land applying the precautionary principle.

The purpose of this study is to analyze the application of the precautionary principle based on the provisions of government regulations and codes of ethics in carrying out the duties and authorities of PPAT and to analyze the role of PPAT officials in making the Deed of Sale and Purchase of Land applying the precautionary principle.

Research Method

The method in this research is empirical juridical, empirical juridical is a legal research method that seeks to see the law in a real sense, examines how the law works in society (Achmad, 2010)^[10]. The approaches used in this research are Empirical juridical approach and statutory approach (Ibrahim, 2018). The sources of legal materials in this study are primary legal materials and tertiary legal materials, primary data obtained by field research or by conducting interviews, secondary data obtained from the results of library searches on various literature or library materials related to this research problem (Achmad, 2010)^[10]. The data obtained are then processed and analyzed by qualitative descriptive analysis, meaning data analysis by revealing and taking the truth obtained from the literature and the field, namely by combining regulations, scientific books that have to do with the research title, then analyzed qualitatively so that a solution can be obtained and conclusions can be drawn.

Results and Discussions

Implementation of the Prudential Principle Based on the Provisions of Government Regulations and the Code of Ethics in the Implementation of the Duties and Authorities of the Land Deed Maker Officials

"PPAT is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units." PPAT in carrying out its duties must be based on: Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Maker Officials; Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to PMNA / Regulation of the Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions for Government Regulation Number 24 of 1997 concerning Land Registration; Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number: 112/KEP-4.1/IV/2017 concerning the Code of Ethics for the Association of Land Deed Makers; and other regulations related to the duties or professions of PPAT (Salim, 2016)^[12].

Carry out some land registration activities, by making a deed as evidence that certain legal actions have been carried out regarding land rights or Ownership Rights to Flats in the working area which will be used as the basis for registering changes to land registration data caused by legal actions which are the main tasks and PPAT authority.

The types of deed made by PPAT are Deed of sale & purchase; Deed of Exchange; Grant Deed; Deed of Entry into the Company (Inbreng); Deed of Sharing of Joint Rights; Deed of Granting Mortgage; Deed of Granting of Building Use Rights on Owned Land; Deed of Granting Right of Use on Owned Land;

According to Siti Rahma, PPAT in carrying out its duties and authorities, PPAT must always apply the precautionary principle as an effort to prevent errors. PPAT in carrying out its duties or profession is based on the Regulations concerning PPAT and the PPAT Code of Ethics, this must be done so that there are no deviations in practice. PPAT must pay attention to what are the obligations and what are the prohibitions in carrying out the duties they carry out (Interview on 17 November 2021).

The principle of prudence will continue to be attached to the PPAT position, prudence is contained in the PPAT oath of office, namely to carry out my position honestly, orderly, carefully and with full awareness, responsibility and impartiality.

In addition to being subject to Government Regulations governing PPAT positions, PPATs must also comply with the PPAT code of ethics. The Code of Ethics is the entire moral code determined by the association based on the decision of the Congress and/or determined by and regulated in the laws and regulations governing this matter and which applies to and must be obeyed by members of the IPPAT association and all people who carry out their duties as PPAT includes Substitute PPATs. The code of ethics for the Association of Land Deed Authors contains several obligations that must be carried out as PPATs, in order to carry out the duties of PPATs and Substitute PPATs or in everyday life.

The precautionary principle is also contained in Article 3 letter (f) KEPPAT stipulates that PPAT is required to work with a full sense of responsibility; independent; Honest and impartial, PPAT is required to provide the best possible service to people who need its services.

PPAT in carrying out its duties and authorities there are still those who do not apply the precautionary principle which results in losses, one of which is related to not applying the precautionary principle in making the sample sale and purchase deed in Decision No.342/Pid.B/2010/ PN.BNA, which in the decision it is suspected that PPAT did not apply the precautionary principle in carrying out its duties and authorities in making the deed of sale and purchase.

PPAT has a role to act based on the principle of prudence and scrutiny in carrying out the duties of his position, by applying the precautionary principle to avoid mistakes that cause harm to others as well as to PPAT itself, to determine actions based on the precautionary principle that must be carried out in the process of making the Deed by: Conducting an introduction to the appearers based on his/her identity shown to the PPAT; Asking then listening and paying close attention to the wishes or wishes of the parties; Examine the documentary evidence relating to the wishes or wishes of the parties; Provide advice and make a framework of Deeds to fulfill the wishes or wishes of the parties; Fulfill all administrative techniques in making the deed; such as reading; signing; provide copies and filings for the minutes; Perform other obligations related to the implementation of the duties of the PPAT position.

PPAT in terms of knowing the appearers who come to the office, PPAT must really be able to know the appearers so that there are no mistakes in recognizing and carrying out their duties in terms of making deeds.

The PPAT precautionary principle can also be seen in the provisions of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of PP. 24 of 2016 which determines that (Helena, 2017) ^[3].

PPAT is personally responsible for the implementation of his duties and positions in every deed, PPAT must always pay attention to the documents provided by the appearers, if the information and documents provided by the appearers are false it will be a problem for PPAT, even though PPAT is not responsible for the information and fake documents provided by the appearers, but this can be detrimental to PPAT when a dispute occurs PPAT will be summoned and questioned as a witness.

As a result of PPAT not applying the precautionary principle, it creates legal problems, where the existence of the sale and purchase deed results in a dispute between the owner and the buyer of the land. This is because the seller sells an object that is not under his authority and causes losses to the buyer of the land.

PPAT's role is very important in the progress of development in Indonesia, namely for legal certainty through authentic deeds as perfect written evidence, therefore PPATs in carrying out their duties must be based on the principle of prudence in making and signing authentic deeds. Not only that, in carrying out its duties and authorities, PPAT must comply with applicable laws and regulations and the code of ethics. And as a PPAT general official in carrying out his position, he must also understand the responsibilities related to the deeds he will make.

The Role of the Land Deed Official in Making the Sale and Purchase Deed Applying the Prudential Principle

Land is the most important thing for the people of Indonesia and most often becomes a problem, in order to avoid problems, the state is obliged to provide legal certainty over land ownership rights for the community

through land registration, land as a basic right of every human being is legally guaranteed by the state in laws and regulations in Indonesia (Wanda, 2017)^[5].

The regulation of national land law is regulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (hereinafter referred to as UUPA) which regulates land tenure rights. The transfer of land rights and ownership rights to apartment units carried out through: buying and selling; exchange ; grant; income in the company; and other legal acts of transfer of rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed made by the authorized Land Deed Author according to the provisions of the applicable laws and regulations (Article 37 Government Regulation Number 24 of 1997 concerning Land Registration).

PPAT is a public official who is given the authority to make authentic deeds regarding certain legal actions regarding land rights or Ownership Rights to Flat Units. The position of the PPAT as a public official is confirmed in paragraph 1 point 1 of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official for Making Land Deeds.

One example of a legal act in the form of being transferred is buying and selling, meaning that the ownership rights to land can be traded by the owner to other parties. This has become one of the main tasks of PPAT, namely making a deed of sale and purchase which is proof that a legal action has been taken (Santoso, 2012)^[13]. The deed of sale and purchase is a deed of sale and purchase made before the PPAT and signed by the parties. The form of the deed, the contents of the deed, and the method of making the deed are made with the provisions of the applicable laws and regulations, the deed of sale and purchase which has been signed by the parties proves that there has been a transfer of rights from the buyer to the seller accompanied by payment of the price, with the deed of sale and purchase proving that it is true. Legal action has been taken to transfer rights in perpetuity and payment of the price proves that the recipient of the rights (buyer) has become the new right holder (Ermasyanti, 2012)^[1].

PPAT has a role to determine an action that can be stated in the deed or not before making the deed of sale and purchase PPAT must ensure the position or status of the seller and buyer, the seller is someone who is authorized to sell land and the buyer is someone who is authorized to buy land. So that, the implementation of the precautionary principle must be carried out in the process of making the Deed (Handayani, 2016)^[15]. Based on Decision No. 324/Pid.B/2010/PN-BNA, it is suspected that PPAT did not apply the principle of prudence in making the deed of sale and purchase, in which the PPAT's role as a public official who was given the authority to make a deed of sale and purchase, PPAT should have made the deed of sale and purchase of land mandatory. Applying the precautionary principle in order to produce an authentic deed can be used as a perfect written evidence for the appearers.

Novi Sri Wahyuni, as for several ways to apply the precautionary principle in making a deed of sale and purchase: Asking the intent and purpose of the appearers, PPAT must listen and pay attention to the information presented by the appearers, PPAT must provide a solution to the statements made by the presenters, If a solution has been found for the purposes and objectives of the presenters, then PPAT carries out its duties and authorities, PPAT's duties before making a deed of sale and purchase, PPAT asks for identification: original Identity Card (KTP), original Family Card (KK), and Passport, Then match the photo of the identity owner with the party who made the authentic deed, in order to prevent identity falsification of the deed made by PPAT. Regarding land parcels that have been registered, PPAT asks for Original Certificates, then PPAT checks at the Land Agency Office, namely Certificate Clean Checks. land has not been registered PPAT asks for proof of old rights or certificate the imagination of the Village Head stating that the party concerned has controlled the parcel of land for 20 (twenty) years and a certificate stating that the parcel of land in question has not been certified from the Land Office, or for remote land located in an area far from its domicile The Land Office for the plot of land in question is confirmed by the Village Head. If any irregularities are found, the PPAT can apply for floating (Interview on 19 November 2021).

Floating is an effort to submit PPAT to the applicant either individually or on behalf of the PPAT with the aim of ensuring the truth of the certificate data. Floating Efforts Using GPS (global positioning system) to enter the registration map, the results of the floating will indicate whether it is true that there is land owned by the party concerned in accordance with the certificate statement. If correct, the results will 100% indicate the original ownership, meaning that both registration and location data are valid. On the other hand, if no land is found at that location, the certificate is considered invalid. That is, it could be that the registration data has already listed the name in checking the location using a fictitious land GPS. Usually the parties who attend to witness the floating are the Land Office, the certificate owner, and the PPAT, then the PPAT must pay attention. Whether the seller has the right to sell the land rights; Whether the Buyer has the right to purchase the land in question; whether the seller or buyer is acting alone or as a proxy; can land be traded and not in dispute?

The PPAT in making the deed was witnessed by 2 (two) witnesses who testified regarding: the identity and capacity of the appearers; the presence of the parties or their proxies; the truth about physical data and juridical data in this case the object before being registered; the existence of the documents shown in the making of the deed; the legal action has been carried out by the appearers.

The deed of sale and purchase as a whole contains information regarding: The appearers, namely the seller and the buyer; a statement that a sale and purchase has been made; Information regarding the object of sale and purchase, namely the status of the land, the area of the land, the location of the land, the boundaries of the land,

as well as the follow-up to the land; the sale and purchase price and information regarding the receipt of money given by the buyer to the seller; The conditions regarding the sale and purchase are stated in each article in the sale and purchase deed (Prawira, 2016) ^[11].

After the deed of sale and purchase is completed by PPAT, then PPAT must read and explain the contents of the deed to the appearers in the presence of at least 2 (two) witnesses before the deed is signed immediately by the appearers, witnesses and PPAT.

PPAT provides explanations to the appearers and witnesses regarding the purpose of the contents of the deed of sale and purchase and PPAT which explains the registration procedure that must be carried out, reading the deed aims to make the parties understand what is contained in the deed. In the process of reading the deed, the parties can ask questions about things that are not understood by the parties, after the deed has been read by PPAT, no party objected to the contents of the deed, in the presence of 2 (two) witnesses before PPAT, the seller with the buyer signs the deed of sale and purchase. The sale and purchase price of land can be paid off immediately witnessed by the PPAT at the appropriate price stated in the deed, if the price has been paid in advance then the parties must show the receipt of the payment to the PPAT.

The next process is the PPAT concerned, within a period of no later than 7 (seven) working days from the date the deed is signed, the PPAT is obligated to submit the deed he made along with the relevant documents to the Land Office for registration of changes to its data.

The precautionary principle is a development of the prudence principle. Black's Law Dictionary says the definition of prudence is as follows: Translation: "Precision, precaution, care and objective judgment as contained in action or care (Black, 2017) ^[6]. This level of concern requires urgency or a situation that requires a lot of training. This condition in the language of the law is associated with care and perseverance as opposed to carelessness."

Prudence theory proposed by Adam Smith prudence is a state of mind that is alert, observant and very careful always attentive to the most distant consequences of every action, in order to obtain the greatest good and to avoid the greatest evil (Haykal, 2013) ^[8]. PPAT in making an authentic deed on land must of course apply the precautionary principle, PPAT has special abilities and expertise in the land sector, by applying the precautionary principle in carrying out office duties can avoid legal problems in the future (Tanawijaya, 2018) ^[16].

From the several meanings of the precautionary principle above, the PPAT is required to act based on the precautionary principle because the deed made by the PPAT is evidence that a legal act has been committed. Therefore, if the legal action is cancelled, the PPAT deed in question no longer functions as evidence of the legal action.

PPAT must adhere to the precautionary principle in making a deed of sale and purchase, the parties who come before the PPAT believe in their position as anticipation of problems that will come in the future. This is not understood by PPAT, without being careful PPAT there are problems with the object of the deed, the subject of the deed, and can threaten the reputation of PPAT itself. Legal defects in the PPAT deed can be caused by deviations from formal requirements and deviations from material requirements (Suryandono, 2019). The application of the precautionary principle in making the deed of sale and purchase aims to ensure that PPAT is always in the right direction, thus public trust in PPAT remains high, and the public remains willing without hesitation to use PPAT services.

Conclusion

The Land Deed Maker Official (PPAT) in carrying out its duties and authorities must act on the principle of prudence, where in each implementation of the duties of his position has been regulated by the minister, therefore the PPAT must know what are the obligations and prohibitions before carrying out their duties. By acting on the principle of prudence, PPAT will avoid problems, and can maintain the reputation of PPAT as a public official, and can raise the dignity of the PPAT profession. Due to the deed made by PPAT is evidence that a legal act has been carried out. Therefore, if the legal action is cancelled, the PPAT deed in question no longer functions as evidence of the legal action. PPAT in making the deed of sale and purchase must be based on the precautionary principle, so that the PPAT is always in the right signs.

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