



Responsibility of officials in creating authentic deeds that are cancelled by the court

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Abstract

The responsibility of Land Deed Officials (PPAT) in issuing deeds must be in accordance with the facts, data, and actual events, supported by relevant documents in accordance with the regulations. This is stipulated in Article 53 paragraph (2) of the Head of the National Land Agency Regulation Number 1 of 2006 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 regarding the Regulations on the Position of Land Deed Officials (Perka BPN No.1/2006). However, it was found in the Judgment of the Banda Aceh District Court dated January 28, 2020, in Judgment Number 8/Pdt.G/2020/PN Bna, that the Deed issued by the PPAT was requested for cancellation by the aggrieved party. The research approach used in this study is a statutory approach, conceptual approach, and historical approach, as explained by Johnny Ibrahim, because each legislative regulation has different historical backgrounds. The research findings revealed that a PPAT, in carrying out their duties and responsibilities, has been proven to have committed violations, and as a result, the PPAT can be subjected to administrative sanctions.

Keywords: responsibility, PPAT, authentic deed

Introduction

Land Deed Officials (PPAT) must issue deeds in accordance with the facts, data, and actual events, supported by relevant documents as stipulated by the regulations. This is stated in Article 53 paragraph (2) of the Head of the National Land Agency Regulation Number 1 of 2006 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 regarding the Regulations on the Position of Land Deed Officials (Perka BPN No.1/2006). If a PPAT is found to have violated their duties and responsibilities, they may be subject to administrative sanctions.

Based on the Judgment of the Banda Aceh District Court dated January 28, 2020, in Judgment Number 8/Pdt.G/2020/PN Bna, the plaintiff filed a lawsuit against the first defendant as the former husband, the second defendant as the wife of the first defendant from their second marriage, the third defendant as the buyer, and the fourth defendant as the Land Deed Official (PPAT). The plaintiff requested the cancellation of the Sale and Purchase Deed issued by the fourth defendant with Number 114 Year 2019, dated July 25, 2019, which was based on a transaction conducted by the first and second defendants with the third defendant. The reason for the cancellation of the deed was that the plaintiff believed that the sale conducted by the first and second defendants with the third defendant was an unlawful act, as the object of the sale, a 79 m² shop located on Jalan Diponogoro, Kampung Baru Village, Baiturrahman District, Banda Aceh, was still jointly owned by the plaintiff and the first defendant, and the plaintiff claimed to own half of the value of the shop.

However, in the Judgment of the Banda Aceh District Court Number 8/Pdt.G/2020/PN Bna, the court rejected the plaintiff's claim. In its considerations, the court held that based on the legal facts, the authority to adjudicate disputes regarding joint property during marriage lies with the Syariah Court. Furthermore, the court concluded that since

the status of the disputed property as joint property between the plaintiff and the first defendant had not been determined by the Banda Aceh Syariah Court, the plaintiff's argument claiming it as joint property lacked legal certainty, and thus, the Banda Aceh District Court did not have jurisdiction to hear the case.

In the Judgment of the High Court Number 65 PDT/2020/PT BNA, the court accepted the plaintiff's request for reconsideration and annulled the Judgment of the Banda Aceh District Court Number 8/Pdt.G/2020/PN Bna. In its considerations, the court stated that during the marriage between the plaintiff and the first defendant, they had joint property in the form of a 79 m² shop located on Jl. Diponogoro, Kampung Baru Village, Baiturrahman District, Banda Aceh, which was purchased by the first defendant from the seller on June 28, 2005, based on Sale and Purchase Deed Number: 404/2005, dated June 28, 2005, made by Notary Sabaruddin Salam, S.H., PPAT in Banda Aceh. The fact that the first defendant married the second defendant on September 18, 2003, was only discovered by the plaintiff in 2006.

The court also found that the first and second defendants had sold the joint property to the third defendant based on the Sale and Purchase Deed issued by the fourth defendant with Number 144 Year 2019, dated July 25, 2019.

The sale conducted by the first and second defendants with the third defendant was deemed an unlawful act. Based on these considerations, the plaintiff's lawsuit was not primarily about the division of joint property between the plaintiff and the first defendant, but rather about the unlawful act committed by the first and second defendants in selling the joint property to the third defendant, as stated in Sale and Purchase Deed Number: 404/2005, dated June 28, 2005, issued by the fourth defendant. Therefore, the lawsuit filed by the plaintiff against the first defendant, second defendant, third defendant, fourth defendant, and other involved parties was related to the unlawful act and not a dispute over joint

property in accordance with Islamic law. Consequently, the competent court to examine and adjudicate this case is the District Court.

The act of the first and second defendants in selling the disputed property to the third defendant based on Sale and Purchase Deed Number: 404/2005, dated June 28, 2005, issued by the fourth defendant is an unlawful act. Thus, the parties involved need to provide evidence during the trial. Based on these considerations, the High Court held that the Banda Aceh District Court has the authority to examine and adjudicate the lawsuit filed by the plaintiff against the first defendant, second defendant, third defendant, fourth defendant, and other involved parties. Therefore, the Judgment of the Banda Aceh District Court dated July 7, 2020, Number 65/Pdt.G/2020/PN Bna, stating that the court lacks jurisdiction to examine and adjudicate this case, cannot be upheld and should be canceled.

Due to the details of this case, the researcher is interested in studying the topic of "The Accountability of Land Deed Officials in Issuing Revoked Authentic Deeds by the Court."

Research Method

This research was conducted using the normative juridical research method with the following approaches: first, the statutory approach (*statuta approach*); second, the conceptual approach (*concept approach*); and third, the historical approach (*historical approach*).

Result

In the creation of PPAT deeds, they must be done in accordance with the correct events, status, and data, supported by documents in accordance with the regulations. This is stipulated in Article 53 paragraph (2) of the Head of the National Land Agency Regulation No. 1 of 2006 concerning the Implementation Provisions of Government Regulation No. 37 of 1998 concerning the Regulation on the Position of Land Deed Officials ("BPN Regulation 1/2006").

Regarding the responsibility of PPAT for deeds containing legal defects, it can be described as follows:

1. Administrative responsibility

PPAT who disregards the provisions stated in Article 38, Article 39, and Article 40, as well as the provisions and instructions given by the Minister or the designated Official in performing their duties, may face administrative sanctions ranging from a written warning to dismissal from their position as PPAT (Article 10 of the Land Deed Officials Regulation). This is also stipulated in Article 6 paragraph (1) of the Code of Ethics for Land Deed Officials, which states that members who violate the code of ethics may be subject to sanctions such as:

- a. Warning;
- b. Reprimand;
- c. Suspension (temporary dismissal) from IPPAT membership;
- d. Dismissal from IPPAT membership;
- e. Dismissal with dishonor from IPPAT membership.

2. Civil responsibility

The liability of PPAT for discrepancies, negligence, and/or omissions in the creation of sale and purchase deeds that

deviate from the formal and substantive requirements of the procedures for creating PPAT deeds may not only result in administrative sanctions but also open the possibility of claims for compensation by parties who have suffered harm. In relation to errors (*beroepsfout*) by PPAT, it must be examined whether the error constitutes a breach of contract (*wanprestasi*) or an unlawful act (*onrechtmatige daad*). It is generally accepted that breach of contract occurs when it is preceded by an agreement, whereas if it is unrelated to an agreement, the violation is referred to as an unlawful act (*onrechtmatige daad*).

3. Criminal responsibility

According to Habib Adjie, through analogical reasoning, it is found that the formal aspects of a PPAT deed can serve as a basis or limitation for prosecuting PPAT if.

- a. The formal aspects are proven to have been intentionally (with full awareness and intention) used by the PPAT as a tool to commit a criminal act.
- b. The PPAT knowingly and intentionally, together with the relevant parties, engages in a legal action that they know to be unlawful.

Imposition of criminal sanctions on PPAT can be carried out within the limits of the violated provisions, meaning that in addition to meeting the elements of the offenses stated in the regulations related to PPAT, the Code of Ethics for Land Deed Officials must also fulfill the requirements specified in the Criminal Code. According to Habib Adjie, the criminal cases related to the formal aspects of PPAT deeds in the creation of authentic deeds are as follows:

- a. Forgery and use of forged documents (Article 263 paragraph (1) and (2) of the Criminal Code)
- b. Committing forgery of authentic deeds (Article 264 of the Criminal Code)
- c. Ordering the inclusion of false information in authentic deeds (Article 266 of the Criminal Code)
- d. Causing or ordering, participating in, or assisting in the commission of the aforementioned offenses (Article 55 in conjunction with Article 263 paragraph (1) and (2) of the Criminal Code or Article 266 of the Criminal Code)
- e. Assisting in the creation of forged documents or the use of forged documents (Article 56 paragraph (1) and (2) in conjunction with Article 263 paragraph (1) and (2) of the Criminal Code or Article 266 of the Criminal Code).

Conclusion

In the creation of PPAT deeds, they must be done in accordance with the correct events, status, and data, supported by documents in accordance with the regulations. This is stipulated in Article 53 paragraph (2) of the Head of the National Land Agency Regulation No. 1 of 2006 concerning the Implementation Provisions of Government Regulation No. 37 of 1998 concerning the Regulation on the Position of Land Deed Officials (BPN Regulation No. 1/2006). If a PPAT is found to have violated their duties and responsibilities, they may be subject to administrative sanctions. However, if there are violations that meet the elements of civil and criminal offenses committed by the PPAT, they may be subject to civil sanctions as stipulated in the Civil Code and criminal sanctions as stated in the Criminal Code.

References

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