



Liability and cause of the land deed-making officer for the sale and purchase deed that was not read before the appellant

Rifka Fitria, Dahlan, M Ya'kub Aiyub Kadir

Master of Law, Faculty of Law, Syiah Kuala University, Jalan Putroe Phang No. 1 Darussalam Banda Aceh, Indonesia

Abstract

The Land Deed Making Officer (PPAT) is a general official who is given the authority to make authentic deeds in terms of land registration, one of which is the Deed of Sale and Purchase and has regulated its obligations in Article 22 PP No. 37 of 1998 concerning the Land Deed Making Officer that "the land deed making officer made by the Land Deed Making Officer is obliged to be read/explained its contents to the parties". In practice, there are still PPAT who do not read the deed before the interceptor. Normative juridical research methods, researching primary, secondary and tertiary material literature by qualitatively analyzing. When a deed is made but does not comply with the procedure, the deed becomes legally defective so that it can be degraded. Based on Pof 10 PP No. 37 Tahun 1998 this is a gross violation. PPAT liability in the form of a code of ethics and law (administrative, criminal, civil). And what causes the PPAT not to read out because of negligence (negligence), the trust of the parties to the PPAT and because of the seduction of one of the parties not to read the deed is faced by the other party. Of course this is contrary to the work and code of ethics of PPAT.

Keywords: Deed-making officer, deed making officer, PPAT

Introduction

Land Deed Making (PPAT) are general officials who are given the authority to make authentic deeds regarding certain legal acts. Based on the provisions of the Basic Agrarian Law Article 19 Ayat (2) letter "b" it is regulated that some of the duties and authorities of the Government in terms of land registration can be divided into 2 tasks, namely: *Pertama*, Registration of Land Rights, is the registration of rights for the first time or the bookkeeping of a right to land in the land book register, and. *Kedua*, Registration of Transfer of Land Rights.

In Article 3 of Government Regulation Number 24 of 1997 concerning Land Registration which states that land registration aims, among other things, to provide legal certainty and legal protection to the holder of rights to a plot of land, units of flats and other registered rights so that it is easy to prove that he is the holder of the rights of the object concerned.

It is stated in Article 2 Ayat (1) of Government Regulation Number 37 of 1998 tentang PPAT Position Regulation it is stated that:

"The Land Deed Making Officer is in charge of carrying out some of the 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 registering changes in land registration data resulting from the legal act".

The legal actions referred to in the article are buying and selling, exchanging, grants, income into the company (*inbreng*), sharing of common rights, granting Building Use Rights / Right of Use on Land Property Rights, granting Dependent Rights, and granting power to impose Dependent Rights. The provisions of Article 1868 of the Civil Code, "an authentic deed is a deed made in the form prescribed by law by or before the general officer authorized to it at the place where the deed was made". This means that an

authentic deed must be made in accordance with predetermined rules.

The Deed of Sale and Purchase (AJB) is an authentic deed made by PPAT which is expected to provide certainty and legal protection in land and building sale and purchase transactions. AJB made by PPAT becomes inauthentic or if it contains legal defects such as defects in the making of the deed.

According to the provisions contained in Article 22 PP No. 37 of 1998 Juncto Article 16 Ayat (1) letter "m" of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning UUJN which states that:

"Read the deed before the appellant in attendance by at least 2 (two) witnesses, or 4 (four) witnesses specifically for the making of the Deed of will under the hand, and signed at that time by the appellant, witness, and Notary".

The reading of the deed is one of the obligations for the PPAT in the process of making an authentic deed if a general official does not carry out his obligations as determined by law and the consequences of his actions have resulted in losses for the parties, then based on the provisions of Article 1365 of the Civil Code states that "any act that violates the law and brings harm to another person, obliges the person who caused the loss through his fault to indemnify the loss".

Currently, it is still in practice that PPAT in making AJB not carry out its obligation to read and explain the AJB and violate the provisions that have been regulated, thereby causing and causing losses and problems for the interceptor (the parties).

Research methods

The type of legal research used in this study uses normative legal research methods, namely legal research conducted by literature, and secondary data (Soejono Soekantoe & Sri Mamudji. 2009)^[5]. The legal materials of this study are:

1. Primary legal materials, namely legal materials that have binding provisions (Rony Hanitijo Soemitro. 1990).

- a. Government Regulation No. 37 of 1998, concerning Regulations on the Position of Land Deed Making Officers.
- b. Government Regulation of the Republic of Indonesia Number 24 of 2016, concerning Amendments to Government Regulation Number 37 of 1998, concerning Regulations for the Position of Land Deed Making Officers
- c. Regulation of the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency Number 2 of 2018 concerning the development and Supervision of PPAT (appendix II).
- d. 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 Regulations for the Position of Land Deed Making Officers.
- e. Code of Ethics for Land Deed Making Officers (Decree of the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency number 112 / KEP-4.1 / IV / 2017 Of The Civil Code (Civil Code).

2. Secondary legal materials are materials related to primary materials and can help to analyze primary materials, such as books, seminar results, scientific papers from legal circles related to this research (Rony Hanitijo Soemitro. 1990).

3. Tertiary legal materials, namely supporting legal materials that include primary and secondary materials, namely tertiary materials of legal dictionaries, Indonesian dictionaries and ensklopedia.

Result and discussion

Liability and Causes of PPAT Not Reading The Deed Before the Appellant.

PPAT is obliged to make and record every deed issued. The deed has legal force both in court and out of court. In essence, a deed that can be used as evidence that there has been a certain legal act regarding ownership rights to land Article 1 Paragraph (4) PP Number 37 of 1998, which of course provides legal certainty for the parties listed in the deed.

A. PPAT Liability

The responsibilities of the PPAT profession can be categorized into 2 (two) things, namely ethical responsibility and legal responsibility. This legal responsibility can be further divided into 3 (three) types, namely liability based on administrative law, civil law, and criminal law (Ridwan. H.R. 2006)^[4].

1. Accountability of PPAT Code of Ethics

Based on the provisions of Article 6 Paragraph (1) of the PPAT Code of Ethics, basically administrative sanctions are reprimands, warnings, temporary dismissals, honorably dismissed, dismissed with disrespect. The sanctions imposed on PPAT who commit violations are in the form of written reprimands, temporary dismissals, respectful dismissals, or dismissals with disrespect. Because the violations committed by the PPAT include abuse of authority (Nabila Mazaya Putri, Henny Marlyna, 2021)^[7].

2. PPAT Legal Liability

a. Administrative responsibility, namely administrative responsibility by PPAT related to his willfulness, negligence and/or negligence in exercising his authority, namely making authentic deeds, is the imposition of administrative sanctions. The imposition of administrative sanctions is adjusted to the level of violations committed by the PPAT. PPAT coverage is administratively determined in Article 62 PP No. 24 of 1997 and emphasized in Article 10 PP No. 24 of 2016.

b. Civil i.e. Civil sanctions imposed on PPAT for unlawful acts (*onrechtmatige daad*), namely acts that cause losses, and normatively the acts are subject to the provisions of Article 1365 of the Civil Code states that "Any unlawful act, which brings harm to others, obliges the person who for his fault of issuing the loss, compensates for the loss". If it is related to the case that occurs now, the PPAT does not read the deed before the interceptor, it certainly causes losses to the interceptor for the validity or force of law can be subject to civil claims. The party who submits a lawsuit to the PPAT must fulfill 4 elements in Article 1365 of the Civil Code, namely "the existence of unlawful acts, errors, losses, and causal relationships between the mistakes and the losses suffered".

Based on the Court Decision that has been discussed previously, civil liability can be directly accounted for by the PPAT, as in the encodement decision number 42/Pdt.G/2020/PN. Bna where the court ruled that the PPAT must indemnify the plaintiff for immaterial damages.

c. Criminal Liability Based on the provisions of Article 55 and Article 56 of the Criminal Code. Article 55 States that "convicted as offenders, those who commit, who order to do, and participate in committing acts", and Article 56 that "shall be convicted as a helper of the crime; Whoever willfully assists in committing the crime, whoever willfully gives the opportunity, the power of effort, or the particulars to commit the crime."

In addition, articles related to criminal sanctions may also be imposed by Article 263 of the Penal Code and Article 264 Paragraph (1) number 1 of the Criminal Code. Article 263 of the Penal Code states that: "Whoever makes a forged letter or forges a letter that may give rise to something right, engagement or release of debt, or which is intended as evidence rather than something with the intention of using or instructing others to use the letter as if its contents were true and not forged, is threatened if such use may cause harm, due to forgery of the letter, with imprisonment for not more than six years." while Article 264 subsection (1) of section 1 of the Penal Code states that: "Forgery of letters shall be punished with imprisonment for not more than eight years, if committed against authentic deeds..."

Sanctions that can be imposed are civil sanctions and administrative sanctions depending on the type of violation or sanctions of the IPPAT code of ethics, while criminal sanctions can only be imposed if the PPAT concerned has been proven to have committed a criminal act. (Yovita, Lastuti, Nanda, 2019)^[8].

This accountability can be seen from the two theories that underlie this, namely the theory of *fautes personnelles* and *fautes de service* (Ridwan. H.R. 2006)^[4].

1. The theory of *fautes personnelle*: That losses to third parties are charged to officials who because of their actions have caused losses.

2. The theory of fautes de services: That losses to third parties are charged to the agencies of the officials concerned.

The error can be due to formal and material requirements, or the error of the PPAT relating to the authentic deed becomes a deed under the hand and does not become a perfect evidence for the interested parties and this can be done because of intentional elements and unintentional elements by the PPAT.

The responsibility requested to the PPAT is not only accountability for the deed but in a broad sense, namely accountability at the time the deed takes place and accountability at the time after signing the deed. In his case, there are still PPAT who committed negligence or lack of thoroughness and meticulousness in making AJB the land which resulted in the AJB of the land being asked for cancellation to the court by one of the parties who felt aggrieved over the issuance of the AJB of the land. The PPAT concerned is included as a defendant in a civil case and for the PPAT concerned must be held responsible for the deed made by him and prove the guilt addressed to him.

But in the case of Judgment Number: 18/Rev.G/2018/PN.Jth. 42/Rev.G/2020/PN. Bna. 18/Rev.G/2021/PN. Bna. and 1/Pdt.G/2021/PN.Sbg, the PPAT who has the authority to make land deeds, actually made an AJB that did not provide legal strength and certainty because there was a legal defect in making the deed, namely that it was not read/explained the contents of the deed before the PPAT.

Based on the provisions of Article 55 of Perkaban No.1 of 2006 as amended by Perkaban No. 23 of 2009, it is said that PPAT is personally responsible for the implementation of their duties and positions in each deed making.

B. Causes of PPAT Not Reading Deeds

The cause of not being read out of the deed before the PPAT is an error that cannot be allowed and is considered small, no matter how small the act violated by the PPAT has a legal impact on the parties and the sale and purchase deed. one of them is the error of the PPAT not being read out of the deed before the PPAT because of negligence, considering that the interceptor already knows the contents of the deed and the trust of both parties to the PPAT. Another reason that makes the PPAT not read out the AJB in front of the interceptor is because the interceptor has believed and believed that what has been made by the PPAT is correct in accordance with the agreement of the interceptors. Even though PPAT can deny this can harm both parties if in the future there is a dispute.

The existence of "rogue and unprofessional" PPAT who commits acts of violation in exercising their authority as a General Officer. In theory, the law should be enforced against anyone who violates regardless of a person's position and group. This rule is the principle of *equality before the law* "equality before the law" which is a fundamental element in the concept of the state of law as proposed by experts such as Julius Stahl, A.V. Dicey and so on (Sofi Ubaidillah. 2019)^[6].

The violation committed by the PPAT not reading the deed before the interceptor is a fatal mistake because it affects the party indirectly and causes material and immaterial losses. Learning from the four cases in the previous discussion, it can be said that the PPAT did this because of the desire of

certain parties because they had an emotional relationship of closeness so as to commit the violation, even though the PPAT already knew that the act was contrary to the code of ethics for making deeds and violated the PPAT laws and regulations. Not all PPAT do these actions, there are still PPAT who are professionals who carry out their profession, are honest and provide good services to the parties.

Conclusion

PPAT liability can be given by law in the form of a code of ethics and law (administrative, criminal and civil). The punishment for PPAT is adjusted to the mistakes he made, PPAT who does not read the deed before the driver is subject to dismissal sanctions as stated in PP No. 37 of 1998 concerning PPAT, and. The cause of the PPAT not reading the deed before the interception is negligence, the trust of the parties to the PPAT and because of demands from one of the parties. PPAT must be professional, fair and transparent in making AJB formal and meter requirements, besides that PPAT complies with the PPAT Bond Code of Ethics so that no one is harmed.

References

1. Mukti Fajar, Yulianto Achmad. *Dualism Normative and Empirical Legal Research*. Yogyakarta: Student Library, 2010.
2. Rosa Agustina. *Unlawful Acts*. Jakarta: Postgraduate Program, Faculty of Law. University of Indonesia, 2003.
3. Ronny Hanitijo Soemirto. *Legal Research Methods*, Bandung: Gaul Indonesia, 1994.
4. Ridwan HR. *State Administrative Law*. Jakarta: Raja Grafindo, 2006.
5. Soejono Soekanto. (et.al). *normative legal research: A brief review*. 8th printing. Jakarta: Rajawali Pers. 2009.
6. Sofi Ubaidillah. *Criminal Liability of Notaries Who Forged Letters*. Journal of Law and Notarization, 2019:3(2):271- 282.
7. Nabila Mazaya Putri, Nabila Mazaya Putri. Violation of Office of Unlawful Acts Committed by Notaries in Exercising Their Authority. ACTA DIURNAL Journal of Notarial Law, 2021:5(1):63-77.
8. Yovita Christian Assikin, Lastuti Abubakar, Nanda Anisa Lubis. The Responsibility of the Land Deed Making Officer Relates to the Cancellation of the Sale and Purchase Deed In Terms of the Applicable Laws and Regulations. ACTA DIURNAL Journal of Notarial Law, Faculty of Law Unpad, 2019:3(1):80-97.