

Legal analysis of the transfer of land rights based on a legally flawed sale and purchase deed

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Abstract

This research is motivated by the prevalence of Sale and Purchase Deeds (AJB) that formally meet requirements yet suffer from legal defects due to deceit, identity fraud, or procedural violations by the Land Deed Official (PPAT). The validity of an AJB as an authentic deed is crucial for the lawful transfer of rights and serves as the basis for issuing the Certificate of Ownership (SHM). When an AJB is legally defective, legal certainty regarding the land is compromised, potentially leading to protracted disputes. This study aims to analyze the legal certainty of rights transfers based on legally defective AJBs.

Keywords: Sale and purchase deed, legal defect, land deed official

Introduction

Legal certainty in the process of transferring land rights is a fundamental pillar of Indonesia's land system, as it determines the clarity of ownership status and ensures legal protection for the parties involved in a transaction. A lawful transfer of rights fosters stability in legal relationships and prevents future disputes. Consequently, the land law system treats the transfer of rights as a process that must be conducted in an orderly, transparent, and legally accountable manner.

The objective of land registration, as mandated by Article 19 (1) of Law No.5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), is to guarantee legal certainty. Daffa Arya Ghossan states that legal certainty in the context of land matters encompasses certainty regarding the object, the right itself, and the subject (holder) of the land right. Indonesia's land registration system employs a negative publication system that incorporates positive elements; this means that a land certificate serves as strong evidence but not absolute proof, allowing other parties who claim to hold rights to seek cancellation if they can prove otherwise.

The primary legal instrument used to guarantee such certainty is the Sale and Purchase Deed (AJB), executed before a Land Deed Official (PPAT). This deed is an authentic deed possessing conclusive evidentiary value and serves as the basis for registering the transfer of land rights,^[1] as stipulated in the UUPA, Government Regulation (PP) No. 24 of 1997 concerning Land Registration, PP No. 37 of 1998 concerning the Position of PPAT (as amended by PP No. 24 of 2016, hereinafter referred to as PP PJPPAT, and the Civil Code (KUHPerdata). This legal framework demonstrates that the validity of a rights transfer depends not only on administrative procedures but also on the substantive validity of the underlying legal act. In the agrarian context, a lawful transfer process ultimately results in the issuance of a Freehold Title Certificate (Sertifikat Hak Milik) as strong proof of ownership; consequently, any defect in the process directly impacts the legal certainty of said certificate.

An authentic deed, as defined in Article 1868 of the KUHPerdata, possesses conclusive evidentiary value regarding its outward appearance, formal aspects, and

substantive content. As an authentic deed, the AJB serves as conclusive evidence that a judge may use as a basis for resolving disputes between the parties. Yuni Putri Dewantara, Michelle Caroline Hadi, and Dave David Tedjokusumo state that authentic deeds possess three types of evidentiary force: formal evidentiary force, substantive evidentiary force, and binding force.^[2] However, the evidentiary force of an authentic deed is not absolute. Rieka Anita Sari notes that if a deed is executed with substantive legal defects - such as coercion, fraud, or procedural violations by the PPAT - it may be annulled through court proceedings.^[3]

A PPAT does not merely act as a public official who records the parties' intentions into a deed; rather, they bear the responsibility of ensuring that the process of transferring rights proceeds lawfully and is free from legal defects.^[4] Sonya Putri Oktavia M. Sarno, dkk., state that the PPAT plays the role of a neutral party required to ensure all legal prerequisites are met before a deed is executed—including verifying the parties' identities, the validity of documents, and the status of the land.^[5]

The PPAT is defined in Article 1 (1) of the PP PJPPAT as "a public official authorized to draw up authentic deeds regarding land rights or the Right of Ownership over Condominium Units." The PPAT's authority encompasses the drafting of deeds for sale and purchase, exchange, grants, capital contribution in kind (inbreng), partition of joint rights, granting of the Right to Build (HGB) or Right of Use (HP) over Freehold land (HM), granting of Security Rights (HT), and granting of the power of attorney to encumber land with Security Rights. Further technical provisions regarding the execution of PPAT duties are stipulated in the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) No.11 of 2016 concerning PPAT.

In performing their duties, a PPAT is required to exercise caution, diligence, and thoroughness when drafting deeds to avoid potential liability. The PPAT must guarantee both the material and formal accuracy of every deed involving the transfer of land rights and is responsible for verifying the obligations the parties must fulfill regarding said transfer. Article 22 of the PP PJPPAT stipulates that the contents of a PPAT deed must be read out or explained to the parties—in

the presence of at least two witnesses—before it is signed. Meysita Arum states that this provision embodies the principle of PPAT prudence, specifically ensuring that the appearing parties fully comprehend the contents set forth in the deed.^[6] However, in practice, the process of transferring land rights does not always align with that principle of legal certainty. Tommy Leonard and Benny Benny point out that there are instances where a deed—despite formally meeting administrative requirements—contains legal defects due to a failure to satisfy the conditions for a valid agreement.^[7] Vidya Maharani also highlights that issues regarding defects in the transfer process affect not only the legal relationship between the parties but also have implications for the status of the issued land rights certificate.^[8]

The requirements for a valid agreement are stipulated in Article 1320 of the KUHPerdata, comprising: (1) mutual consent to be bound, (2) legal capacity to act, (3) a specific object, and (4) a lawful cause. The first two are termed subjective requirements as they pertain to the parties entering into the agreement, whereas the latter two are termed objective requirements as they relate to the agreement itself. Defects of will (*wilsgebreken*) in contract law are governed by Article 1321 of the KUHPerdata, which states that no valid agreement exists if consent is given due to mistake (*dwaling*), duress (*dwang*), or fraud (*bedrog*). In their research, Graceilla Ribka Berliana Tuelah et al. state that a defect of will is a factor that can render an agreement invalid or voidable.^[9]

This phenomenon is reflected in various judicial practices. Research by Beta Avissa (2021) analyzed District Court Decision No.150/Pdt.G/2019/PN.JKT.TIM,^[10] which held that a AJB based on an underlying sale and purchase obligation that was legally defective due to the failure to meet the requirements of Article 1320 of the KUHPerdata (regarding consent, capacity, and lawful cause) and the failure to meet the material and formal requirements for sale and purchase set out in Supreme Court Jurisprudence No.123K/Sip/1970^[11] was null and void by operation of law. In their research, Rivo Tri Anggraini and Mahmul Siregar examined Supreme Court Decision No.3507K/Pdt/2023, in which a PPAT executed a sale and purchase deed without the consent or knowledge of the property owner; consequently, the PPAT was found to have committed an unlawful act, and the deed was declared invalid—or legally defective—and lacking binding legal force.^[12] This study confirms that negligence on the part of the ifying the validity of documents and the agreement between the parties can have fatal consequences for the validity of the deed they execute. Yurike Andam Sari and Vera Rimbawani Sushanty discuss the liability of the PPAT from a normative perspective, emphasizing the legal basis for compensation; however, their study is general in nature and does not delve into specific cases where legal defects stem from deceit.^[13] Meanwhile, Rizki Fajar Krismiatri examines the annulment of deeds in the absence of mutual agreement between the parties based on Supreme Court Decisions No. 3537K/Pdt/2017 and 3537K/Pdt/2018 focusing on procedural violations such as the absence of witnesses.

Supreme Court jurisprudence also affirms that a land certificate issued based on a defective deed may be annulled. Supreme Court Jurisprudence No. 1588 K/Pdt/2001^[14] states that "A land certificate issued prior to a sale and purchase deed—lacking a legal basis—is declared void. The issuance of a certificate without an application

from the owner is invalid." Supreme Court Jurisprudence No.459 K/SIP/1975 and No. 327 K/SIP/1976 establish that the registration of a person's name in the registry does not constitute absolute proof of land ownership if another party can prove its invalidity.

In performing their duties, a ficial (PPAT) is required to comply with land regulations and act with honesty, diligence, orderliness, and a full sense of awareness and responsibility. Failure to do so can erode public trust in the PPAT and even damage the dignity, standing, and honor of the PPAT profession as a public official.^[15] This is understandable, as errors or negligence committed by a PPAT in drafting a deed (including a AJB) directly result in losses suffered by the client. Errors committed by a PPAT in drafting a Sale and Purchase Deed can be classified into two categories: deviations regarding material requirements and deviations regarding formal requirements. Deviations regarding material requirements may occur if one of the appearing parties is a minor, if an appearing party acts under a power of attorney from a principal who has already passed away, or if the seller lacks the necessary consent from parties entitled to grant such consent. Deviations regarding formal requirements may occur if the PPAT fails to read out the contents of the sale and purchase deed in detail, if the deed is signed outside the presence of the PPAT, or if the certificate has not been verified for conformity with the land register at the Land Office. A PPAT who is negligent in performing their duties—thereby causing a deed they drafted to lack the evidentiary weight of an authentic deed—may be held administratively, civilly, and criminally liable. Based on the theory of official liability, the administrative liability of a PPAT falls under the category of personal liability (*fautes personnelles*), as the violation occurs at the level of the individual offender rather than the institution overseeing the PPAT.

Research Methods

This study employs an empirical-juridical research method to examine applicable legal provisions (law in books) alongside their actual implementation and effectiveness within legal practice in society (law in action). Fieldwork was conducted to gather primary data regarding the implementation of Standard Operating Procedures (SOPs) for deed drafting by PPAT. An empirical approach was selected because the study focuses not only on written legal norms but also on the behavior and practices of stakeholders in carrying out their functions and obligations. Willem H. van Boom et al, state that empirical legal research is essential for understanding how law operates within social practice.^[16]

The respondents in this study are PPATs, serving as the primary subjects directly involved in the research. Meanwhile, the informants who provide supporting information regarding legal aspects, policies, the implementation of land registration SOPs, and professional oversight consist of: representatives from the Regional Board of the Indonesian Land Deed Officials Association (IPPAT) or the Aceh Besar Regency PPAT Supervisory Board; and legal counsel for Siti Aminah (or the heir/family representative of Siti Aminah, the original landowner). The data obtained—both primary and secondary—were analyzed using a descriptive-qualitative method. The analysis involved presenting fieldwork results (primary data) derived from interviews and subsequently correlating and cross-

referencing them with library research findings (secondary data), such as relevant regulations and court rulings.

Result and Discussion

Legal Analysis of the Transfer of Land Rights Based on a Legally Flawed Sale and Purchase Deed

1. Legal certainty of the sale and purchase deed of land rights

In their research, Ahmad Chairul Anwar et al examined the phenomenon of Deeds of Sale and Purchase (AJB) executed by a PPAT that contain material defects. The study concluded that a unilaterally executed AJB even when drawn up before a PPAT lacks legal certainty. Although the deed was formally executed by and before a PPAT, the underlying legal act contained a material defect and was subsequently annulled by the court.^[17]

Furthermore, the study emphasized that a AJB containing a material defect lacks binding legal force; this is because a land sale requires mutual agreement or acknowledgment by both parties, and beyond lacking legal force such a deed is subject to annulment by the court. Thus, the judicial annulment of a deed containing a material defect provides legal certainty regarding matters that fail to comply with statutory provisions.^[18]

In their research, Muh Saeful Bahri et al., examined a case involving the issuance of three AJB for land plots where the master title remained registered in the original owner's name and had never been transferred to the seller, while the original title deed was held by a loan shark as debt collateral. The study concluded that the issued deeds were legally defective both formally and materially due to the failure to meet the requirements for the valid transfer of land rights.^[19]

The study also asserted that the PPAT was negligent in verifying the land's juridical and physical data, thereby exposing them to potential administrative, civil, and criminal sanctions. This demonstrates that the legal certainty of a AJB relies heavily on the diligence exercised by the PPAT in performing their official duties. If a PPAT is negligent, the resulting deed becomes defective and loses its legal certainty. In their research, Desantha Ramandha Putra et al., examine Supreme Court Decision No.3507 K/Pdt/2023, which declared a AJB null and void by operation of law because it was executed without the knowledge of the land owner. The study emphasizes that, when drafting a AJB, a PPAT must comply with applicable legal provisions and apply the principle of prudence.^[20]

2. Legally Defective Deed of Sale and Purchase

A legally defective AJB is a deed whose creation fails to meet the requirements stipulated by statutory regulations, both formal and material. Rieka Anita Sari states that a legally defective deed can be annulled through a lawsuit, and this cancellation will invalidate the transfer of rights that have been executed.^[21]

In general, legal defects in a deed of sale and purchase can be classified into two main categories:

a. Formal Defects

Formal defects are defects related to the deed's drafting procedure as stipulated in statutory regulations. Examples of formal defects include: the deed not being read aloud, witnesses not meeting the requirements, the parties appearing before it being legally competent, or the PPAT not having the authority to draw up the deed. Formal defects

can cause the deed to lose its evidentiary force as an authentic deed. Article 1869 of the KUHPdata states that a deed that cannot be treated as an authentic deed due to defects in its form has the force of a private writing if signed by the parties.

In her research, Vidya Maharani identified that deviations from formal requirements can occur because the PPAT fails to read the sale and purchase deed in detail, the deed is not signed in the presence of the PPAT, or the certificate has not been checked for conformity with the land register at the Land Office.^[22]

b. Material Defects

Material defects are defects related to the truth of the substance contained in the deed. Examples of material defects include: statements by the parties that are untrue, the object of the agreement does not exist, or the seller is not the legal rights holder. Material defects can result in the deed being declared null and void (nietig van rechtswege) or revocable (vernietigbaar).

Ahmad Chairul Anwar et al., in their research, stated that if the PPAT creates a document without stating or verifying the existence, approval, and knowledge of the spouse or the validity of the notarial deed, the PPAT may be subject to administrative sanctions, or even civil penalties, for violating the provisions of his/her position and the principle of prudence.^[23]

3. Factors Causing Legal Defects

The elements or requirements for the validity of an agreement (including agreements for the sale and purchase of land rights) are stipulated in Article 1320 of the KUHPdata; therefore, a PPAT must adhere to Article 1320 to ensure the validity of the legal act of selling and purchasing land rights.^[24] Consequently, legal defects in a sale and purchase deed can arise from various factors. In her research, Vidya Maharani identified that deviations regarding material requirements can occur if one of the appearing parties is a minor, if an appearing party acts under a power of attorney from a principal who has already passed away, or if the seller lacks the necessary consent from parties entitled to grant such consent.^[25]

Eva Riska Isnandya stated in her research that legal defects in a sale and purchase deed can arise from a defect of will on the part of one of the parties specifically mistake (dwaling), duress (dwang), or fraud (bedrog) as regulated in Article 1321 of the KUHPdata.^[26] Such defects of will can occur when a PPAT fails to fulfill the obligation to read and explain the deed's contents to the appearing parties, resulting in one party failing to fully comprehend the legal consequences of their actions.

Muh Saeful Bahri et al. identified several factors causing legal defects in AJB, including: inadequate verification of the land's juridical and physical data by the PPAT, low public legal awareness, and the abuse of trust placed in the public official authorized to draft the deed.^[27]

4. Case Examples of Legal Flaws in Judicial Practice

In Indonesian judicial practice, numerous court rulings have declared AJB null and void by operation of law due to legal defects whether formal or material. Supreme Court Decision No.3507K/Pdt/2023 serves as a significant example; in this case, AJB No.134/2016 and No.135/2016 were declared null and void by operation of law because they were

executed without the knowledge of the landowner. The panel of judges reasoned that the plaintiff's power of attorney was clear and verified as the named party appeared in court to defend their rights and that the AJB executed by the PPAT regarding the plaintiff's land were defective and lacked legal force, as the execution steps did not comply with applicable procedures. In their research, Desantha Ramandha Putra et al. concluded that Supreme Court Decision No.3507 K/Pdt/2023—which declared AJB No.134/2016 and No.135/2016 null and void by operation of law—was consistent with applicable legal regulations.^[28] Furthermore, District Court Decision No.150/Pdt.G/2019/PN.JKT.TIM also declared a deed of sale and purchase null and void by operation of law. This ruling was based on the fact that the underlying sale and purchase agreement was legally defective due to a failure to meet the requirements for a valid agreement under Article 1320 of the KUHPPerdata, as well as a failure to satisfy the material and formal requirements for sale and purchase transactions established in Supreme Court Jurisprudence No.123K/Sip/1970. This decision affirms that a failure to meet either the subjective or objective requirements of a sale and purchase agreement results in the deed losing its legal force. A similar situation arose in the Bantul District Court Decision No.5/Pdt.G/2023/PN Btl as detailed in the study by Graceilla Ribka Berliana Tuelah et al.,^[29] where a legally defective deed was subject to annulment, thereby affecting previously registered rights; in this instance, the PPAT was deemed negligent in fulfilling their obligations, resulting in the deed being legally flawed. Furthermore, Supreme Court Decision No.915 K/Pdt/2021 affirmed that a sale and purchase deed executed under a guardianship arrangement—which was legally defective due to the absence of complete testimony from blood relatives or relatives by marriage was declared null and void; the PPAT involved could be held administratively and civilly liable for violating the formal and material requirements governing land sales. These rulings consistently demonstrate that sale and purchase deeds containing legal defects whether due to a lack of mutual agreement between the parties, procedural incompleteness, or PPAT negligence during verification are declared null and void by operation of law and lose their evidentiary value as authentic deeds. Consequently, when adjudicating cases, judges consistently prioritize compliance with the requirements for a valid agreement and the procedures for the transfer of rights as absolute prerequisites for the creation of a deed that possesses legal certainty.

5. Legal Consequences of a Legally Defective Sale and Purchase Deed

A sale and purchase deed that is legally defective can be annulled through a lawsuit filed in court. As stated in the Bantul District Court Decision No.5/Pdt.G/2023/PN Btl, a deed executed with legal defects is subject to annulment, which entails legal consequences for rights that have already been registered. Rieka Anita Sari states that the annulment of such a deed renders the transfer of rights invalid and serves as grounds for cancelling the certificate that was issued.^[30]

Yovita Christian Assikin et al. emphasize in their research that the legal consequence of a AJB containing legal defects and violating statutory regulations is that it is null and void by operation of law; consequently, the AJB and all actions

associated with it are void and possess no legal force whatsoever.

Alya Maghfira Ramadhani states that a legally defective sale and purchase deed affects not only the legal relationship between the parties but also has implications for the certificate of ownership issued based on that deed.^[31] A certificate issued based on a defective deed may lose its legal legitimacy and be annulled through available legal mechanisms. This aligns with Supreme Court Jurisprudence No.459 K/SIP/1975 and No.327 K/SIP/1976, which establish that the registration of a person's name in the registry does not constitute absolute proof of land ownership if another party can demonstrate the invalidity of the title.

6. Forms of Legal Responsibility of the PPAT Profession

A PPAT as a public official authorized by the state to draft authentic deeds regarding specific legal acts in the land sector—bears inherent responsibility for every deed they execute. This liability arises when a deed contains legal defects resulting from intentional acts, carelessness, or negligence in the performance of official duties.^[32] In this context, PPAT liability falls into three distinct legal realms: administrative, civil, and criminal liability. While these three realms differ in their legal bases, mechanisms, and sanctions, they share the common objectives of enforcing PPAT compliance with statutory regulations, protecting the public interest, and upholding the dignity and honor of the PPAT profession.^[33]

Research conducted by Rivo Tri Anggraini, Sutiarnoto, and Mahmud Siregar regarding Supreme Court Decision No.3507K/Pdt/2023 affirms that a Sale and Purchase Deed unlawfully executed by a PPAT loses its status as an authentic deed under Article 1868 of the KUHPPerdata. Substantive violations can render a deed null and void by operation of law (*batal demi hukum*), whereas remediable violations require judicial annulment. Unlawful acts by a PPAT entail civil, administrative, and criminal liability.^[34] The study further concludes that a PPAT who issues a deed without the seller's knowledge may face administrative sanctions—ranging from a reprimand or temporary suspension to dishonorable discharge if document forgery is proven. From a civil perspective, they may be sued under Article 1365 of the KUHPPerdata, and from a criminal perspective, they may be subject to sanctions for document forgery. Research by Ahmad Chairul Anwar et al., confirms that if a PPAT executes a document without including or verifying the existence, consent, and acknowledgment of a spouse—or the validity of the notarial deed itself—the official may face administrative or even civil sanctions for violating professional regulations and the principle of prudence.^[35] The study further concludes that the act of selling property unilaterally based on a legally defective notarial deed violates the provisions stipulating that land registration is conducted to ensure legal certainty for rights holders.

Research by Desantha Ramandha Putra et al., affirms that a PPAT in exercising their duties and office as a public official authorized to draft authentic land-related deeds must consistently apply the principle of prudence. They must ensure that any deed to be issued adheres to applicable procedures and is free from legal defects; this is crucial because a legal defect can render a AJB drafted by a PPAT null and void by operation of law.^[36] The study further

concludes that a PPAT may be held liable if a deed they draft contains such legal defects.

In their research, Muh Saeful Bahri et al., conclude that a PPAT may be deemed negligent in verifying the juridical and physical data of the land, thereby exposing them to potential administrative, civil, or criminal sanctions.^[37] The study emphasizes that a PPAT's failure to verify the validity of documents and the agreements between parties can have fatal consequences for the validity of the deed being drafted. Furthermore, research by Anggraini et al. reveals that an unlawful act is deemed to have occurred based on the perpetrator's conduct specifically, actions that violate the law, infringe upon the rights of others, breach the perpetrator's legal obligations, contravene morality and public order, or violate societal standards of propriety regarding oneself or others. Nevertheless, for an act to be classified as unlawful, it must be determined whether the element of fault is present.^[38] A PPAT's action of drafting and issuing a deed without the presence of the parties legally required to appear and sign the deed before the official constitutes a violation of applicable legal provisions. This not only contravenes laws such as PP and the Regulation of the Head of the BPN governing the procedures for drafting deeds but also violates the professional code of ethics, which demands honesty, accuracy, and a high level of professionalism from a PPAT.

Conclusion

Research by Desantha Ramandha Putra et al., affirms that a PPAT in exercising their duties and office as a public official authorized to draft authentic land-related deeds—must consistently apply the principle of prudence. They must ensure that any deed to be issued adheres to applicable procedures and is free from legal defects; this is crucial because a legal defect can render a AJB drafted by a PPAT null and void by operation of law.^[36] The study further concludes that a PPAT may be held liable if a deed they draft contains such legal defects.

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Suggestions and Recommendations

PPATs must consistently uphold the principle of prudence by meticulously examining both the formal and material aspects when drafting any Sale and Purchase Deed. They are obligated to act as guardians of legality by ensuring that the original certificate is in the seller's possession, that land ownership has been legally transferred, and that the land in question is free from third-party encumbrances. Should the deed contain legal defects, the AJB executed by the PPAT may be rendered null and void by operation of law, and the PPAT may be held liable.

The PPAT Supervisory Board and the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN) should strengthen preventive oversight systems by increasing the frequency of routine inspections of PPAT protocols, establishing standardized inspection SOPs, and enhancing inter-agency coordination. The implementation of a mandatory verification checklist should also be considered. Strict and transparent sanctions for violations must be enforced to serve as a deterrent and a lesson for PPATs.

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