



## The making of a deed of sale and purchase by a temporary land deed official without the presence of involved parties (A study in bener meriah regency)

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### Abstract

Temporary Land Deed Officials, or PPATS, are Land Deed Officials originating from Regional Government Agencies, in this case, the District Office. PPATS are appointed because the PPAT allocation in a district or city is unfulfilled. An authentic deed drawn up by the Camat as PPATS is evidence that certain legal actions have been carried out regarding land rights. Its function is to ensure that a legal event has occurred, with the aim of avoiding disputes that may occur in the future. An authentic deed can change the evidentiary force to be the same as a private deed if one of the provisions is violated, such as if the deed is not read out in the presence of the parties and in the presence of at least two witnesses and also signed at that time by the parties, the witness, and PPATS. Deeds that are not read out in the presence of the parties and witnesses are included in a defective deed. Article 22 of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deeds Officials, which came into force on March 5, 1998, requires that "PPAT deeds must be read or explained to the parties in the presence of at least two (two) witnesses before being signed immediately by the parties, witnesses, and PPAT." However, in reality, in Bener Meriah Regency, the deed of sale and purchase of land was made by PPATS without the parties being present to be read, explained, and signed by the parties before the Camat as PPATS, even though the parties did not meet with PPATS. The parties should have been present before the PPATS so that the PPATS never read out the contents of the deed as mandated by Article 22 of Government Regulation Number 37 of 1998, namely that the elements of the contents being read or explained to the parties were not fulfilled.

**Keywords:** deed of sale and purchase, PPATS, the presence of the parties

### Introduction

Temporary Land Deed Officials, or PPATS, are Land Deed Officials originating from regional government agencies, in this case, the subdistrict office. PPATS are appointed on the basis of not having fulfilled the notary and/or PPAT allocation in a district or city. An authentic deed drawn up by the Camat (subdistrict head) as PPATS is evidence that certain legal actions have been performed on land rights. The making of a deed by the PPATS must comply with the provisions stipulated in the laws and regulations regarding land registration. One of the provisions in Article 22 of Government Regulation Number 37 of 1998 on the Position Regulations for Land Deeds Officials states: "To read the deed in front of an applicant attended by at least 2 (two) witnesses, or 4 (four) witnesses specifically for making a private will deed, and signed at the time also by the applicant, witnesses, and PPAT, this stipulates that the making of the deed by PPATS must be attended by the parties who conduct the legal action, or the person concerned or his attorney, and witnessed by at least two witnesses."

The PPATS must then explain and read the deed to the parties and witnesses and sign it promptly. According to Article 22 of Government Regulation Number 37 of 1998 on Regulations for the Position of Land Deeds Officials, which came into force on March 5, 1998, "PPAT deeds must be read or explained to the parties in the presence of at least two (two) witnesses before being signed immediately by the parties, witnesses, and PPAT."

In practice, however, in Bener Meriah Regency, PPATS made the deed of sale and purchase of land without the

presence of the parties to be read, explained, and signed by the parties before the Camat as PPATS, even worse, the parties did not meet with PPATS. The parties should have been present before the PPATS. Because they were not present, the PPATS did not read out the contents of the deed as required by Article 22 of Government Regulation Number 37 of 1998; thus, the elements of the contents being read or explained to the parties were not met.

The research's findings demonstrate that there are PPATS that issue deeds without the parties present. Among them was the sale and purchase of inherited land from Tibah for Siti Sarah and Zuhaikal. In this case, the sale and purchase deed was issued by PPATS, who at that time served as the Camat Bukit, with Deed Number 55/CBT/2008. This deed was issued on February 21, 2008, and Deed Number 50/CBT/2008 was issued on February 21, 2008. The land in dispute was 6 x 20 metres in area, and there were houses on it. The land that was the object of the sale and purchase previously belonged to the late Harun Rasyid, who bequeathed the land to his two children: Abdul Jalil, who was the eldest child and the biological parent of Siti Sarah and Zuhaikal, and Tibah, the youngest child of the deceased and also the aunt of Siti Sarah and Zuhaikal.

Previously, the land that was the subject of the sale and purchase did not have a certificate or had insufficient evidence that a certificate of inheritance addressed to Tibah existed. In this case, PPATS issued a Deed of Sale and Purchase of Land for the above-mentioned subject solely on the basis of sporadic letters from Reje Kampung Babusassalam. The rights of the other heir, Yusran, Abdul Jalil's eldest son, should still be tied to the land that

was traded. When selling or purchasing inherited land, all heirs must authorize the transaction. This is regulated by Civil Code Article 833 paragraph (1), which states that when buying and selling inherited land, approval must be obtained from all heirs because, in this case, all heirs have rights to the land. In addition to the case mentioned in Banda Subdistrict, Bener Meriah Regency, one similar case occurred: the issuance of a certificate of ownership rights to a plot of land based on a Sale and Purchase Deed with Number 49/BDR/2022 made by Rais Abidin, PPATS District Bandar, Bener Meriah Regency. In this case, the seller's son refuses to accept the sale and purchase of land handled by his 66-year-old mother, claiming that his mother never went to complete a land sale and purchase agreement with PPATS.

**Based on the description of the background above, the formulations of the problems discussed in this study are**

1. What is the evidentiary force of the deed of sale and purchase made by PPATS without the presence of the parties?
2. What is the legal responsibility of PPATS for making a sale and purchase deed without the presence of the parties?
3. Without the parties present in the Bener Meriah Regency, what legal protection is there for the buyer of the PPATS-made deed?

**Research Methodology**

This study on the Making of a Sale and Purchase Deed by a Temporary Land Deed Official Without the Presence of the Parties (A Study in Bener Meriah Regency) falls under the category of empirical legal research. Empirical juridical research departs from the gap between *das Sollen* and *das Sein*, or the gap between theory and reality. This empirical juridical research explores and analyzes the operation of law in society. The empirical juridical study is also field research that entails examining current legal laws and then merging them with data and societal living behavior. Because the data were gathered directly from the research site, this study used a legal sociological research approach as well as a qualitative approach.

Primary legal material which is binding legal materials consist of:

1. Government Regulation of the Republic of Indonesia Number 24 of 2016 on Amendments to Government Regulation Number 37 of 1998 on Regulations for Positions for Land Deed Officials.
2. Regulation of the Head of the National Land Agency Number 23 of 2009 concerning Amendments to Regulation of the Head of the National Land Agency Number 1 of 2006 on Provisions for the Implementation of Government Regulation Number 37 of 1998 on Regulations for the Position of Land Deeds Officials.

Secondary legal material is legal material that can provide an explanation of primary legal materials, such as laws and regulations, research results, research journals, and papers from legal scholars. Tertiary legal materials are legal materials that provide explanations of primary legal materials and secondary legal materials, such as the Great Indonesian Dictionary and the Legal Dictionary. Non-legal material is material that is not legal material and is not

related to law but can be used and needed to help answer the problems in this research as long as the material is related to this research. This material can be in the form of books, journals, or research results in disciplines other than law. Data collection techniques to obtain primary data were field research from in-depth interviews with respondents and informants regarding the making of a sale and purchase deed by PPATS at the Bukit sub-district office and the Bandar sub-district office in Bener Meriah district. The interview was conducted to find out and explain concretely the research problems. Apart from that, the data were also discovered through library research.

**Result and Discussion**

**PPATS legal liability for making sales and purchase deeds without the presence of the parties.**

According to the findings of a study conducted at Bener Meriah Regency, the unlawful act committed by PPATS in making a sale and purchase deed was failing to invite the parties to read or explain the contents of the sale and purchase deed. In this case, the parties could sign the deed separately. The seller gave a signature in front of PPATS employees, which was not directly attended to by PPATS. Meanwhile, the buyer did the signing at the buyer's house. There was only one witness present at the signing. The provisions in Article 22 of Government Regulation Number 37 of 1998 on Regulations for the Position of Land Deed Officials that "the contents of the PPAT deed must be read or explained to the parties in the presence of at least 2 (two) witnesses before being signed immediately by the parties, witnesses, and PPAT" are certainly not in accordance with the provisions in Article 22 of Government Regulation Number 37 of 1998 on Regulations for the Position of Land Deed Officials. The condition of reading or explaining the contents to the parties was not fulfilled, nor was the criterion of having two (two) witnesses present; even the parties making the sale and purchase deed met with PPATS staff rather than PPATS.

**1. Civil Law Liability**

The civil liability of PPATS is related to negligence in executing a sale and purchase deed that fails to comply with the formal and material requirements of the PPATS deed procedure. As a result, not only can administrative punishments be enforced, but there is also the prospect of being sued for compensation by injured parties. It was discovered that the PPATS concerned paid little attention to and consistently did not apply existing rules in connection with the making of the PPATS deed, which was legally flawed because the parties were not present, and conversely, it was very rare to find an element of intent to harm the parties or third parties. PPATS must be held accountable for compensating these parties, particularly buyers, for losses incurred in the form of cost reimbursement and compensation. The result of a mistake caused by purposeful or negligent carelessness and inaccuracy in the execution of legal obligations for PPATS in making land sale and purchase deeds, causing the implementation of a person's subjective rights to be disrupted if the parties suffer a loss.

**2. Administrative Legal Liability**

PPATS, as a public official, may face administrative sanctions up to and including dismissal from their position if they fail to perform their duties in accordance with their

authority and violate Article 62 of Government Regulation Number 24 of 1997 on Land Registration. Administrative sanctions were imposed on PPATS for infringing Articles 11 paragraph (1), 13 paragraph (2), and 15 paragraph (1) of Law Number 4 of 1996 on Mortgage Rights on Land and Objects Related to Land. Sanctions may include reprimands, warnings, suspension from IPPAT membership, dismissal from IPPAT membership, and dishonorable discharge from IPPAT membership, according to Article 6 paragraph (1) of the IPPAT Code of Ethics.

### 3. Criminal Legal Liability

Criminal punishments can be imposed on PPATS as long as they have made a false letter or faked a deed that counts as a crime. The material requirements and formal requirements of the procedure for making a PPATS deed are the formal aspects that must be followed in making a land sale and purchase deed related to the duties of the PPATS office.

#### **Liability based on administrative law and the code of ethics of the PPAT profession.**

PPATS must be responsible for making the deed of sale and purchase of land that contains legal defects because this is categorized as abuse of authority, considering that the authority vested in PPATS based on Article 2 of Government Regulation Number 37 of 1998 on Position Regulations for Land Deed Officials has been abused, so that the use of this authority is ultimately not in accordance with the purpose of granting the authority itself. In this case, it appears that there has been an abuse of authority by PPATS because none of the parties were present as they should have been. If a PPATS is proven to have made a deed of sale and purchase of land that is legally flawed because it is not in accordance with what is mandated by law, then if there is a dispute over this matter, it is usually the seller who makes the dispute, and with the cancellation of the deed as an authentic deed, PPATS can be asked for compensation. If PPATS's responsibility is related to intentionality and/or negligence in making a sale and purchase deed that deviates from the formal requirements and material requirements of the procedure for making a PPATS deed, then PPATS can be subject to administrative sanctions. Based on Perka BPN No. 1 of 2006, deviations from the formal and material requirements include serious violations by PPATS, which can be subject to sanctions of dishonorable dismissal from office by the Head of the Indonesian National Land Agency. In Article 6 paragraph (1) of the Code of Ethics of the Association of Officials Making Land Deeds Number: 112/KEP-4.1/IV/2017, that is, members who violate the Code of Ethics may be subject to sanctions as follows:

- a. Reprimand;
- b. Warning;
- c. Schorsing (temporary dismissal) from IPPAT membership;
- d. Onzetting (dismissal) from IPPAT membership; or
- e. Dishonorable termination of IPPAT membership.

The imposition of these sanctions is adjusted to the quantity and quality of the violations committed. As for making a deed of sale and purchase of land by PPATS without the presence of the parties, it is included in the violation, as stipulated in Article 4 letter (r) that every PPAT, both in the context of carrying out the duties of the PPAT position, is

prohibited from carrying out other acts that are generally referred to as violations of the PPAT Code of Ethics. Among other things, violations of the provisions in the PPAT Position Regulations (Position Regulations for Land Deed Officials) and other statutory provisions related to the PPAT's main duties. Sanctions that can be imposed on PPATS who make a deed without the presence of the parties, which is not in accordance with the formal requirements and material requirements of the procedure for making a PPATS deed, PPATS can be subject to sanctions with dishonorable dismissal from his position and the imposition of administrative fines.

#### **Analysis of Implementation of PPATS Responsibilities**

The Panel of Judges stated that the Deed of Sale and Purchase No. 012 of the Government Number 37 of 1998 concerning Regulation/2007 dated June 4, 2007, contains a formal defect and thus cannot be used as the basis for the issuance of the Certificate of Ownership of SHM No.00157 by the Head of the Aceh Besar Land Office on November 28, 2017. Based on the above, the Panel of Judges canceled the Deed of Sale and Purchase Number 12 of 2007 and ruled Certificate Number 00157 of 2017 in Rita Diana's name legally worthless. The responsibility of PPATS in providing legal protection to the parties in the case of making a land sale and purchase deed that was not attended by the parties to read or explain the contents to the parties. PPATS's responsibility, in this case, arises due to unlawful acts committed by PPATS in performing their duties. Thus, causing losses for the parties who requested their services. The form of PPATS responsibility when it is related to their profession adheres to the principle of responsibility for error (*based on fault of liability*). In making an authentic deed, the PPATS must be responsible if an error occurs or a violation of the deed he or she made occurs. However, if an element of error or violation occurs on the part of the parties, then the PPATS concerned cannot be held accountable because the PPATS only records what the parties or applicants submit to be included in the deed; false statements submitted by the parties are the responsibility of the parties. However, in the case of making an authentic deed of sale and purchase of land that was not attended by the parties, it was a mistake made by PPATS either intentionally or due to negligence, misusing the authority of Government Regulation Number 37 of 1998, resulting in a person experiencing a loss, and if the error can be proven by the party who was harmed, then PPATS can be subject to sanctions in accordance with laws and regulations.

#### **Legal protection for buyers for deed made by PPATS without the presence of the parties in Bener Meriah Regency**

In buying and selling land, the buyer will have legal protection if the buyer has good faith, as stipulated by the Supreme Court of the Republic of Indonesia, both in its decisions and in a Circular Letter of the Supreme Court. For example, the Decision of the Supreme Court of the Republic of Indonesia Number 251K/Sip/1958 dated December 26, 1958, in the legal code says: "Buyers who have acted in good faith must be protected, and the sale and purchase in question must be considered valid." The same thing has also been explained by the Supreme Court in Supreme Court Circular Letter Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the

Chamber of the Court as a Guideline for the Implementation of Duties for the Court. Point IX says that "*Protection must be given to buyers with good faith even if it is later found out that a seller is a person who has no right (in buying and selling land)*". The law does not provide a definition of what is meant by good faith. However, laws and regulations stipulate that a buyer can be said to have good faith if the buyer is not aware of any defects in the item, as stated in Article 531 of the Civil Code: "A person with good faith is a person who holds possession that he obtained by obtaining property rights, in which case he does not know the defects contained therein." In fact, in Bener Meriah Regency, the parties, including the buyer, have had good faith, where the buyer has ensured that the seller is the rightful person or owner of the land being sold. In addition, the seller also ensures that the land that is the object of sale and purchase is not currently in dispute and is not used as collateral. However, the problem was with PPATS because it did not present the parties with the opportunity to read or explain the contents of the sale and purchase deed and was not signed by the parties immediately, as stipulated in Article 22 of Government Regulation Number 37 of 1998. As a result of this process, if the deed of sale and purchase of land does not comply with the provisions of Article 22 of Government Regulation Number 37 of 1998, the deed becomes defective in the eyes of the law, and the deed is no longer an authentic deed. Even though the sale and purchase are still considered valid, the deed becomes a private deed. The buyer gets legal protection in making a land sale and purchase deed without the presence of the parties if the deed made by the PPATS is sued, as long as it fulfills the legal terms of the agreement in Article 1320 of the Civil Code. The agreement contained in the deed remains valid as stipulated in Article 1320 of the Civil Code regarding the legal requirements for an agreement, namely that there has been a legal act of buying and selling. However, the deed is no longer an authentic deed but becomes a private deed, and the parties, both the buyer and the seller, have the right to request compensation for the losses suffered by the PPATS concerned. This is in accordance with what is stated in Article 62 of Government Regulation Number 24 of 1997, that PPATS can be asked for compensation due to legal defects found in the process of making an authentic deed.

### Conclusion

The evidentiary force becomes imperfect, as in an authentic deed. Meanwhile, the agreement contained in the deed of sale and purchase made by PPATS in Bener Meriah Regency without the presence of the parties is still valid because it does not conflict with the legal terms of the agreement as stipulated in Article 1320 of the Civil Code, namely that PPATS is obliged to compensate for losses suffered by these parties, especially buyers, in the form of reimbursement of costs and compensation. The legal protection that the buyer gets is protected by law because the legal terms of the agreement are fulfilled, but the buyer has the right to claim compensation from the relevant PPATS.

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