



Responsibility of land deed officials for the transfer of joint property after divorce in Banda Aceh

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Abstract

This study explores the responsibilities of Land Deed Officials (PPAT) in the transfer of joint property after divorce in Banda Aceh, focusing on the case of the Banda Aceh Mahkamah Syariah Decision No. 185/Pdt.G/2021/MS. Bna. According to Article 10, paragraph (7) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 2 of 2018 concerning Guidance and Supervision of PPATs, violations committed by PPATs are followed up with an examination by the supervisory board of PPATs. The aim of this research is to review and analyze the responsibility of PPATs in the transfer of undivided joint property after divorce that does not comply with procedures, as well as the legal consequences of undivided joint property after divorce. The method used is normative legal research, drawing from statutory regulations and relevant literature. The findings indicate that PPATs must ensure that the process of transferring land rights is carried out in accordance with applicable legal procedures and involves the presence of all interested parties, including ensuring that SR (Plaintiff/Ex-Wife) is present and consents to the transfer of ownership rights. The responsibility of the PPAT is divided into ethical and legal responsibilities, covering administrative, civil, and criminal aspects. Divorce raises issues related to joint property and personal property within marriage. Joint property refers to assets acquired together during marriage, whereas personal property refers to assets brought into the marriage by each spouse. The transfer of land rights as joint property must be agreed upon by both parties to avoid legal disputes. The case studied reveals that MM (Defendant/Ex-Husband) sold joint property without the consent of SR (Plaintiff/Ex-Wife), which constitutes a legal violation. The sale and purchase deed made by the PPAT without the presence and approval of both parties can be annulled. In this context, the PPAT involved must be held accountable for the procedural violation that occurred. It is recommended that PPATs enhance their awareness and service quality to the Association of Land Deed Officials (IPPAT) to encourage active roles in law enforcement.

Keywords: Responsibility, land deed officials, joint property, divorce

Introduction

Marriage is one of the significant moments in life that unites a man and a woman, leading to various legal consequences for the family, community, and their property. In Indonesia, marriage is strictly regulated by Law No. 1 of 1974 on Marriage (UUP). The term used is "marriage" rather than "wedding" due to the diverse nature of Indonesian society. The purpose of marriage is to form a harmonious family, although it often ends in divorce due to various problems. Divorce terminates the marriage as regulated by the UUP and raises issues related to joint property. Property in marriage is divided into joint property and personal property. According to Article 35 of the UUP, assets acquired during marriage become joint property, while assets acquired through gifts or inheritance remain personal property. Upon divorce, joint property must be divided as stipulated in Article 37 of the UUP.

In this context, Land Deed Officials (PPATs) play a crucial role in the transfer of land rights. Based on the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 112/KEP-4.1/IV/2017, PPATs are responsible for creating authentic, valid deeds. They must adhere to applicable legal regulations to ensure the accuracy and legality of the deeds they create. A case in Banda Aceh illustrates the importance of the PPAT's role. In this case, an ex-wife sued her ex-husband, who sold joint property without her consent. This highlights the necessity

for PPATs to ensure that all parties involved in the transfer of land rights are present and approve the process to avoid legal violations.

From this background, the research identifies two main issues: how PPATs are responsible for the transfer of joint property after divorce that does not comply with procedures, and what the legal consequences are for joint property that has not been divided after divorce.

This research focuses on the responsibility of PPATs in the transfer of joint property after divorce that does not comply with procedures and the legal consequences of undivided joint property.

Methodology

The research employed in this study is normative legal research. Law is conceptualized as what is written in statutory regulations (law in books) or as rules or norms that serve as guidelines for human behavior. Normative legal research positions law as a system of norms based on primary and secondary legal materials. According to Ronny Hanitijo Soemitro, normative legal research uses secondary data such as statutory regulations, court decisions, legal theories, and legal expert doctrines. This method is used to analyze relevant legislation, such as the Marriage Law and Government Regulations regarding PPATs.

The approaches used are the statute approach and the conceptual approach. The statute approach examines regulations related to the issues studied, such as the UUP

and PP PPAT. The conceptual approach refers to legal principles found in scholars' views or legal doctrines, providing an understanding of legal concepts relevant to the issue under study, namely the responsibility of PPATs for the transfer of joint property after divorce in Banda Aceh.

Data collection was conducted through library research to obtain secondary data and theoretical readings. Searches were conducted through statutory regulations, printed or electronic media articles, scientific works, books, legal journals, and by grouping relevant data. Data analysis was conducted to resolve the issues discussed. Additionally, interviews with sources such as PPATs and the Regional Supervisory Board of PPATs in Banda Aceh were conducted to complement secondary data.

Results and discussion

According to Article 1457 of the Civil Code, a sale is obligatory, creating reciprocal rights and obligations between the seller and the buyer without transferring ownership. Article 1458 states that the sale of immovable property is considered valid even though the land has not been delivered or the price has not been paid; the transfer of rights requires delivery as determined by other regulations. The sale of land under customary law and the UUPA is cash, clear, and real. Cash means that the transfer of rights and payment of the price are done simultaneously. Clear means that the legal act is performed in the presence of a PPAT. Real means that the intention to sell and purchase is followed by a concrete act.

The conditions for the sale of land are divided into material and formal requirements. Material requirements include: the seller is the legitimate holder of the land rights; the buyer is entitled to own the land under the UUPA; and the land is eligible for sale. Formal requirements include: the deed is made in the presence of a PPAT, attended by the seller and buyer or their proxies, and two witnesses; the deed is made in two original copies, one for the PPAT and one for the Land Office; the deed is submitted to the Land Office within seven working days after signing.

Before purchasing land, it is necessary to examine the seller's rights, authority to sell, and the land's status. The steps include the prospective buyer and seller agreeing on the land and price; they appear before a PPAT; if the land is not yet certified, the Village Head or a government official must be present; the seller hands over the certificate or a letter of explanation from the Land Office; the PPAT prepares the Sale and Purchase Deed; and the PPAT handles the registration until the certificate is issued.

According to Government Regulation No. 24/1997, the preparation of the PPAT deed must be attended by the parties conducting the legal act. Required documents include ID cards, family cards, marriage certificates, SPPT PBB from the seller and buyer. The PPAT deed is witnessed by two witnesses and read aloud by the PPAT to the parties. The PPAT must submit the deed and other documents to the Land Office for registration of the transfer of rights within seven working days after signing. A new certificate is issued and handed over to the buyer or their proxy.

Ownership rights are regulated in Articles 20-27 of the UUPA, representing the strongest and fullest right over land. Ownership rights can be transferred, inherited, and mortgaged with a security right. Ownership rights must be registered and can be relinquished or donated.

According to Article 21 of the UUPA, only Indonesian citizens can hold ownership rights. Certain legal entities may hold ownership rights based on government regulations. Foreigners who acquire ownership rights must relinquish them within one year of acquisition, or the rights will fall to the state. Legal entities that may hold ownership rights include state banks, agricultural cooperatives, and specific religious and social institutions.

Ownership rights occur through customary law, government determinations, or statutory provisions. Ownership rights are extinguished if the land falls to the state due to revocation of rights, voluntary surrender, abandonment, or the provisions of Article 21 paragraph (3) and Article 26 paragraph (2) of the UUPA.

Islamic law recognizes the personal property of husband and wife but allows for joint efforts in acquiring property. Joint property refers to assets acquired during marriage and is divided equitably upon divorce. Joint property is regulated in Article 35 of the UUP, Article 37 of the UUP, and Article 97 of the KHI.

In the case study, the Plaintiff sued the Defendant for selling joint property without consent. The Defendant acted unilaterally by selling the land without the Plaintiff's approval. The PPAT responsible for creating the deed should have ensured that the Plaintiff was present and agreed to the sale. The PPAT must be held accountable for any violations committed in this context.

PPAT (Land Deed Official) is an official authorized to create authentic deeds concerning land rights, appointed and dismissed by the Minister of Agrarian Affairs. PPAT assists the Head of the Land Office in land registration. The duties of a PPAT include creating deeds of sale and purchase, exchange, grants, incorporation into a company, division of joint rights, granting Building Use Rights/Right of Use on Freehold Land, granting Mortgages, and granting the authority to encumber Mortgages.

The PPAT deed is an authentic deed that must meet certain requirements and be made in the presence of the PPAT within their jurisdiction. The function of the PPAT deed serves as an important proof in substantiating legal acts that form the basis for the emergence of rights or obligations over land. This deed becomes the basis for registering changes in land registration data resulting from such legal acts.

Responsibility of the land deed official (ppat) for the transfer of joint property post-divorce that does not comply with procedures

According to O.P. Simorangkir, responsibility is the obligation to bear or carry out everything that is one's duty. The PPAT, as an official authorized to create authentic deeds concerning land rights, is professionally responsible for the deeds they create. This responsibility arises from the causal relationship between the duties and authority given to them for the benefit of society. In performing their duties, the PPAT must ensure the presence of all parties involved in the legal act and verify the validity of the related documents. In the case of Decision Number 185/Pdt.G/2021/MS.Bna, which took place in Banda Aceh City, a former wife (SR) sued her former husband (MM) for selling joint property without her consent. The Sale and Purchase Deed was made by PPAT RA, who failed to ensure the presence and consent of SR. This violates Article 37 paragraph (1) and Article 39 paragraph (1) letter c of Government Regulation Number 24

of 1997 concerning Land Registration. The PPAT must be held responsible for the legally flawed deed.

The responsibility of the PPAT is divided into administrative, civil, and criminal responsibilities. Administrative responsibility includes sanctions such as reprimands, warnings, or dismissal from office, as stipulated in the Minister of Agrarian Affairs and Spatial Planning Regulation Number 2 of 2018. Civil responsibility involves claims for damages by the aggrieved party due to the negligence of the PPAT, according to Article 1365 of the Civil Code. Criminal responsibility arises if the PPAT deliberately or negligently includes false information in an authentic deed, as per Article 266 Paragraph (1) of the Criminal Code.

Legal experts like Wirjono Prodjodikoro emphasize the importance of intent in criminal acts. Intent is a key factor in determining whether someone deserves criminal punishment. In this context, if the PPAT is proven to have deliberately included false information or was negligent in verifying data, they may face criminal sanctions.

The PPAT must work with high integrity, in accordance with the morals and ethics of the profession as regulated in the IPPAT Code of Ethics. Article 3 letter e of the IPPAT Code of Ethics stipulates the obligation of the PPAT to work responsibly, independently, honestly, and impartially. Violations of these ethics may result in administrative sanctions from the PPAT Supervisory and Development Board.

In the case of Decision Number 185/Pdt.G/2021/MS.Bna, PPAT RA violated the principles of prudence and professional ethics by failing to ensure SR's consent. An interview with Notary/PPAT Teuku Irwansyah, S.H., Sp.N., M.Kn., revealed the importance of integrity and compliance with regulations in maintaining public trust. Ahmad Rifqi, S.H., M.Kn., a PPAT in Banda Aceh City, emphasized that every agreement must refer to the applicable laws, and a peace agreement that contradicts the law cannot be considered a valid legal basis. Ms. Nurdhani, S.H., Sp.N., a member of the PPAT Supervisory Board, added that the consent of the former spouse is required to adhere to the principle of prudence.

The implementation and responsibility of the PPAT provide significant benefits for legal certainty and public welfare. First, the PPAT ensures that every land transaction is conducted in accordance with the law, reducing the risk of land disputes. Second, the PPAT creates transparency and security in transactions by verifying the validity of documents. Third, the PPAT helps prevent ownership disputes by ensuring that all parties involved give their consent.

Fourth, the PPAT protects public rights from fraud or misuse of rights. Fifth, the integrity and professionalism of the PPAT enhance public trust in the legal and judicial system in Indonesia. Sixth, the PPAT increases the efficiency and effectiveness of property transactions with clear and standardized procedures. Seventh, strict sanctions against PPATs who violate the rules uphold the law and prevent the abuse of authority.

Therefore, the role of the PPAT is crucial in maintaining integrity and fairness in property transactions. Administrative, civil, and criminal responsibilities ensure that the PPAT always acts in accordance with regulations to protect public rights and support legal and economic stability.

Legal consequences of undivided joint Property Post divorce

Divorce, often seen as the failure of a marriage, frequently triggers issues related to property within the marriage, which includes joint property and personal property. According to Law No. 1 of 1974, property acquired during the marriage is joint property, while gifts or inheritance remain personal property. In a legal context, the transfer of rights over land as joint property must be agreed upon by both parties (husband and wife), as each party has equal rights. According to Article 35 paragraph (1) of the Marriage Law, property acquired during the marriage becomes joint property. Article 36 paragraph (1) stipulates that concerning joint property, the husband or wife may act with the consent of both parties. The Compilation of Islamic Law (KHI) Article 92 also states that neither the husband nor the wife may sell or transfer joint property without the consent of the other party. The Supreme Court jurisprudence of Indonesia states that the sale of land, which is joint property, must be approved by both parties, and if not, the transaction is null and void. The sale and purchase deed made without consent is considered invalid, and the land certificate transferred based on that deed is considered legally flawed.

In the case of the Banda Aceh Sharia Court Decision Number 185/Pdt.G/2021/MS.Bna, a former husband sold joint property without the consent of his former wife after their divorce. PPAT RA, who made the sale and purchase deed, failed to ensure the presence and consent of SR, which is a violation of Article 37 paragraph (1) and Article 39 paragraph (1) letter (c) of Government Regulation Number 24 of 1997 concerning Land Registration. As a result, the deed is null and void because it does not meet the legal requirements for the transfer of rights. The PPAT is professionally responsible for the deed they created. The responsibility of the PPAT can be divided into administrative, civil, and criminal responsibilities.

Administrative sanctions against the PPAT include reprimands, warnings, and even dismissal from office, in accordance with the Minister of Agrarian Affairs and Spatial Planning Regulation Number 2 of 2018. This responsibility arises from the negligence or error of the PPAT in ensuring the validity and presence of all parties involved in the legal act.

The PPAT may be held civilly liable if their negligence causes harm to another party, according to Article 1365 of the Civil Code. In this case, the aggrieved former wife is entitled to claim compensation for the sale of joint property without her consent. According to Wirjono Prodjodikoro, intent (*dolus*) is important in criminal law. If the PPAT is proven to have deliberately included false information in an authentic deed, they may face criminal sanctions in accordance with Article 266 Paragraph (1) of the Criminal Code.

In the context of legal certainty theory proposed by Jan Michael Otto, legal certainty can be achieved if clear, consistent, and easily accessible legal rules are available and consistently applied by the authorities. Legal certainty provides a sense of security and comfort because it ensures that individual rights are protected and legally recognized according to legislation.

Joint ownership in marriage means that any action regarding joint property must be carried out with mutual consent. Therefore, in the transfer of rights over land that is joint

property, there must be consent from both parties to ensure legal certainty. If one party transfers the rights without consent, the sale and purchase deed made by the PPAT is invalid and has no legal force.

Overall, non-compliance with legal procedures in the transfer of joint property post-divorce results in the sale and purchase deed being invalid. The PPAT involved must be held accountable for the mistake, whether administratively, civilly, or criminally. Therefore, it is crucial for the PPAT to always ensure that all legal requirements are met in every transaction to maintain legal certainty and fairness for all parties involved.

Conclusion

The responsibility of the Land Deed Official (PPAT) for the transfer of joint property post-divorce is a crucial aspect of maintaining legal certainty and fairness for all parties involved. Based on Articles 1457 and 1458 of the Civil Code, sale and purchase are obligatory and require the transfer of rights through clear legal procedures. Land sale and purchase in customary law and the Basic Agrarian Law must meet material and formal requirements, including the presence of the parties involved and the verification of document validity by the PPAT.

In the case of the Banda Aceh Sharia Court Decision Number 185/Pdt.G/2021/MS.Bna, a former husband sold joint property without the consent of his former wife, violating the principles of prudence and professional ethics as stipulated in Article 37 paragraph (1) and Article 39 paragraph (1) letter (c) of Government Regulation Number 24 of 1997 concerning Land Registration. The PPAT involved, RA, failed to comply with the legal requirements, resulting in an invalid deed that was legally flawed. As a result, the PPAT must be held accountable for their actions.

The responsibilities of the PPAT are divided into administrative, civil, and criminal responsibilities. Administrative sanctions include reprimands, warnings, or even dismissal from office, as regulated by the Minister of Agrarian Affairs and Spatial Planning Regulation Number 2 of 2018. Civil liability arises if the aggrieved party sues for damages due to the negligence of the PPAT, as stipulated in Article 1365 of the Civil Code. Criminal liability may be imposed if the PPAT is found to have deliberately included false information in an authentic deed, as per Article 266 Paragraph (1) of the Criminal Code.

In the implementation of their duties, the PPAT must uphold integrity, professionalism, and compliance with the law to ensure legal certainty and fairness. The PPAT must always act with caution and verify the validity of the documents and the presence of the parties involved to avoid legal problems and protect the rights of all parties. The sanctions imposed on the PPAT who violate the rules serve as a deterrent to prevent the misuse of authority and uphold the rule of law in Indonesia. Therefore, the role of the PPAT is crucial in maintaining legal certainty, public trust, and the stability of the legal and economic system in Indonesia.

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