

Responsibility of the land deed making officer for the transfer of property by one of the parties

Hilda Fitriani¹, Darmawan², Teuku Saiful²

¹ Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

² Lecturer, Faculty of Law, Universitas Syiah Kuala, Indonesia, Banda Aceh, Indonesia

Abstract

The transfer of land rights through sale and purchase is inseparable from the existence of an agreement / agreement, where there is an agreement between the parties binding themselves, with one party handing over an object, and the other party will make payments that can be made before the PPAT in accordance with Article 2 paragraph (1) of the PP Land Deed Making Officer. PPAT in transferring land rights must act carefully in accordance with Article 3 letters e, f, and g of the PPAT Code of Ethics Year 2017. The purpose of this study is to determine and explain the responsibility of Land Deed Making Officials for the application of the precautionary principle to land sale and purchase agreements. The results showed that, the responsibility of the PPAT for the transfer of property by negligence, or intentionality in making a deed that deviates from the formal requirements and material requirements for the procedure for making the deed of PPAT, "then the PPAT can be subject to administrative sanctions where the sale and purchase deed made by this PPAT does not have binding legal force until even the PPAT can be given administrative sanctions in the form of a reprimand by IPPAT.

Keywords: Responsibilities, land deed making officers, and transfer of property

Introduction

The sale and purchase of land involves two parties, where the first party has the obligation to transfer the title to the land to the second party. Instead, the second party has the responsibility to pay a sum of money according to the price agreed upon by both parties. The process of transferring land rights through sale and purchase transactions is carried out before the Land Deed Making Officer (PPAT). The implementation of the agreement for the transfer of rights or sale and purchase of land must comply with the conditions stipulated by law, which include material and formal conditions ^[1].

Based on Article 1 point 1 of the Government Regulation of the Republic of Indonesia Number 24 of 2016 which is an amendment of Government Regulation Number 37 of 1998 concerning Government Regulations of Land Deed Making Officials (PP Land Deed Making Officials), it is stated that, "Land Deed Making Officer is a general official who is authorized to make authentic deeds relating to certain legal acts regarding land rights or ownership of housing units in flats".

Then Article 2 of the Land Deed Making Officer PP states that, PPAT has the main duty;

1. "carry out part of the land registration activity by making a deed as evidence of the commission of certain legal acts regarding land rights or property rights to flats, which will be used as a basis for registering changes in land registration data resulting from such legal acts.
2. The legal acts referred to in paragraph (1) shall be as follows:
 - a. Buying and selling;
 - b. Exchange;
 - c. Grants;
 - d. Income into the company;
 - e. Sharing of common rights;

- f. Granting building use rights/use rights over freehold land;
- g. Granting of dependent rights;

The grant of power imposes the right of dependent".

Every PPAT must be able to act carefully in accordance with Article 3 letters e, f, and g of the PPAT Code of Ethics Year 2017 states that,

In order to carry out the duties of the position of the PPAT and Substitute PPAT or in daily life, each PPAT is required to:

- e. have professional behavior and participate in national development, especially in the field of law;
- f. work responsibly, independently, honestly, and impartially;
- g. provide the best service to the community who need their services.

According to Article 6 of the PPAT Code of Ethics, a PPAT can be sanctioned if he violates the Code of Ethics in the form of:

- a. reprimand;
- b. warnings;
- c. schorsing (temporary dismissal) from IPPAT association membership;
- d. onzetting (dismissal) from IPPAT association membership; and
- e. dishonorable dismissal from IPPAT association membership.

The precautionary principle has the meaning of imposing a vigilant attitude both on oneself and for others by paying attention to the consequences of every action taken, both now and in the future^[2]. PPAT needs to comply with the precautionary principle in carrying out its duties to prevent potential problems in the future. PPAT must be meticulous in researching documents related to property, identifying the

parties, and checking the necessary permits. It is also important for PPAT to be careful in taking care of administration at the Land Office, especially in clarifying the status of the property being sold in order to avoid mistakes in making the Deed of Sale and Purchase of land. This aims to ensure the conformity of the contents of the deed with actual legal events. The precautionary principle will also maintain the reputation and quality of PPAT services in making deeds and services to the community^[3]. The legal act of PPAT in selling/buying land is also regulated in Article 37 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration states that, "Transfer of land rights and ownership of housing units in high-rise buildings through the method of buying and selling, exchange, grants, participation in companies, and other legal acts of transfer of rights, except through auction, can only be registered if supported by a deed made by a Land Deed Making Officer (PPAT) who has the authority in accordance with the provisions of applicable laws and regulations."

In land and/or building sale and purchase transactions, agreements or engagements play an important role. In the agreement, the parties bind themselves, where the surrender of a property is carried out by one party, and the other party will make payments in accordance with the previous agreement, according to Article 1457 of the Civil Code. Therefore, this agreement results in rights and obligations for the parties involved, namely the seller and the buyer. In the context of buying and selling land and/or buildings, there is a term for money regulated by Article 1454 of the Civil Code. According to this provision, with the amount of money, the sale and purchase transaction cannot be canceled, so disputes that may arise in the future are not accommodated. In general, the process of buying and selling before the PPAT involves paying taxes by the seller and buyer, physical examination of land certificates, signing of the Deed of Sale and Purchase (AJB), validation, and other steps. However, in certain situations, such as the absence of one of the parties at the specified time, the status of the object of sale and purchase that is still guaranteed or collateralized at the bank, or the object of sale and purchase that is still in the process of solving the certificate, the AJB process can experience problems^[4].

The object of buying and selling property in marital status can be grouped into 3 (three) types of assets, namely:

1. Joint Property, i.e. property acquired during marriage becomes joint property. Includes assets and liabilities and is obtained as a result of joint efforts and/or agreements of husband and wife for the benefit of the family^[5].
2. Congenital Property, that is, property acquired by each husband and wife before the marriage took place. This property can come from own acquisition or effort before marriage, inheritance, and/or grant before marriage.
3. Personal property, which is property acquired by each husband and wife during marriage but not by joint effort. Included in this group of assets are gifts, wills, and/or inheritances obtained by one of the spouses during the marriage period. The status of this property remains personal property, unless they agree otherwise or in the process agree or let the property merge into together^[6].

Law Number 1 of 1974 concerning Marriage states that property acquired during marriage becomes joint property. While the property of each husband and wife either as a gift or inheritance is under the control of each as long as the parties do not specify otherwise^[7].

In fact, a husband sells his wife's property without his wife knowing as in decision Number 123/PDT/2020/PT SBY, in the Surabaya High Court. In this judgment, the husband (hereinafter referred to as Defendant 1) sold 2 plots of land belonging to his wife from the property to his son-in-law without the knowledge of his children. In the judgment of the first instance of the District Court with 65/Pdt.P/2018-PN-Ngw the Defendant sold 1 plot of land inherited by his wife. In the decision of the first instance, the panel of judges requires to obtain permission from the heirs first so that the sale and purchase process can then be carried out.

The Ngawi District Court has partially accepted the application and in its ruling, defendant 1 was proven to have sold the land in 2018 to defendants 2 and 3, both of whom are still related to the plaintiff. This case continues to the cassation level with case number 915 K / Pdt / 2021 which in its judgment rejected the cassation filed by defendants 1, 2, and 3.

Based on Article 1239 of the Civil Code, in order for this lawsuit to be unobscure, vague and worthless, and in order to avoid the Defendant's attempt to transfer his property to another party, the plaintiff requests that: cancellation of the sale and purchase agreement of 2 plots of land with SHM Number 2201 covering an area of 599 M2 and SHM Number 2202 covering an area of 593 M2 on behalf of the right holder of the Wife, which is recorded in accordance with the Deed of Sale and Purchase of PPAT Deed of Ngawi Regency in the name of Prakoso Pranajaya, SH No. 822/2018 and No. 823/2018 dated October 5, 2018, to be returned to the original name, namely Endang Hariwanti.

The principle of prudence of the PPAT is only explained in Article 22 of the PP of the Land Deed Making Officer that the PPAT Deed must be read / explained its contents to the parties in the presence of at least 2 (two) witnesses before being signed immediately by the parties, witnesses and the PPAT. While in its journey, PPAT not only ensures that the parties face the PPAT as officials who make, read, and explain the deed, but according to the precautionary principle, the PPAT can avoid and prevent errors that cause problems in making authentic deeds^[4].

Based on the background above, it can be seen that there is no prudence of PPAT in making buying and selling property. Therefore, to answer these problems, the main problem in this study is how is the responsibility of the Land Deed Making Officer for the application of the precautionary principle to the land sale and purchase agreement.

Research Method

The type of research used is normative legal research, which analyzes law as a symptom of society or patterned behavior and the working of law in society which can be assessed based on the level of legal effectiveness, compliance with the law, the role of legal institutions or entities in law enforcement, the implementation of legal provisions, the influence of legal provisions on certain social problems or vice versa, and the impact of social problems on the law. In this study using a combination of approaches, namely the Statutory Approach and the Concept Approach^[8].

Primary legal material, that is, binding legal material. In this study, as a basis, of course, the Constitution of the Republic of Indonesia of 1945, Law Number 1 of 1971 concerning Marriage, Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Government Regulations of Land Deed Making Officials and the Code of Ethics of Land Deed Making Officials and Laws, books, and other legal sources that support the legal provisions in the laws and regulations. Secondary legal material, which is legal material that provides an explanation of primary legal material or as primary legal material.

Data collection techniques are the most important step in the research process because the main purpose of research is to obtain data. The data acquisition technology needed here is the most suitable data acquisition technology so that data is really maintained that is valid and reliable^[9].

Library research. In accordance with the use of secondary data in this study, data collection will be carried out by collecting, studying, and systematically processing literature materials and related documents. Secondary data both concerning primary, secondary and tertiary legal materials are obtained from library materials, taking into account the principle of updating and rebuilding. The data are arranged systematically, so that a complete relative picture of qualitative classification is obtained.

After all data is obtained completely, the data is analyzed using qualitative data analysis techniques, using legal principles, theories, and laws. The use of qualitative data analysis is to measure and test data, concepts, theories, and teachings by not using mathematical or statistical formulas, but using logical reasoning. This data analysis method aims to get a clear picture so that existing problems can be answered and then descriptive analysis results can be obtained.

Results and Discussions

a. Responsibility of Heirs for Transfer of Land Rights in the Deed of Sale and Purchase

Based on Article 174 letter e KHI has mentioned the definition of inheritance, namely: (e) Inheritance is property plus part of the joint property after being used for the purposes of the testator during illness until death, the cost of managing the body (tajhiz), debt payments and gifts to relatives. Editorially, the article explains the meaning of inheritance. It also contains another understanding that before the estate is distributed to the heirs, the inheritance must first be used to pay the obligations of the heir, including debts that exist during the testator's life^[10].

According to the Civil Code, the attitude of an heir to the estate is distinguished in the following 3 different options: 1. The heir receives the right of inheritance in full or purely (zuivere aanvaarding). 2. The heir receives the estate conditionally (beneficiae aanvaarding) and 3. The heir refused to inherit the property (verwerpen). The heir who has secretly sold part of the estate or paid off the testator's debts, then he is considered to have chosen the attitude of accepting inheritance rights (Stilzwijgende aanvaarding). If the heir takes the attitude of accepting the estate conditionally or rejecting the estate, then the choice must be expressly stated before the Clerk of Court. Some heirs who sell part of the heir's estate. An inheritance claim against a disputed object that turns out to have been sold

unbeknownst to the other heirs must be legally protected. If the act is considered wrong or unlawful, then the proposition must be proven.

The obligations of the heirs to the heirs are:

1. take care and finish until the funeral of the body is completed;
2. settle both debts in the form of treatment, treatment, including the obligations of heirs and collectors of receivables;
3. finalize the testator's will;
4. Dividing the estate among the rightful heirs.
5. The liability of the heir for the debts or obligations of the testator is limited only to the amount or value of his estate^[10].

In general, based on the existing civil law order, the obligations of the heir to the heir's estate are as follows^[11]:

1. Maintain the integrity of the estate before the estate is divided.
2. Find a way of distribution in accordance with the provisions and others.
3. Pay off the testator's debt if the testator leaves a debt.
4. Execute the will if any.

The Civil Code regulates the responsibilities of heirs to the testator's estate, including maintaining the integrity of the estate before the estate is divided, finding ways of distribution according to the provisions, paying off the testator's debts if the heir leaves debts, and executing a will if the heir leaves a will. And therefore the heirs are entitled:

1. Accept in full the inheritance that can be done expressly or otherwise.
2. Accepting with the right to exchange, this right shall be declared to the Registrar of the District Court at the place of open inheritance.
3. Rejecting inheritance.

Heirs who receive inheritance from heirs have several responsibilities, namely^[12]:

1. Record the existence of the estate within four months after he declares his conviction to the clerk of the district court.
2. Take good care of the relics.
3. Settle inheritance matters immediately.
4. Provide guarantees to creditors, both movable property creditors and mortgage holder creditors
5. Give accountability to all debt collectors and people who receive gifts in relief.
6. Calling out people with debts who are not well-known, in official newspapers.

To find out the responsibilities of heirs in customary law, it is necessary to know the customary inheritance system based on the hereditary system, individual system, and collective inheritance system, as for the inheritance system of descendants in the regions as follows:

1. Straight up and down lineage i.e. someone who is directly descended from another person, for example between father and son or between grandfather, father and son, grandchild, cici and so on straight down.
2. Deviant or branched lineage, that is, if between two or more people there is a single ancestor, for example, the same father and mother (siblings), or grandparents, and so on.

3. The matrilineal system is a system of descent drawn according to the maternal line, where the position of women is more prominent than the position of men in inheritance.

The case in the Surabaya High Court decision Number 123/PDT/2020/PT SBY, in the Surabaya High Court is a case in the object of his misery regarding the inheritance inherited by a wife to her husband and children. The property left behind is 2 plots of land which are the property of his wife. This is evidenced by the existence of a certificate of inheritance in 2013 which was confirmed by the local village head and corroborated by the statement of the sub-district head with letter number 549/2013.

The defendant in the decision case 123/PDT/2020/PT SBY who is the biological father of the plaintiff who is the son of the heir. In this case, the children as heirs have inquired about the transfer of rights to their mother's estate, but the defendant ignored.

Children as heirs also have rights to land inherited from their mothers, so they file a lawsuit with the local court. It is as already explained that descendants have responsibility for the inheritance to maintain it. Therefore, the defendant does not have full rights to transfer the title to his wife's land derived from the property, according to the provisions of the law must notify and know his children as well.

According to Article 833 paragraph (1) of the Civil Code, the heirs by themselves by law, get ownership of all goods, at will and all receivables of the deceased. Then in Article 832 paragraph (1) of the Civil Code states, who is entitled to be heirs is a blood family, then the transfer of land rights carried out by defendant one must get approval by all heirs.

In the Surabaya High Court decision Number 123/PDT/2020/PT SBY, the children did not give consent and they did not even know of the transfer of rights to the land. One of the reasons for the plaintiff's application is for the court to cancel the land sale and purchase agreement.

Legal Responsibility of PPAT for Transfer of Property by One Party

Each profession certainly has professional ethics that are different from other professions. However, there are several general professional ethics, one of which is the responsibility that also applies to PPAT. PPAT is a state official whose task is to issue certain deeds, especially the deed of transfer of land rights based on PP No. 37 of 1998, PPAT is responsible for administrative, civil, and criminal crimes.

The legal responsibility of PPAT for the transfer of property in AJB consists of ^[13]:

1. Administrative Responsibilities

Administrative errors or administrative errors made by PPAT in carrying out various registration and land transfer activities undoubtedly cause legal consequences that can be held accountable by PPAT. According to Kranenburg and Vegtig, there are two (two) theories about civil servant accountability, namely ^[14]:

- a. "Fautes Personelles theory, which is a theory that states that damages against third parties are imposed on officials who because of their actions have caused harm. In this theory, the burden of responsibility is directed at humans as individuals.

- b. Fautes de Services theory, which is a theory that states that losses to third parties are imposed on the agencies of the officials concerned. According to this theory, responsibility falls on the position. In terms of application, the losses incurred are also adjusted whether the mistake committed is a gross error or a light error where the weight and lightness of a mistake implicate the responsibility that must be borne".

Based on the power of the PPAT to perform authentic actions, a PPAT must always be careful or careful about a case, considering that a PPAT has theoretical and practical abilities. So if the PPAT makes a charter and makes the charter is not legally correct, it can be said to be an abuse of authority, because the PPAT concerned recognizes that every PPAT as a legally authorized official is obliged to handle cases related to his authority and not allegations of abuse of power can be excluded. This state of abuse of power is increasingly seen when one or several parties experience adverse elements arising when the PPAT instrument is repealed as a result of an unlawful law.

The responsibility of the PPAT for loopholes, negligence, or negligence of the PPAT in the sale and purchase deed that does not meet the material and formal requirements related to the procedures for implementing the sale and purchase deed can be borne by the party who feels violated and asks for compensation that is not limited to administrative sanctions. Regarding PPAT errors, it is necessary to check in advance whether the error is caused by delays or illegal actions ^[15].

The responsibility of the PPAT is related to negligence, or willful negligence in making a deed that deviates from the formal requirements and material requirements for the procedure for making the deed of PPAT, "then the PPAT may be subject to administrative sanctions. Deviations from these formal and material requirements include gross violations by PPAT which can be sanctioned with dishonorable dismissal from office by the Head of the Indonesian National Land Agency which in Article 28 of PERKA BPN No. 1 of 2006", states that:

1. **"PPAT was honorably dismissed from his position by the Head of the Agency because:**
 - a. own request;
 - b. is no longer able to carry out duties due to the state of his body health or mental health, after being declared by the authorized medical examination team at the request of the Head of the Agency or a designated official;
 - c. commit a misdemeanor violation of the prohibition or obligation as a PPAT;
 - d. appointed as a civil servant or member of the TNI/POLRI".
2. **PPAT was dishonorably dismissed from his position by the Head of the Agency, because:**
 - a. Commit a gross violation of the prohibition or obligation as a PPAT;
 - b. Sentenced to confinement/imprisonment for committing a criminal offense that carries a maximum penalty of confinement or imprisonment of 5 (five) years or more based on a court decision that already has permanent legal force;
 - c. Violate the code of professional ethics.

3. Misdemeanors as referred to in paragraph (1) point c include:
 - a. Collect service fees in excess of the provisions of laws and regulations;
 - b. Within 2 (two) months after the end of the leave does not carry out his duties again as referred to in Article 42 paragraph (5);
 - c. Does not submit a monthly report on the deed he made as referred to in Article 62;
 - d. Concurrently holding positions as referred to in Article 30 paragraph (1); and
 - e. Others determined by the Head of the Agency".
4. **“Serious violations as referred to in paragraph (2) letter a, among others**
 - a. assist in committing malicious conspiracies that result in land disputes or conflicts.
 - b. make a deed as an evil agreement that results in land disputes or conflicts;
 - c. make deeds outside their working area except those referred to in Article 4 and Article 6 paragraph (3);
 - d. provide incorrect information in the deed that results in land disputes or conflicts;
 - e. open a branch or representative office or other form located outside and or within its work area as referred to in Article 46;
 - f. violate the oath of office as PPAT;
 - g. the preparation of the deed of PPAT carried out, while it is known by the PPAT concerned that the parties authorized to carry out legal acts or their proxies in accordance with laws and regulations are not present before them;
 - h. making a deed regarding land rights or Ownership Rights over Flats Units which by the relevant PPAT is known to be still in dispute which results in the face of the person concerned not being entitled to perform legal actions proven by deeds;
 - i. PPAT does not read the deed in front of the parties or parties who have not or are not authorized to do the act according to the deed made;
 - j. PPAT makes a deed before parties who are not authorized to perform legal acts in accordance with the deed made;
 - k. PPAT makes a deed during the period of being subject to temporary suspension or in a state of leave;
 - l. others determined by the Head of the Agency".

In Article 10 of Government Regulation Number 24 of 2016 concerning the Provisions for the Position of PPAT, which is also regulated in Article 6 paragraph 1 of the IPPAT Code of Ethics, namely that members who violate the Code of Ethics may be subject to sanctions in the form of:

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

The imposition of these sanctions is adjusted to the quantity and quality of violations committed by the member (Article 6 paragraph (2) of the PPAT Code of Ethics). The guidance and supervision of the implementation of the duties of the Land Deed is carried out by the Head of the National Land

Agency, in accordance with the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning the Implementation Provisions of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer concerning Development and Supervision in Article 66 paragraph (3), namely, guidance and supervision of the PPAT carried out by the Head of the Land Office, as follows.

- a. "Assist in conveying and explaining land policies and regulations as well as technical guidelines for the implementation of PPAT duties that have been determined by the Head of the Agency and laws and regulations;
- b. Check the deed made by the PPAT and notify in writing to the relevant PPAT if a deed is found that does not meet the requirements to be used as a basis for registration of its rights;
- c. Conduct checks regarding the implementation of PPAT operational obligations".

The role of BPN as a partner that oversees the responsibility of PPAT is very important here. For example, socialization in PPAT is a form of improving the quality of service and the responsibility of PPAT itself, this form of supervision is usually carried out on the basis of monthly reports sent by PPAT to the State Office every month depending on the area of work. Routine monitoring is also carried out directly on site or directly at the PPAT office, eg. B. regarding the suitability of PPAT nameplates, archives, documents, etc.

Sanctions that can threaten, "PPAT and result in documents not meeting the formal and material requirements of the PPAT procedure or procedures for making documents are sanctions that lead to dishonorable dismissal from office and the imposition of administrative sanctions".

The administrative responsibility of PPAT in decision Number 123/PDT/2020/PT SBY, in the Surabaya High Court. In the petition at the level of the Ngawi District Court decision 14/Pdt.P/2018-PN-Ngw, the petitioner to cancel the agreement made by the parties in the transfer of property before the PPAT with SHM No. 822/2018 and No. 823/2018. In the first level decision, the panel of judges did not cancel it, but on appeal the land sale and purchase deed of SHM No. 822/2018 and No. 823/2018 was canceled by the panel of judges.

So administratively, the sale and purchase deed made by this PPAT has no binding legal force. This is because the process of transferring land does not meet administrative requirements which are carried out by not adhering to the principle of prudence. The PPAT in transferring land rights should act carefully, meaning that the PPAT acts carefully and conscientiously by looking at all parties who have rights to the land.

The administrative process in the transfer of land rights is a basic requirement in the legal bond of engagement, so there needs to be caution in looking at the parties involved. The responsibility of PPAT for the deed of sale and purchase of decision Number 123/PDT/2020/PT SBY, has been canceled by the court in order to impose administrative sanctions, which proves that the deed is legally flawed, so that PPAT does not provide the principle of legal certainty for the face.

PPAT must be administratively responsible because, taking a careful attitude in terms of making authentic deeds, because PPAT must have professionalism theoretically and

practically. The situation of abuse of authority will be more obvious if there is an adverse element suffered by one or the parties that appears at the time of cancellation of the deed of PPAT made as a final consequence of the deed that has a legal defect. Regulation of the Head of the National Land Agency Number 1 of 2016 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer states that deviations from the formal and material requirements committed by PPAT include serious violations. Such grave violations may be subject to dishonorable dismissal from office by the Head of the Indonesian National Land Agency.

Furthermore, in Article 62 of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that PPAT which in carrying out its duties ignores the provisions as referred to in Article 38, Article 39 and Article 40 as well as provisions and instructions given by the Minister or appointed official is subject to administrative action in the form of written reprimand until dismissal from his position as PPAT, without prejudice to the possibility of being sued for damages by parties who suffer losses resulting from the neglect of these provisions.

Civil Liability

The responsibility of the PPAT for loopholes, negligence or willful in the deed deviates from the formal requirements and basic requirements of making the deed of PPAT does not prevent the parties from feeling violated and demanded for compensation.

With regard to errors (*beroeepsfout*) from the PPAT, it must be checked in what form the error occurred, whether it was a delay or an unlawful action (*Onrechtmatige Daad*). The common belief is that default occurs if it is preceded by agreement, whereas violation is called an illegal act when it is not related to the agreement (*Onrechtmatige Daad*).

In determining an act can be said to violate the law of *Onrechtmatige Daad*, 4 conditions are needed:

- a. "Contrary to the legal obligations of the offender;
- b. Contrary to the subjective rights of others;
- c. Contrary to decency;
- d. Contrary to propriety, thoroughness and prudence"^[16].

The four criteria are not cumulatively required for the existence of illegal acts, but alternatively, the fulfillment of one of the two criteria is sufficient to qualify for illegal acts^[17]. Civil law sanctions against PPAT for unlawful acts (*Onrechtmatige Daad*) are acts that cause losses, and normatively these acts are subject to the provisions of Article 1365 of the Civil Code, which reads "Every unlawful act, which causes harm to others, obliges the person who by mistake publishes the loss, to compensate for the loss".

According to Roscoe Pound, the law sees there are 3 (three) liabilities for offenses, namely^[18]:

- a. Liability for intentional harm;
- b. Liability for negligent and unintentional damages;
- c. Liability in certain cases for losses committed due to negligence and unintentional".

While J.H. Nieuwenhuis stated, "responsibility arises because of an unlawful act or *Onrechtmatige Daad* and is an *Oorzaak* of harm, while the culprit who is guilty called *Schuld*, then the person must be responsible for the loss"^[19].

However, if in the implementation of the duties and positions of the PPAT there is an obligation to produce authentic documents containing the authority to correct evidence containing legal errors, then the court decision will be declared inauthentic because it is formal and formal. Material requirements for the procedure for preparing PPAT documents are not met, so the authenticity of the documents can not only be met or ignored and detrimental. So that the incident violates the legal obligation of PPAT and PPAT to be responsible for the loss.

This is not only contrary to the legal obligations of the PPAT, but also caused by the violation of the subjective rights of others. after Meyers, as quoted by Rachman Setiawan, stated that "Subjective Rights refer to a right granted by law to a person specifically to protect his interests"^[20]. In this case, the case of making a deed of PPAT containing legal defects will result in difficulties for the client or the person entitled to the deed to exercise his rights. The client's right guaranteed by law can confirm as the right to the deed is the right to use the deed as evidence of his valid rights, so that with this evidence to postulate his rights and even deny the rights of others. Thus, if the deed of PPAT made as the basis for the transfer of rights to the land is declared void by a court decision and results in the PPAT client not getting the right to an authentic deed or unable to use the deed as befits the role and function of an authentic deed so that the client who should be the right holder becomes unable to exercise his rights, then the PPAT concerned is responsible for the losses caused".

Compensation for unlawful acts is a form of compensation for individuals who have committed wrongful acts by the party they suffered. Compensation for mistakes, no agreement. While there are 2 (two) types of compensation known in civil law, namely^[21]:

- a. "General indemnity is compensation that applies to all cases due to unlawful acts in the form of costs, losses and interest. Indemnity is generally regulated in Articles 1243 to Article 1252 of the Civil Code.
- b. Special damages that can arise only from certain engagements".

Illegal forms of compensation are different from compensation for late payments and there can be compensation in forms other than cash. With respect to other forms of compensation, this can be seen taking into account the fully formulated Hoge Read.

Perpetrators of unlawful acts may be subject to sanctions in the form of payment of a sum of money as compensation for losses suffered by the injured party, but if the aggrieved party asks for compensation in other forms and the judge can consider it. The form of compensation of the violator can be fulfilled for reaching the result of an agreement for the benefit of the injured party who is able to eliminate the damage suffered^[20].

In the case of decision Number 123/PDT/2020/PT SBY, in the Surabaya High Court over the transfer of land rights made by the husband over his wife's property has continued until the last legal effort, namely Cassation with Case Number 951K / Pdt / 2021. The liability of the PPAT in this case is only limited to canceling an engagement in this case the Sale and Purchase Deed that has been proven in, the court fulfills the elements violated in making the Sale and Purchase Deed.

The panel of judges does not give civil responsibility to PPAT either in the form of compensation, fines or others in its decision, so the actions of PPAT cannot be blamed. However, if referring to the precautionary principle possessed by PPAT in making a sale and purchase deed, PPAT can be given the responsibility of the code of ethics in carrying out its position.

This ethical sanction can be applied by the Regional Honor Council is the Honorary Council at the Regional level of the IPPAT association which is applied directly to the PPAT concerned, but in this case because the PPAT is not given civil sanctions because the person who made the deed is the husband, or still his heir.

The emergence of civil PPAT responsibility based on the preparation of the PPAT deed has a very important role. In the provisions of Article 1365 of the Civil Code, which reads "Every unlawful act, which causes harm to others, requires the person who because of his mistake to publish the loss, to compensate for the loss", so that the PPAT must be given civil sanctions, namely to compensate all losses from the face.

Criminal Liability

The imposition of criminal sanctions on PPAT can be done provided that the PPAT completes a false letter or document that is considered a criminal offense. Material and formal requirements in the development of PPAT documents are formal aspects that must be considered in the implementation of the land sale and purchase deed related to PPAT costs. The author argues that deviations from the substance provisions and formal procedures of PPAT in the preparation of documents should be caused by restrictions on formal aspects regulated in laws and regulations relating to PPAT. In other words, if a PPAT is formally violated, civil and administrative sanctions can be imposed depending on the type of violation or sanction in the IPPAT Code of Ethics, so that the classification of violations of formal aspects of a criminal act is an act that is not based on law, cannot be considered.

Habib Adjie suggested that the formal aspect of a PPAT instrument can be used as a basis or obstacle in the imposition of criminal sanctions on PPAT, if ^[22]:

- 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 criminal act.
- b. PPAT knowingly and intentionally together with the parties concerned carry out a legal action that it knows to be unlawful".

The imposition of criminal sanctions on PPAT can be carried out as long as the specified limit value is violated. This means that the IPPAT Code of Ethics must not only be in accordance with words that violate PPAT laws and regulations, but also in accordance with the wording of the Criminal Code (KUHP).

According to Habib Adjie, regarding criminal cases related to the formal aspects of notarial deeds / PPAT at the time of filing an authentic deed, the following provisions apply ^[23]:

- a. "Making forged / forged letters and using forged / forged letters (Article 263 paragraphs (1) and (2) of the Criminal Code)
- b. Falsifying authentic deeds (Article 264 of the Criminal Code)

- c. Ordering to include false information in an authentic deed (Article 266 of the Criminal Code)
- d. Doing, ordering, doing, participating in doing (Article 55 Jo Article 263 paragraphs (1) and (2) of the Criminal Code or Article 266 of the Criminal Code)
- e. Assist in making forged/or forged letters and using forged/forged letters (Article 56 paragraphs (1) and (2) Jo Article 263 paragraphs (1) and (2) of the Criminal Code or Article 266 of the Criminal Code)".

Intentionality or "dolus according to criminal law is an act that is recognized, understood and known as such, so that there is no element of misconception or misunderstanding. Whereas negligence (culpa) is an act that occurs because it is completely unthinkable of the effect or because of not paying attention and this is caused by lack of caution and the act is contrary to his obligation".

Moeljatno argues that, "intentionality (dolus) according to criminal law is an act that is consciously carried out in defiance of prohibition, while negligence or negligence (culpa) is the perpetrator's lack of attention to the object by not realizing that the result is a prohibited condition, so that error in the form of negligence is essentially the same as intentionality, only different gradations. According to Wirjono Prodjodikoro, intentionality is very important in crime because most crimes have an element of intentionality or opzet, not an element of culpa. This is appropriate because usually those who deserve criminal punishment are people who do something deliberately" ^[24].

Violation of Article 266 paragraph (1) of the Criminal Code, "can only be suspected to the PPAT when the PPAT knows that the information requested by the parties to be included in the deed is incorrect or as if the statement is in accordance with the truth and if it can cause losses, but the PPAT is still willing to make the deed, then the PPAT in this case can be charged with committing a crime Article 266 paragraph (1) of the Criminal Code jo Article 56 paragraph (1) of the Criminal Code, with the maximum threat of a crime that can be imposed for the act of assisting a crime Article 266 paragraph (1) of the Criminal Code reduced by one third Article 57 paragraph (1) of the Criminal Code".

In this context, the author argues that PPAT cannot be held responsible for criminal acts if PPAT has fulfilled its obligations in accordance with the procedures stipulated in related laws and regulations. "This is legitimized in Article 266 of the Criminal Code, where a PPAT cannot be criminally charged under Article 266 if he has carried out his duties properly. Article 266 of the Criminal Code shows that the position of a PPAT is a person who is ordered (manus ministra) and in criminal law the person who is told cannot be held criminally responsible for his actions". On the other hand, a PPAT can be held criminally liable for the deed he made under Articles 263 and 264 of the Criminal Code if:

- a. "PPAT acknowledges that when a person who comes before him to make an authentic deed, whether in the form of an engagement for sale and purchase or other engagements, that person cannot fulfill the legal requirements of an engagement based on applicable laws and regulations. However, the PPAT did not heed the legal conditions of the engagement and remained and continued to make the deed as requested by the confronters;

- b. PPAT does not heed and continues to make an authentic deed even though he knows that at the time the person who comes to him to make the authentic deed has given incorrect information to be included in the deed;
- c. The author argues that to avoid being charged with a criminal offense Article 266 paragraph (1) of the Criminal Code, it is better from the beginning that the faces express their intention to carry out legal proceedings by first reminding the faces that:
 1. "If you want to include in the deed a price other than the actual price, the face must never notify the PPAT or the PPAT Office employee that the actual price is different from the price that wants to be stated in the deed;
 2. If the applicant has already notified the price difference, the PPAT should refuse to make a deed for the facer concerned;
 3. Inform the complainant that if in the future it is found that the price stated in the deed is not correct, there is a possibility that the person concerned will not be charged under Article 266 paragraph (1) of the Criminal Code".

In decision No. 123/PDT/2020/PT SBY, in the Surabaya High Court Defendant 1 was proven to have sold land in 2018 to defendants 2 and 3, both of whom still have family relations with the plaintiff in accordance with the Deed of Sale and Purchase of PPAT Deed of Ngawi Regency on behalf of Prakoso Pranajaya, SH No. 822/2018 and No. 823/2018 dated October 5, 2018, to be returned to the original name of Endang Hariwanti.

In proving this case, PPAT has no information to carry out Article 266 of the Criminal Code, it's just that PPAT did not act carefully, which means it did not present all heirs in the transfer of rights, not committing forgery.

The cancellation of the PPAT deed through a court decision, not only because of the result of the PPAT's mistake or negligence in making the deed. But the cancellation of the PPAT deed can also be caused by the mistakes or negligence of the parties who bind themselves to each other in the deed, so that the error or omission causes a lawsuit from one of the parties. "In civil proceedings, it is not uncommon for a PPAT to be in a position as a co-defendant which is given as a forced effort, because in the deed, especially the Partij Acte which later becomes evidence for civil cases, the PPAT is not involved and even prohibited by law from being involved in a legal act as explained in the deed it was inaugurated. The involvement of PPAT is only limited to formulating the legal acts of the parties into the deed and then formalizing the deed. He was forced to place PPAT as a defendant as an attempt to force PPAT to make information about his deed which is now evidence in the judicial process"^[25].

Matters that harm customers, then PPAT, are subject to criminal, administrative and civil sanctions. However, if the customer is blamed, the PPAT cannot be held accountable because the PPAT cannot be held legally responsible. PPAT records or only displays legal acts committed by the parties to the deed. Land transfer The land transfer must ensure the accuracy of land rights (land rights) and the skills and powers of those who transfer and accept land transfers. Therefore, the legal responsibility of PPAT to its customers is limited, so PPAT also gets legal protection.

Analysis related to criminal sanctions is imposed because, intentionality (*dolus*) according to criminal law is an act that is realized, understood and known as such, so that there is no element of misconception or misunderstanding. While negligence (*culpa*) is an act that occurs because he does not think at all about the effect or because he does not pay attention and this is caused by lack of caution and the action is contrary to his obligations.

Criminal sanctions can be imposed as long as the relevant PPAT is proven intentionally and planned either alone or jointly with one or the parties making the deed they made into a tool for committing a criminal act, then the relevant PPAT can be subject to criminal sanctions in accordance with applicable legal regulations.

Conclusion

The responsibility of the PPAT for the application of the precautionary principle in the transfer of land rights can be divided into 3 (three) parts, administrative, civil, and criminal responsibilities, in general, the PPAT is administratively responsible in the form of an oral reprimand by the umbrella organization, namely IPPAT, while civil liability if the PPAT is proven in court which results in losses to the parties, then PPAT must pay compensation as a form of civil liability. Criminal responsibility can be given to the PPAT if the PPAT is reported to have committed acts prohibited in Article 264 and Article 266 of the Criminal Code. In the case under study, the PPAT is only responsible for the deed it issued because it acts carelessly so that the deed has no binding legal force.

References

1. Hartanto A. *Panduan Lengkap Hukum Praktis Kepemilikan Tanah*. Surabaya: Laksbang Justitia, 2015.
2. Wanda HIW, Wanda HD. *Prinsip Kehati-Hatian Pejabat Pembuat Akta Tanah dalam Peralihan Tanah yang Belum Bersertifikat*. *J Huk IUS QUIA IUSTUM*, 2017:24(3):470.
3. Wanda HD, Sesung R. *Prinsip Kehati-hatian Pejabat Pembuat Akta Tanah Dalam Pengurusan Peralihan Tanah Letter C*. *Al-Daulah J Huk dan Perundangan Islam* 2017:7(2):444-445.
4. Aulia A. *Prinsip Kehati-hatian PPAT Dalam Proses Pengikatan Jual Beli Tanah Sebagai Perwujudan Kepastian Hukum*. *J Recital Rev*. 2022:4(1):223.
5. Cahyani TD. *Hukum Perkawinan*. Malang: UMM, 2020.
6. Djuniarti E. *Hukum Harta Bersama Ditinjau Dari Perspektif Undang-Undang Perkawinan Dan Kuh Perdata*. *J Penelit Huk Jure Akreditasi LIPI*, 2016:(740):452.
7. Ria WR, Yovitasari A. *Akibat Hukum Pembagian Harta Bawaan Dan Harta Bersama Akibat Meninggalnya Pasangan Dalam Perspektif Hukum Islam*. *Justicia Sains J Ilmu Huk*, 2016:7(2):262.
8. Ibrahim J. *Teori dan Metodologi Penelitian Hukum Normatif*. 2nd ed. Jawa Timur: Bayu Media Publishing, 2008.
9. Soekanto S. *Pengantar Penelitian Hukum*. Jakarta: UI Perss, 2014.
10. Admin. *Kewajiban Dan Tanggungjawab Ahli Waris Menurut Pasal 175 Khi Dan Pasal 833 Kuh Perdata*

- [Internet]. MA RI. Available from: <https://pa-serui.go.id/kewajiban-dan-tanggungjawab-ahli-waris-menurut-pasal-175-khi-dan-pasal-833-kuh-perdata/>
11. Syarif SA. *Hukum Kewarisan Perdata Barat*. Jakarta: Kencana Pranada Media Group, 2006.
 12. Asyhadie Z. *Hukum Keperdataan*. Depok: Rajawali Press, 2018.
 13. Prawira IGBYP. *Tanggung Jawab PPAT Terhadap Akta Jual Beli Tanah*. *J IUS*,2016;4(1):69–77.
 14. HR R. *Hukum Administrasi Negara*. Jakarta: Raja Grafindo Persada, 2006.
 15. Haridhy FT, Ismail I, Darmawan. *Perlindungan Hukum Bagi Pembeli Akibat Kelalaian PPAT dalam Pembuatan Akta Jual Beli*. *J IUS*,2016;7(2):327.
 16. Agustina R. *Perbuatan Melawan Hukum*. Depok: Pascasarjana Fakultas Hukum, Universitas Indonesia, 2003.
 17. Widjaja G, Mulyadi K. *Perikatan yang lahir dari Undang-Undang*. Jakarta: Raja Grafindo, 2003.
 18. Sianturi SR. *Asas-Asas Hukum Pidana Indonesia dan Penerapannya*. 4th ed. Jakarta: Alumni, 1996.
 19. Pohan M. *Tanggung Gugat Advokat, Dokter dan Notaris*. Surabaya: Bina Ilmu, 1985.
 20. Setiawan R. *Tinjauan Elementer Perbuatan Melawan Hukum*. Bandung: Binacipta, 1991.
 21. Fuady M. *Perbuatan Melawan Hukum, Pendekatan Kontemporer*. 2nd ed. Bandung: PT. Citra Aditya Bakti, 2005.
 22. Adjie H. *Sanksi Perdata dan Administrasi terhadap Notaris sebagai Pejabat Publik*. 2nd ed. Bandung: Refika Aditama, 2009.
 23. Adjie H. *Kebatalan dan Pembatalan Akta Notaris*. Bandung: PT. Refika Aditama, 2013.
 24. Prodjodikoro W. *Asas-Asas Hukum Pidana di Indonesia*. 3rd ed. Bandung: PT. Refika Aditama, 2003.
 25. Sukisno D. *Pengambilan Fotocopy Minuta Akta dan Pemanggilan Notaris*. *J Mimb Huk Yogyakarta Fak Huk Univ Gadjah Mada*,2008;20(2):52.