



## Juridical analysis of cancellation of PPAT deed in decision number 65 PDT/2020/PT BNA

Amira Fadlita<sup>1</sup>, Yusri<sup>2</sup>, Novi Sri Wahyuni<sup>2</sup>

<sup>1</sup> Master of Notary Student, Faculty of Law, Syiah Kuala University, Aceh, Indonesia

<sup>2</sup> Lecturers, Faculty of Law, Syiah Kuala University, Aceh, Indonesia

### Abstract

The Land Deed Making Officer (PPAT) in issuing the deed must be in accordance with the actual facts, data and events that supported by the appropriate documents in the statutory regulations. This study aims to explain the basic considerations of the Judge of the High Court cancelling the deed of sale and purchase made before the PPAT, the legal implications for the parties due to the cancellation of the deed of sale and purchase made by the PPAT and the form of PPAT's responsibility for the deed of sale and purchase which was cancelled by the court. Empirical juridical research is used in this study with a statutory approach, a conceptual approach, and a historical approach. The results showed that the deed of sale and purchase made before the PPAT was cancelled by the judge because the deed did not meet the material and formal requirements. The legal implications of cancelling the deed of sale and purchase by the judge result in the deed not being used as a basis for transferring land rights. PPATs who are proven to have committed violations in carrying out their duties and positions in the process of making a deed may be subject to or be subject to sanctions in the form of administrative sanctions, civil sanctions and criminal sanctions.

**Keywords:** Accountability, PPAT, authentic deed

### Introduction

The Land Deed Making Officer (PPAT) in issuing the deed must be in accordance with the actual facts, data and events and supported by the appropriate documents in the statutory regulations. This is what is regulated in Article 53 section (2) 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 Officials Making Land Deeds (Perka BPN No.1/2006). A PPAT in carrying out their duties and positions is proven to have committed an offense, may be subject to sanctions in the form of administrative sanctions.

Based on the Decision of the Banda Aceh District Court on 28<sup>th</sup> of January, 2020 in Decision Number 8/Pdt.G/2020/PN Bna, the plaintiff sued Defendant I as a former husband and Defendant II as the wife of Defendant I from a second marriage, and Defendant III as a buyer, and Defendant IV as a Land Deed Making Officer (PPAT). The plaintiff in this decision made a request to cancel the Sale and Purchase Deed issued by Defendant IV Number 114 of 2019 dated July 25 2019 which was issued from a legal sale and purchase action committed by Defendants I & II with Defendant III. The reason for the lawsuit for cancelling the deed of sale and purchase was because the plaintiff felt that the sale and purchase carried out by Defendant I and Defendant II and Defendant III was a form of unlawful act, because the object being traded was in the form of a One Door Shop with an area of 79 m<sup>2</sup> located on Jalan Diponogoro, Kampung Baru Village, Baiturrahman District, Banda Aceh City is still a joint property between the plaintiff and Defendant I and the plaintiff feels he owns half of the value of one door of the shop.

However, in the Decision of the Banda Aceh District Court Number 8/Pdt.G/2020/PN Bna, the judge rejected the lawsuit from the plaintiff. In his consideration, the judge

argued that based on legal facts, the authority to adjudicate disputes regarding joint assets during marriage is the Syar'iyah Court. Furthermore, the judge argued that because the object of the case had not been decided as joint property of the plaintiff and defendant I by the Banda Aceh Syar'iyah Court, the Banda Aceh District Court was of the opinion that the plaintiff's argument in his lawsuit stated that the object of the case was still joint property between the plaintiff and defendant I, do not have legal certainty because it has not been decided by the Banda Aceh Syar'iah Court as a judicial body authorized to try absolutely and the judge also decided to grant the defendant's exception and stated that the Banda Aceh District Court had no authority to try this case.

In the High Court Decision Number 65 PDT/2020/PT Bns, the judge accepted the plaintiff's original appeal and cancelled the Banda Aceh District Court Decision Number 8/Pdt.G/2020/PN Bna. In his consideration the judge stated that during the marriage period between the plaintiff and Defendant I had joint property in the form of a One Door Shop with an area of 79 m<sup>2</sup> located on Jl. Diponogoro, Kampung Baru, Baiturrahman District, Banda Aceh, which was purchased by Defendant I from the seller on 28<sup>th</sup> of June 2005 pursuant to Deed of sale and purchase Number: 404/2005 dated 28 June 2005 drawn up by Notary Sabaruddin Salam, S.H., PPAT in Banda Aceh. That Defendant I married Defendant II on 18<sup>th</sup> of September 2003 which the Plaintiff found out in 2006.

That Defendant I and Defendant II had sold the joint property of Plaintiff and Defendant I to Defendant III in accordance with the Deed of sale and purchase made by Defendant IV with Number 144 of 2019 dated 25 July 2019. That the sale and purchase was carried out by Defendant I and Defendant II with Defendant III is a form of unlawful act.

From the above considerations, formally the plaintiff's lawsuit is not a lawsuit regarding the distribution of joint assets between the plaintiff and Defendant I, but a lawsuit against the Unlawful Act which was carried out by Defendant I and Defendant II selling the joint property of the Plaintiff and Defendant I to Defendant III based on the Deed of sale and purchase. Purchase Number: 404/2005 dated 28 June 2005 made by Defendant IV. Because the plaintiff's lawsuit addressed to Defendant I, Defendant II, Defendant III, Defendant IV, and Co-Defendant are Unlawful Acts and are not disputes over joint property in marriage according to the Islamic way, the District Court has the authority to examine and adjudicate the *a quo* case.

The act of Defendant I and Defendant II selling the object of the case to Defendant III pursuant to Deed of sale and purchase Number: 404/2005 dated 28<sup>th</sup> of June 2005 made by Defendant IV is an unlawful act, so it needs evidence from the parties at trial. Based on the considerations mentioned above, the Panel of High Judges is of the opinion that the Banda Aceh District Court has the authority to examine and adjudicate the lawsuit filed by the plaintiff's original comparator against Appellant I and Appellant II, previously Defendant I and Defendant II, Appellant III, Originally Defendant III, Appellant IV, Originally Defendant IV, and co-appellant co-defendant. Therefore, the decision of the Panel of Judges at the Banda Aceh District Court dated July 7 2020 Number 65/Pdt.G/2020/PN Bna stated in amar that the Banda Aceh District Court was not authorized to examine and adjudicate this case which could no longer be defended and should be canceled.

Because of the explanation of this case, it is interesting to study, therefore the researcher took the research title "Juridical Analysis of Cancellation of Ppat Deeds in Decision Number 8/Pdt.G/2020/Pn Bna.

### Research Methods

This research was conducted using normative juridical legal research methods. Sources of data obtained from primary and secondary legal materials. The approach used is the statutory approach (statute approach), conceptual approach (concept approach), and historical approach (historical approach). The data obtained were analysed qualitatively prescriptively.

### Research Result

The cancellation of the sale and purchase deed by the Court occurred in Banda Aceh City, which is contained in the High Court Decision Number 65/PDT/2020/PT BNA Banda Aceh dated January 28 2020 in Decision Number. The Plaintiff (Nur Kesumawati) made a request to cancel the Deed of sale and purchase issued by Defendant IV (Notary and PPAT Yusrawati, S.H.) Number 114 of 2019 dated 25 July 2019 which was issued from the legal action of sale and purchase carried out by Defendants I & II (Helmizar and Novadilla) with the buyer of Defendant III (Ampun Bantai). The background to the lawsuit is that on 27<sup>th</sup> of February 1987 the Plaintiff (Nur Kesumawati) married Defendant I (Helmizar) in accordance with a duplicate quote from the Marriage Certificate Number: KK.01.01/6/Pw.00/107/2005 issued by the Office of Religious Affairs Labuhan Haji District on June 10, 2005. The plaintiff (Nur Kesumawati) and Defendant I in 2005 once bought a shop owned by Abdul Muis Manaf as the seller, with evidence of Deed of

sale and purchase Number: 404/2005 dated 28<sup>th</sup> of June, 2005 drawn up by a Notary/ PPAT Sabaruddin Salam, S.H., PPAT in Banda Aceh which made one shop door with an area of 79 m<sup>2</sup> located on Jalan Diponegoro, Gampong Baru, Baiturrahman District, Banda Aceh become joint property between the Plaintiff and Defendant I.

On 5<sup>th</sup> of January, 2006 the Plaintiff (Nur Kesumawati) filed a lawsuit against her husband Defendant I (Helmizar) for divorce, because she married Defendant II (Novadilla) without the knowledge of the Plaintiff (Nur Kesumawati) and it was revealed that the marriage took place on 18<sup>th</sup> of September 2003. On 25<sup>th</sup> of July 2019 Defendant I and Defendant II sold one shop door which is joint property between the Plaintiff and Defendant I, so the Plaintiff filed a lawsuit with the Banda Aceh District Court, but in the Decision in the District Court Decision Number 8/Pdt.G/2020/PN BNA, The judge decided to reject the lawsuit from the plaintiff (Nur Kesumawati) and granted the exceptions of the defendants.

In this case the case of making a PPAT deed which contains legal defects, will result in difficulties for Defendants I, II and III or people who are entitled to the deed to exercise their rights. The client's right that is guaranteed by law can confirm that those who are entitled to the deed are the right to use the deed as evidence of their legal rights, so that with this evidence they can argue for their rights, even denying the rights of others.

Thus if the PPAT deed which was made as the basis for the transfer of land rights, is declared null and void by a court decision, and results in the PPAT client not obtaining the rights to the authentic deed, or unable to use the deed as befits the role and function of an authentic deed, so that the Defendant I, II and III, who should be rights holders, are unable to exercise their rights, the PPAT concerned is responsible for the losses incurred.

Compensation for unlawful acts is a form of compensation that is imposed on the person who has caused the wrong party to suffer. Compensation arises because there is a mistake, not because of an agreement. While the form of compensation known in civil law there are 2 (two) types, namely:

- a. General compensation, namely compensation that applies to all cases due to unlawful acts in the form of costs, losses and interest. Compensation in general is regulated in Article 1243 to Article 1252 of the Civil Code (KUHPperdata).
- b. Special compensation that can only arise from certain agreements. In an unlawful act, the form of compensation is different from compensation for default, and there is the possibility of compensation in other forms besides the amount of money.

Regarding compensation in other forms, it can be seen in the consideration of a Hoge Read which is completely formulated. The perpetrator of an unlawful act can be punished to pay a sum of money as a compensation for the loss he has caused to the injured party, but if the aggrieved party demands compensation in another form, and the judge considers it an appropriate form of compensation, then the perpetrator can be punished for committing other achievements in the interests of the aggrieved party that are suitable for eliminating the losses suffered.

### Criminal liability

According to Habib Adjie, as the author is aware of the analogy reasoning method, he argues that the formal aspects of a PPAT deed can be used as a basis or limitation to be able to convict a PPAT if,

- a. These formal aspects are proven intentionally (with full awareness and conviction and planned by the PPAT concerned) that the deed he made was used as a tool to commit a crime. The PPAT consciously and intentionally together with the
- b. parties concerned takes a legal action which he knows is an unlawful act.

The imposition of criminal sanctions against PPATs can be carried out if these limits are violated, meaning that in addition to fulfilling the formulation of violations mentioned in the laws and regulations related to PPATs, the IPPAT code of ethics must also fulfil the formulations mentioned in the Criminal Code (KUHP). According to Hibab Adjie, the criminal cases related to the formal aspects of the PPAT deed in making authentic deed are as follows:

- a. Making fake/forged letters and using fake/forged letters (Article 263 sections (1) and (2) of the Criminal Code);
- b. Falsifying an authentic deed (Article 264 of the Criminal Code);
- c. Ordered to include false statements in an authentic deed (Article 266 of the Criminal Code).
- d. Doing ordering to do, participating in doing (Article 55 Jo Article 263 section (1) and (2) of the Criminal Code or Article 266 of the Criminal Code).
- e. Assist in making fake/or forged letters and using fake/falsified letters (Article 56 section (1) and (2) in conjunction with Article 263 section (1) and (2) of the Criminal Code or Article 266 of the Criminal Code).

### Conclusion

In making a PPAT deed, it must be carried out in accordance with the correct incident, status and data and supported by documents according to statutory regulations. This is what is regulated in Article 53 paragraph (2) 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 Officials Making Land Deeds (Perka BPN No.1/2006).

The deed of sale and purchase made by the PPAT must meet the material requirements and formal requirements. If these conditions are not met, the implication is that the deed of sale and purchase of land can be cancelled. If a PPAT in carrying out his duties and positions is proven to have committed a violation in the process of making a deed, the PPAT may be subject to or be subject to sanctions in the form of administrative sanctions, civil and criminal sanctions. PPATs who commit acts against the law (civil) may be subject to civil sanctions in the form of payment of compensation. Meanwhile, if it is proven to have committed a crime against the PPAT, it can be subject to criminal sanctions contained in the Criminal Code.

### Reference

1. Jhonny Ibrahim, *Teori dan Penelitian Hukum Normatif*, Surabaya: Bayu media, 2005.
2. Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, 2011.

3. Husni Tamrin, *Pertanahan Oleh Notaris PPAT*, Jakarta: Laksbang, 2018.
4. Anita Afriana, "Kedudukan Dan Tanggung Jawab Notaris Sebagai Pihak Dalam Penyelesaian Sengketa Perdata Di Indonesia Terkait Akta Yang Dibuatnya", *Jurnal Poros Hukum Padjadjaran*, Vol. 1 No. 2, 2020.
5. Baharudin. "Kewenangan Pejabat Pembuat Akta Tanah (PPAT) Dalam Proses Jual Beli Tanah". *Jurnal Keadilan Progresif*, Vol. 5 No.1, Maret 2014.
6. Denny Saputra, "Prinsip Kehati-Hatian Bagi Notaris/PPAT Dalam Menjalankan Tupoksinya Dalam Upaya Pencegahan Kriminalisasi Berdasarkan Kode Etik" *Jurnal Akta*, Vol. 4 No. 3, 2017.
7. *Civil Code (Kitab Undang-Undang Hukum Perdata)*.
8. *Law Number 5 of 1960 concerning Basic Agrarian Principles*.
9. *Law Number 4 of 1996 concerning Mortgage Rights on Land*
10. *Law Number 1 of 1974 concerning Marriage*.
11. *Law Number 16 of 1985 concerning Flats*.
12. *Law Number 20 of 2011 concerning Flats*.
13. *Government Regulation Number 24 of 1997 concerning Land Registration*.
14. *Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials*.
15. *Government Number 24 of 2016 Amendments to Government Regulation Number 37 of 1998 concerning Regulations for the Position of Land Deed Making Officials*.
16. *Regulation of the Minister of ATR/BPN Number 3 of 1997*.