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The Position of Land Ownership Right Base in Making Deed of Sale and Purchase before Land Titles Registrar

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Abstract

This research aims to discuss the strength of the proof of basic land ownership documents (base of rights) in the process of making a sale and purchase deed (AJB) by the Land Deed Making Officer (PPAT). PPAT is a public official who has the authority to make authentic deeds regarding certain legal actions regarding land rights or ownership rights to apartment units. This is important, because in the event that a plot of land does not have documents that can be used as a basis for rights regarding ownership of land rights, then the only basis for rights that is used in practice is a statement of physical control over a plot of land, known as sporadic. So that in the process of buying and selling land, the seller as the land owner only uses

sporadic forms of rights as proof of ownership. On this sporadic basis, finally PPAT made AJB in the land buying and selling process. This has caused many cases of land disputes to emerge due to the PPAT's carelessness in examining the basis for ownership rights to land which is used as the basis for making sale and purchase deeds. So it would be interesting to research the strength of the evidentiary basis for land rights in making a sale and purchase deed before the PPAT. As an example of a case caused by PPAT's carelessness in making a sale and purchase deed contained in the Banda Aceh District Court Decision Number 37/Pdt.G/2023/PN-Bna.

Keywords: Base of Rights, Land Ownership, Sale and Purchase Deed

Introduction

After the Indonesian nation became independent in 1945, in September 1960 the legal product regulating land was Law No. 5 of 1960 (known and abbreviated as UUPA). The basic aim of the birth of these agrarian law provisions is to eliminate the concept of "colonial agrarian" management and shift to the concept of "national agrarian". It is said to be national agrarian because these legal provisions have eliminated the concept of colonial agrarian law which was very detrimental to the Indonesian people as masters of their own country. Therefore, it can be said that UUPA is one of the national legal products that was born from the thoughts of the nation's children originating from customary law, where the legal product was born, directed and based on the framework of the ideals or noble values of the nation in managing resources. National agrarian for the benefit of the Indonesian people.

One of the main materials contained in the national agrarian regulations is related to the control of land rights. This is important for the state to regulate because strategic values are attached to the land. This means that land for the Indonesian people is not only of economic value, but is also closely related to the social, cultural and even belief aspects of the community, so that it requires the state to regulate and lead the use and allotment of the land, all of which is maximized only for the sake of the people's prosperity. Indonesia. In other words, the state only needs to be a regulator, not a direct actor.¹ Therefore, there is a need for juridical reasons that can confirm that a piece of land is recognized by the state as being owned by a certain legal subject, so that special treatment is needed in managing this land to avoid land disputes or conflicts in the future.

The special treatment in question is to provide certain status rights to land through the implementation of land registration. This is done with the aim of providing legal certainty over land by providing proof of ownership of land rights. The guarantee

¹ Jimly Assiddiqie, *Konstitusi Ekonomi*, Jakarta: Kompas, 2010, hlm. 250.

of legal certainty that is intended to be realized in land registration includes certainty about the status of the rights being registered, certainty about the subject of the right and certainty about the object of the right.² In the process of implementing land registration activities, the Land Deed Drafting Officer (PPAT) has a very important role in land registration activities in order to achieve state goals. PPAT is one of the public office holders appointed by the state to carry out the land registration process before the registration is forwarded to the land office.

The main task is to carry out part of the land registration activities by making authentic deeds in the land sector. The aim is none other than to maintain land juridical data which is stored and presented at the district/city land office, as well as proof documents that always match the actual situation.³

Considering the duties of the PPAT office holder, of course in holding the PPAT position it does not rule out the possibility of a PPAT vacancy in a district/city as a result of the vast territorial area of Indonesia. To respond to these conditions, the formulators of the provisions regarding PPAT convened and/or appointed other officials to assume the position of PPAT. Another official who is given the authority to assume the position of PPAT is the District Head or Village Head, who after taking the oath of office will be appointed as a Temporary PPAT (PPATS) as intended in Article 5 (3) letter a PP No.37 of 1998 concerning Officials Making Land Deeds.

In accordance with the provisions of Article 7 PP no. 24 of 1997 concerning Land Registration, PP No. 37 of 1998 was issued. Then Article 1 paragraph (1) of PP Number 24 of 1997 states that PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding rights to land or ownership rights to apartment units. The making of an Authentic Deed by the PPAT or before the PPAT is intended to obtain legal certainty and legal protection for interested parties, including the public in general,⁴ regarding a particular legal act involving land.

In practice, the sale and purchase of land still often gives rise to disputes/disputes regarding basic issues of ownership, land boundaries, price agreements being reneged on, and even the recording party, in this case the PPAT, which is not transparent in completing its duties. Basically, these disputes arise because each party does not fulfill their obligations or there are legal defects in the agreement between both parties or other problems that can give rise to disputes.

Currently, land buying and selling sometimes does not go according to expectations. Many problems arise from land buying and selling transactions. Land buying and selling is carried out by both parties, namely the seller and the buyer. In this transaction, each party must fulfill their respective obligations, the seller must hand over the object being traded, namely land, and the buyer must provide the money used to pay for the land. After the sale and purchase

transaction is carried out, the buyer wants to transfer the name to the land certificate they have purchased. Before changing the name of the certificate, the parties must make a Deed of Sale and Purchase (AJB) then the AJB will be signed by the seller and the buyer. However, PPAT cannot be arbitrary in carrying out its obligations. Article 26 paragraph (1) UUPA stipulates that buying and selling, exchange, gift, gift by will, and other acts intended to transfer property rights and their supervision are regulated by government regulations.

Ownership rights can be transferred and transferred. Transfer is the transfer of property rights to another party not because of deliberate legal action, but because of the law itself, because of inheritance. So, with the death of the land owner, the land will automatically fall/transfer to his heirs. Transferred is the transfer of property rights to another party due to an intentional legal action. So, in order for the ownership rights to be transferred or transferred to another party, there must be certain actions that are intended to transfer the ownership rights, for example by legal actions in the form of buying and selling, gift or exchange.⁵

The purpose of registering the transfer of land rights is to provide legal certainty and protection of land ownership for the recipient of the transfer by obtaining strong evidence in the form of a certificate which contains the name of the recipient of the transfer of rights as the new owner. So, by registering the land, it is easy to prove the rights to the land they control.⁶ According to the results of literature observations made by the author, the regulations regarding land registration do not yet explain in detail the requirements for making a sale and purchase deed before the PPAT.

This has caused many cases of land disputes to emerge which are caused by the PPAT's carelessness in examining the basis of ownership rights to land which is used as the basis for making sale and purchase deeds. From the description above, the author intends to examine the strength of the evidentiary basis for land rights in making a sale and purchase deed before the PPAT. For example, a case caused by PPAT's carelessness in making a sale and purchase deed contained in the Banda Aceh District Court Decision No. 37/Pdt.G/2023/PN Bna. This case started with the process of buying and selling land located in Aceh Besar using a certificate from the Keuchik (village head) as the basis for land ownership to make a sale and purchase deed. In this case, the judge stated that the actions carried out by Defendants I and II were unlawful, because they had executed a sale and purchase deed using the basis of land ownership rights which in essence meant that the land had the legal heirs of the previous land owner. Regarding the certificates that had been issued in the names of Defendants I and II regarding property rights, they were declared invalid and had no legal force.⁷

² Urip Santoso, *Hukum Agraria: Kajian Komprehensif*, Jakarta: Kencana, 2014, hlm. 278.

³ Boedi Harsono, Tugas dan Kedudukan Pejabat Pembuat Akta Tanah, *Jurnal Hukum dan Pembangunan*, Vol. 25, No 6, 1995, hlm. 477-478.

⁴ Safrina Y. Y., Azhari., Suhaimi. "Notary's responsibilities for privately made deed signed before and attested". *International Journal of Law*, Volume 10, Issue 2, 2024, Pages 62-65.

⁵ Erna Sri Wibawanti dan R. Murjiyanto, *Hak Atas Tanah & Peralihannya*, Yogyakarta: Liberty Yogyakarta, 2013, hlm. 48.

⁶ Della Rafiqqa Utari, Suhaimi, Pendaftaran Tanah Yang dikuasai Oleh Tempat-Tempat Ibadah Umat Islam Di Kecamatan Kuta Alam Banda Aceh, *Syiah Kuala Law Journal*, Vol. 4(3) Desember 2020, pp. 310-322.

⁷ Putusan Pengadilan Negeri Banda Aceh Nomor 37/Pdt.G/2023/PN BNA.

Apart from the cases above, there are also similar cases which give rise to legal problems in making sale and purchase deeds regarding the determination of inheritance certificates. A certificate of heirship can be one of the bases for land rights in making a sale and purchase deed. We can see this case in the Jantho Sharia Court Decision Number 349/Pdt.P/2019/MS.Jth. In this decision, the petitioner sued the respondent because of the inheritance case over land which was the object of dispute in court. In this case, the Jantho Sharia Court granted the applicant's lawsuit by canceling the inheritance certificate made by the Keuchik of Gampong Paya, Sukajaya District, Sabang Municipality. The decision also states that the applicant can process the title transfer of the land certificate at the Aceh Besar District land office.⁸

From these cases, it is understood that the Keuchik's determination of an heir certificate as the basis for land rights to be registered often causes problems, so the PPAT must be more careful and astute in looking at the basis for rights to land ownership when making sale and purchase deeds. From various cases in the process of transferring land rights in the community, PPAT's responsibility in providing legal certainty is very large. However, this could also be a risk for PPAT if it cannot apply the principle of caution in making deeds. Based on the problems above, the author is interested in further research on the strength of proof of a strong basis for land ownership in the process of making a sale and purchase deed.

Research Methods

This research is empirical juridical research, namely research that emphasizes applicable legal regulations, and in this case the research was carried out starting from research on secondary data which was then continued with research on primary data in the field.⁹ Empirical research can also be said to be sociological research that examines applicable legal provisions and what happens in reality in society.¹⁰

The approaches used in this research are the statutory approach, concept approach and case approach. The research location was carried out in the Banda Aceh Municipality Legal Area, considering that the data to be researched was in the Banda Aceh Municipality.

A sample is some of the characteristics or traits possessed by a population. The sampling in this research was purposive sampling, namely the selection of a group of subjects based on certain characteristics or traits that were deemed to be closely related to previously known characteristics or characteristics of the population.¹¹

From the population several samples were selected that could represent the entire population consisting of respondents and informants. Data analysis was carried out qualitatively, namely research that emphasized meaning, reasoning, definition of a particular situation (in a particular

context), and also researched more on matters related to everyday life.¹² This research describes the problem by analyzing it descriptively qualitatively, namely to reveal events or facts, circumstances, phenomena, variables and circumstances that occurred during the research by revealing what actually happened. Based on this analysis, to draw conclusions, the inductive thinking method is used, namely a thinking method that starts from specific knowledge and then assesses general events.¹³

Result and Discussion

1. Provisions on Land Rights

Recognition of rights to something by a person or community must be based on valid and strong evidence of ownership, one of which is the right to land and house. Without proof of written rights, a person or community cannot immediately make a statement regarding ownership rights. With the enactment of the Basic Agrarian Law (UUPA) Number 5 of 1960, the public can recognize several types of land ownership rights, including control rights from the state which are made in the form of certificates, customary rights from indigenous peoples/customary communities and customary rights. Individuals (individuals and legal entities).

The legality of proof of land rights gives rise to many legal problems, one of the causes of which is due to clashes in the concept of land control based on applicable laws and regulations. Land Certificate (SKT) which is the initial proof of rights which is widely used in various regions, in rural areas there are different terms but this is the same as the basic document or some people call it initial written proof. Proof of land rights in the form of letters made by the community in various types whose aim is to create written evidence of objects or plots of land controlled by the community, including rights originating from the customs of each region in Indonesia which have different names. - different: Girik, letter C, patuk and similar rights originating from special customary rights.¹⁴

Land Certificate (SKT) is a certificate regarding an object or proof of land/land ownership made at the request or request of the community to the Subdistrict or Village office where the land object is being applied for, and based on that request or application the Subdistrict or Village issues a Certificate Land (SKT) begins by having a land register registered in the village, and then the SKT issuance process involves testimony by the RT and several witnesses and then it is proposed to the Lurah or Village Head for approval for the SKT issuance.¹⁵

The community's need for proof of ownership of land rights is quite high. They are aware of the guarantee of legal certainty in the land sector so that in the future there will be no interference from other parties. Thus, some people use various methods to obtain proof of ownership of land rights,

⁸ Putusan Mahkamah Syar'iah Jantho Nomor 349/Pdt.P/2019/MS.Jth.

⁹ Bambang Sunggono, *Metode Penelitian Hukum*, Jakarta: Raja Rajawali Pers, 2006, hlm. 75.

¹⁰ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*, Jakarta: Rineka Cipta, 2012, hlm. 26.

¹¹ Amiruddin dan Zainal Asikin, *Pengantar Metode Penelitian Hukum*, Jakarta: Rajawali Pers Grafindo, 2008, hlm, 45.

¹² Rukin, *Metode Penelitian Kualitatif*, Sulawesi Selatan: Yayasan Ahmar Cendekia Indonesia, 2019, hlm. 6.

¹³ Soerjono Sukanto, *Pengantar Penelitian Hukum*, Jakarta: Universitas Indonesia, 1986, hlm. 250

¹⁴ Yosep Surya Ditama Sibarani, *Kajian Hukum Surat Keterangan Tanah Yang Dikeluarkan Kepala Desa Sebagai Bukti Awal Hak Milik Atas Tanah*, *Jurnal Lex Privatum*, Vol. XI, No.4, Mei 2023, hlm. 1-13.

¹⁵ *Ibid.*

including by visiting the village or village head office to ask for a Land Certificate (SKT).

Making a Land Certificate (SKT) as initial proof of ownership of land rights has long been carried out by rural communities. Even though a land ownership certificate is a form of private written evidence whose evidentiary power is not as strong as an authentic deed, it is because these land certificates are documents that are categorized as basic rights or juridical data on land which are used as a condition for completing the requirements for land rights applications as regulated. In terms of land legislation, the land certificate is a very important document in the process of issuing a land title certificate.¹⁶

The legal force of the SKT issued by the Village Head in land sale and purchase transactions based on the Land Registration PP, has valid legal force if it is known by the sub-district head as PPAT, with a legal basis based on the Elucidation of Article 7 paragraph (2) and Article 39 paragraph (1) letter b number (1) and number (2) PP No. 24 of 1977 can be categorized as the basis for rights submitted as complete requirements for land rights applications. Provisions of Article 7 paragraph (2) PP No. 24 of 1997 states that, for villages in remote areas, the Minister can appoint a PPAT.¹⁷

In the explanation of Article 7 paragraph (2) PP no. 24 of 1997 is intended to make it easier for people in remote areas where there is no PPAT to carry out legal acts regarding land. Those appointed as Temporary PPATs are Government Officials who control the situation of the area concerned, namely the Village Head. It can be said that the SKT issued by the Village Head which is used as the basis for the implementation of the sale and purchase of land rights has legal force if the implementation of the land sale and purchase is known to the Village Head as a government official who controls the conditions of the area concerned in remote rural areas. However, if in an area there is already a sub-district head appointed as PPAT or Temporary PPAT, then the sale and purchase of land rights on the basis of an SKT issued by the Village Head will only have legality and legal force if the sale and purchase of land rights is known and signed by the sub-district head as PPAT or Temporary PPAT appointed by the government.¹⁸

In Article 5 paragraph (3) letters a and b PP PPAT Position, which reads:¹⁹ "To serve the community in making PPAT deeds in areas where there are not enough PPATs or to serve certain community groups in making certain PPAT deeds, the Minister can appoint the following officials as PPATS or Special PPATs:

- a. Sub-District Head or Village Head to serve in making deeds in areas where there are not enough PPATs, as Temporary PPATs;
- b. "Head of the Land Office to serve in making PPAT deeds required for the implementation of community service programs or to serve in making certain PPAT

¹⁶ *Ibid*, hlm. 1-13.

¹⁷ Muhammad Doifullah Fachriza, *Kekuatan Skt Sebagai Bukti Kepemilikan Sebidang Tanah Dalam Perjanjian Sewa-Menyewa Berdasarkan UUPA dan PP No. 24 Tahun 1997 Tentang Pendaftaran Tanah, Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan Fakultas Hukum Unpad*, Volume 3, Nomor 2, Juni 2020, hlm. 321-388.

¹⁸ Muhammad Doifullah Fachriza, *Ibid*.

¹⁹ Pasal 5 ayat (3) huruf a dan b PP Jabatan PPAT.

deeds for friendly countries based on the principle of reciprocity in accordance with the considerations of the Ministry of Foreign Affairs, as a Special PPAT."

From Article 5 (3) letters a and b, it can be concluded that the position of PPAT Village Head is a position appointed directly by the state as a PPATS to assist BPN in serving the creation of SKT as one of the proofs of the basis for land ownership status. The Village Head as a PPATS must pay careful attention to the conditions of the land that will be registered with him. In fact, every village must have an archive to record whether the land was actually previously owned by no one. Even though the Village Head is given the authority to issue SKT considering that the Village Head is appointed directly as the PPATS and has the authority to issue SKT, he must look at the conditions in the field. Because if he has even the slightest doubt, the Temporary PPAT is protected by law if the PPATS refuses to issue the SKT.²⁰

2. Position of Land Ownership Rights in Making a Sale and Purchase Deed Before the PPAT

Making a sale and purchase deed before the PPAT must go through several processes, namely as follows:

- a. Examination of data from land deed officials (PPAT). Based on the sale and purchase transaction of land rights, the PPAT concerned will request data including:²¹

- 1) Land Data
 - a) Original PBB for the last 5 years along with Deposit Receipt.
 - b) Original certificate.
 - c) Building construction permit (IMB),
 - d) Proof of payment for electricity, telephone and water bills (if any)
 - e) Mortgage rights certificate, this requirement is attached if it is still a mortgage, by attaching the original mortgage rights certificate for the land that is the object of the transaction.

- 2) Seller and Buyer Data

Data for individuals includes:

- a) Photocopy of the identity card (KTP) of the husband or wife of the seller and buyer.
- b) Photocopy of family card (KK) and marriage certificate of seller and buyer.
- c) Photocopy of the seller's and buyer's taxpayer registration number (NPWP).

Data for companies includes:

- a) Photocopy of the resident's identity card (KTP) of the representing directors and commissioners.
- b) Photocopy of the complete articles of association including approval from the Minister of Law and Human Rights (Kemenkumham).
- c) General meeting of shareholders (GMS) to sell (if the majority of the PT's assets are being sold) or a statement letter (if only a small portion of the PT's assets are being sold) to the board of directors.²²

²⁰ Muhammad Doifullah Fachriza, *Op Cit*.

²¹ Urip Santoso, *Pendaftaran dan Peralihan Hak atas Tanah*, Jakarta: Kencana, 2013, hlm. 370.

²² Irma Devita, *Kiat-Kiat Cerdas, Mudah, dan Bijak Mengatasi Masalah Hukum Pertanahan*, Bandung: Kaifa, 2010, hlm. 18.

b. Making a Sales and Purchase Binding Agreement (PPJB). PPJB is an agreement between the seller and the buyer before the sale and purchase is carried out because the reasons that must be fulfilled for the sale and purchase include:

- 1) The land title certificate has not been registered.
- 2) Still in the process of changing the name.
- 3) The price of the object or certificate has not yet been paid in full.
- 4) The certificate is still in the process of being resolved at the BPN office.

c. Making and Signing the Deed of Sale and Purchase of Land Rights.

The making of the sale and purchase deed is attended by the seller and buyer or an authorized person, attended by two witnesses, the PPAT reads and explains the contents of the deed, if the contents of the deed have been approved by the seller and buyer then it can be signed. The transfer of land rights through sale and purchase can only be registered if it is proven by a deed that has been made by PPAT according to statutory regulations.

d. Registration of the Sale and Purchase Deed and Submission of the Certificate at the BPN Office.

e. After the sale and purchase deed is signed, PPAT submits the AJB files to the BPN office for the name transfer process no later than 7 working days with complete files such as:

- a. Letter of request for change of name signed by the buyer.
- b. Deed of sale & purchase.
- c. Land title certificate.
- d. Seller and buyer ID cards.
- e. Proof of payment of BPHTB (Land and Building Rights Acquisition Fee).

After the sale and purchase deed and all files have been submitted to BPN, PPAT will receive proof of receipt of the application for registration of transfer of land rights. Next, PPAT will hand it over to the buyer.

To obtain a sale and purchase deed before the PPAT, the parties must complete the requirements required in the sale and purchase deed, and the PPAT must also make the deed in accordance with the established process, as explained by one of the PPATs the author interviewed, namely PPAT Ahmad Rifqi S.H., M.Kn, he explained that making a sale and purchase deed before the PPAT is different from a sale and purchase deed made by a notary. There are 3 (three) processes that must be followed in making a PPAT deed, namely: Pre-signing, post-signing. The explanation is:

- a. In the pre-process, what PPAT must pay attention to is:
 - 1) when the basic certificate is in place, the sale and purchase is carried out in cash, the payment has been paid in full, the object is clear, then PPAT can immediately make a sale and purchase deed.
 - 2) However, if the sale and purchase transaction is in the form of credit, or there is still unpaid tax, the certificate is still under the bank's mortgage, or it already exists but is not yet generous and the parties want to make payment at that time, then the PPAT only has to do it. can make a notarial deed of sale and purchase binding (PPJB). Apart from that, the object must also be checked so that it does not involve registered or

unrecorded disputes, both in court and outside of court.

- b. After checking everything completely, a deed is drawn up in accordance with the rules, and then the deed is signed by the parties in front of the PPAT and witnesses.
- c. Then 7 (seven) days after the signing, the deed must be registered at the Land Office.²³

One of the conditions that must be fulfilled in making a sale and purchase deed is that clear land data must be met in the form of submitting a basic certificate which is the basis for the rights owned by the seller who wants to sell the land. The grounds of rights that are permitted in making a sale and purchase deed before the PPAT are explained by PPAT Zulfadila S.H., M.Kn, namely:

- a. Certificate.
- b. Building use rights letter (SHGB).
- c. Business use rights.
- d. Deed of Sale and Purchase (AJB).
- e. Statement of Physical Control of Land Plots (Sporadic) made by the Village/Subdistrict Head.
- f. Girik, Petuk, Liter C, Letter of Grant, Letter of Inheritance and so on.²⁴

In PP No.24 of 1997, one of the permitted grounds of rights other than an authentic deed (certificate) is a private letter. This private letter can take the form of a land certificate (SKT) which is now known as a Statement of Physical Control of Land Plots (Sporadik) made by the Subdistrict Head (*Keuchik*). A land certificate is a piece of private written evidence whose evidentiary power is not as strong as an authentic deed, but because the land certificate is a document which is categorized as a basis for rights which is used as a condition for completing the requirements for a land rights application, the land certificate is a very important document. important in the process of making a sale and purchase deed because there are no other rights. The legal force of a land certificate issued by the (*Keuchik*) in land sale and purchase transactions is explained in Article 7 (2) which reads: "For villages in remote areas the Minister can appoint a PPATS".²⁵

And Article 39 (1) letter b PP No. 24 of 1997, namely: "concerning plots of land that have not been registered, the following is not conveyed to him:²⁶

- a. a letter of proof of rights as intended in Article 24 (1) or a statement from the *Keuchik* stating that the person concerned controls the plot of land as intended in Article 24 (2); and
- b. a certificate stating that the plot of land in question has not been certified by the Land Office, or for land located in an area far from the Land Office, from the relevant right holder, confirmed by the *Keuchik*;

²³ Wawancara dengan Ahmad Rifqi S.H., M.Kn, PPAT, Kuta Alam, Banda Aceh, 11 Juni 2024.

²⁴ Wawancara dengan Zulfadila S.H., M.Kn, Baiturrahman, Banda Aceh, 14 Juni 2024.

²⁵ Pasal 7 ayat (2) Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

²⁶ Pasal 39 ayat (1) huruf b angka (1) dan angka (2) Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.

Based on the Elucidation of Article 7 (2) and Article 39 (1) letter b PP No. 24 of 1997, it is explained that the SKT/Sporadi rights base has valid legal force if it is known to the sub-district head as the official who made the land deed, and can be categorized as a rights base submitted as a completeness of the requirements for a land rights application.

Even though Sporadik has valid legal force, its evidentiary power is not as strong as an authentic deed because Sporadik does not go through an announcement scheme, checking, satellite technology, and so on. Sporadik only involved village officials in writing the letter. Therefore, as said by PPAT Dian Sutari S.H., M.Kn, the legal force of Sporadic is very weak, this does not mean that it is not true, it just means that it is very weak. When a PPAT or notary makes a deed that is basically Sporadic, it is full of risks. The risk is because Sporadik does not go through the process that a certificate or other authentic deed goes through, which means the possibility of being sued or someone who feels they own the land is large, and it is possible that the PPAT that made the sale and purchase deed could also be a defendant.²⁷

Sporadik is said to be weak because the parties involved in making Sporadik only made and were present at the time of making and signing Sporadik, when measurements were carried out by the measurement team assigned by BPN, these parties were not present. There are many cases in society that often arise, such as Sporadic forgery, where parties can be bribed to sign a letter that sometimes they do not know about the contents of the Sporadic letter they are signing. So that it can be used as a benchmark so that in the future the SKT/Sporadic issued by the Village Head has stronger legal force, it would be better for the parties who signed the SKT/Sporadic to be involved in the measurement so that falsification of the SKT/Sporadic can be identified by the authorized BPN. Measure the land before issuing the deed, to minimize the occurrence of land disputes in the future.

3. Factors that cause a sale and purchase deed to be drawn up before the PPAT can give rise to disputes

The sale and purchase deed made by PPAT is a type of authentic deed. An authentic deed according to Article 1869 of the Civil Code (KUHPperdata) is a deed made in a form determined by law or before an authorized public official, for the purpose for which the deed was made. Authentic deeds must fulfill several requirements, namely authentic deeds must be made in the form determined by law, authentic deeds must be made in the presence or by a public official (*openbaar ambtenaar*), the official must be authorized, for that purpose in the place where the deed is made, the purpose is authorized is related to his position, the type of deed he made, the day and date the deed was made, and the place where the deed was made.²⁸

An authentic deed can also be cancelled, if the authentic deed does not meet the terms and conditions determined by law. One of the authentic deeds is the land sale and purchase deed, which will later become the basis for the issuance of a

certificate for the land. According to statutory regulations, the factors that could be behind the cancellation of land sales and purchases bound by a sale and purchase deed issued by PPAT are:²⁹

- a. Failure to fulfill the requirements set by law for this type of formal agreement will result in the agreement being null and void.
- b. Failure to fulfill the legal conditions of the agreement.
- c. Fulfillment of the conditions is void in the type of conditional agreement.
- d. Cancellation by a third party based on Paulina's action.

Then the Jurisprudence of the Supreme Court of the Republic of Indonesia also stated that the factors behind the cancellation of the land sale and purchase agreement with the sale and purchase deed issued by the PPAT were:³⁰

- a. The agreement is invalid because it does not fulfill the objective requirements for the validity of the agreement, namely the agreement between the parties as stated in Article 1320 KUHPperdata.
- b. The agreement is void because it does not fulfill the objective requirements for the validity of the agreement, namely certain things contained in Article 1320 of the KUHPperdata.
- c. The agreement is void because it does not fulfill the objective requirements for the validity of the agreement, namely the lawful reasons contained in Article 1320 of the KUHPperdata.
- d. Cancellation due to the right to repurchase the object in the sale and purchase agreement.
- e. The agreement is invalidated due to using an absolute power of attorney.
- f. Invalidity in the case of buying and selling joint assets.
- g. Cancellation of sale and purchase agreement.
- h. Cancellation in case of emergency (*noodtoestand*).
- i. Invalidity of agreements regarding land rights.

As for making a PPAT deed, the steps that must be carried out by a PPAT are:³¹

- a. Before executing a deed regarding the transfer or encumbrance of land rights or ownership rights over an apartment unit, the PPAT is obliged to first carry out an inspection at the land office regarding the conformity of the certificate of land rights or ownership rights over the apartment unit in question with the listed lists. at the local land office by showing the original certificate.
- b. The deed must use the form that has been determined.
- c. In the event that permission is required for the transfer of rights, this permission must be obtained before the deed is made.

²⁹ Jovita Elizabeth, Pembatalan Akta Jual Beli PPAT yang Cacat Hukum Berdasarkan Putusan Pengadilan (Studi Kasus Putusan Pengadilan Tinggi Tanjungkarang No. 17/Pdt.G/2012/PT.TK), *Jurnal Palar (Pakuan Law Review)*, Vol. 08, No. 01, Januari-Juni 2022, hlm. 198-211.

³⁰ *Ibid.*

³¹ Laily Eka Trisdianti, Pelaksanaan Pertanggungjawaban Ppat Dalam Pembuatan Akta Jual Beli Tanah Yang Obyeknya Ada Sengketa Di Kabupaten Blitar, *Jurnal Hukum dan Kenotariatan*, Vol. 6, No. 1, Februari 2022, hlm. 630-620.

²⁷ Wawancara dengan Dian Sutari S.H., M.Kn, Baiturrahman, Banda Aceh, 18 Juni 2024.

²⁸ Tan Thong Kie, *Studi Notariat dan Serba-Serbi Praktek Notaris*, Jakarta: PT Ichtar Baru Van Hoeve, 2011, hlm. 441-442.

- d. Before a deed regarding the transfer of land rights is drawn up, the prospective recipient of the rights must make a statement stating:
- 1) That the person concerned with the transfer of rights does not become the holder of rights to land that exceeds the maximum provisions for land control according to the provisions of the applicable laws and regulations;
 - 2) That the person concerned with the transfer of rights is not the holder of absentee (guntai) land rights according to the provisions of the applicable laws and regulations;
 - 3) That the person concerned is aware that if the statements referred to in a and b are not true then the excess land or absentee land will become the object of land reform.
 - 4) That the person concerned is willing to bear all the legal consequences, if the statements referred to in a and b are not true. PPAT is obliged to explain to prospective recipients of the rights the intentions and statements as referred to above.
- e. The making of the PPAT deed must be attended by the parties carrying out the legal action in question or the person authorized by them with a written power of attorney in accordance with applicable laws and regulations.
- f. The making of a PPAT deed must be witnessed by at least two witnesses who according to the provisions of the applicable laws and regulations fulfill the requirements to act as witnesses in a legal action, who provide testimony, among other things, regarding the presence of the parties or their proxies, the existence of documents shown in the making of the deed, and the legal action has been carried out by the parties concerned.
- g. The PPAT is obliged to read the deed to the parties concerned and provide an explanation regarding the content and purpose of making the deed, and the registration procedures that must be carried out subsequently in accordance with applicable regulations.
- h. The contents of the PPAT Deed must be read/explained to the parties in the presence of at least 2 (two) witnesses before being signed immediately by the parties, witnesses and the PPAT.
- i. No later than 7 (seven) working days from the signing of the relevant deed, the PPAT is obliged to submit the deed he made along with the relevant documents to the land office for registration.
- j. PPAT is obliged to provide written notification regarding the delivery of the deed as referred to above to the parties concerned

According to Article 39 PP no. 24 of 1997, PPAT must refuse to make a deed if:

- a. Regarding plots of land that have been registered or ownership rights to apartment units, the original certificate of title in question is not delivered to him or the certificate submitted does not match the registers at the Land Office; or
- b. Regarding plots of land that have not been registered, the following are not conveyed to him:
 - 1) Evidence letter as intended in Article 24 paragraph (1) or a statement letter from the

Village/Subdistrict Head stating that the person concerned controls the plot of land as intended in Article 24 paragraph (2); And

- 2) A certificate stating that the plot of land in question has not been certified by the Land Office, or for land located in an area far from the Land Office, from the relevant right holder, confirmed by the Village/Subdistrict Head;
- c. One or the parties carrying out the legal action in question or one of the witnesses as intended in Article 38 does not have the right or does not meet the requirements to act in such a way;
 - d. One of the parties or parties acts on the basis of an absolute power of attorney which essentially contains a legal act of transferring rights; or
 - e. For legal actions to be carried out, permission from an authorized official or agency has not been obtained, if such permission is required according to applicable laws and regulations; or
 - f. The object of the legal action in question is in dispute regarding its physical data and/or juridical data; or
 - g. Other requirements are not met or violated as specified in the relevant laws and regulations.

If the PPAT has carried out its duties well, the possibility of a dispute occurring is very minimal, but if a dispute occurs in the future outside the authority of the PPAT which made the sale and purchase deed, this will return to the parties carrying out the sale and purchase. The factors found by the author when conducting research related to sale and purchase deeds made by PPAT often occur in disputes related to falsification of identity or SKT/Sporadik brought by the parties. Until now, this factor has not been able to be overcome by PPAT because of the limitations that PPAT has. PPAT has limitations in terms of checking information brought by the parties, what PPAT can do is only ask about the authenticity of the documents brought only through the parties who submit them, regarding the veracity of the information or documents PPAT cannot look further.

If in the future there is a dispute related to the land for which the PPAT has made a sale and purchase deed, then the PPAT will adhere to the basis of the basic rights brought by the parties, because if a problem arises, it is the Sporadic that is being questioned. Because regarding the authenticity of the Sporadic PPAT cannot check further, PPAT is only authorized to make sale and purchase deeds. However, it is better for PPAT to be more careful when making sale and purchase deeds using the basis of Sporadic rights whose legal force is weak and difficult to justify. So PPAT must ask questions to the parties to see the honesty of the parties. If they genuinely do not know about the fake Sporadic that was brought, then PPAT can defend itself by sticking to the Sporadic, however, if PPAT also knows about it and is involved in counterfeiting the Sporadic, then PPAT must be held accountable for its actions. Therefore, one way that PPAT can do to free itself from actions outside its control is by adding a clause stating that the parties who made the deed if they uttered false statements, misleading or false information, fake documents, then it will be the

responsibility of the parties and free the PPAT and witnesses from all forms of legal action if this happens.³²

What the PPAT does is in accordance with the theory of evidence which states that evidence in criminal cases (criminal procedural law) is aimed at finding material truth, namely the true or actual truth, while evidence in civil cases (civil procedural law) is aimed at finding formal truth, meaning that the judge may not exceed the limits proposed by the parties to the case. There are four elements of proof theory, namely: The existence of expert opinion, the existence of methods, the existence of a subject, and the existence of a goal.³³ Here PPAT must be able to prove that it is not involved and not guilty when a dispute occurs related to sporadic fakes.

4. Legal Consequences for PPATs that Issue Deeds of Sale and Purchase on the Basis of Sporadic Rights

PPAT errors committed in the form of negligence or negligence are categorized as abuse of authority, the sanctions for which are regulated in Article 62 PP No. 24 of 1997, "PPATs who in carrying out their duties ignore the provisions as intended in Article 38, Article 39 and Article 40 as well as the provisions and instructions given by the Minister or appointed Official are subject to administrative action in the form of a written warning up to dismissal from their position as PPAT, without reducing the possibility of being sued for compensation by parties who suffer losses resulting from ignoring these provisions."³⁴

Regarding intentional, negligent and/or negligence in making a sale and purchase deed that deviates from the formal and material requirements of the procedures for making a PPAT deed, the PPAT can be subject to administrative sanctions. The PPAT's administrative responsibilities include tax responsibilities which are additional PPAT authorities granted by the tax law. In this regard, PPAT may be subject to administrative sanctions in the form of fines for violations of Article 91 (1) of Law No. 28 of 2009 concerning Regional Taxes and Regional Retributions, which states: "Land Deed Officials/Notaries can only sign deeds of transfer of rights to land and/or buildings after the taxpayer submits proof of tax payment."

As a result of these actions, PPAT may be subject to sanctions as regulated in Article 93, namely: "PPAT/Notaries and heads of offices in charge of State Auction Services, who violate the provisions as intended in Article 91 (1) and (2) will be subject to administrative sanctions in the form of a fine of Rp. 7,500,000. For each violation".

Regarding the case of making a PPAT deed that contains legal defects such as fake SKT/Sporadik, it will result in difficulties for the party entitled to the deed to exercise their rights. If the PPAT deed which was made as the basis for the transfer of rights to the land, is declared invalid by a court decision, and results in the PPAT client being unable to use the deed according to the role and function of an authentic deed, then the client who is supposed to be the right holder becomes unable to carry it out. Rights, the PPAT concerned is responsible for the losses incurred. As a result of an error

due to intention or negligence in the form of carelessness, carelessness and carelessness in carrying out legal obligations for the PPAT in making the land sale and purchase deed, resulting in a loss for the parties, the PPAT concerned must be responsible for compensating for the losses incurred. Suffered by the parties in the form of reimbursement of costs, compensation and interest.³⁵

Then regarding the imposition of criminal sanctions against PPAT, it can be carried out as long as a PPAT has made a fake letter or falsified a deed that qualifies as a criminal act. Formal aspects of a PPAT deed can be used as a basis or limitation for criminalizing PPAT if:³⁶

- a. These formal aspects were proven intentionally (with full awareness and conscientiousness and planned by the PPAT concerned) that the deed he made was used as a tool to commit a criminal act.
- b. PPAT consciously and deliberately, together with the parties concerned, carries out a legal action which it knows is an unlawful action.

The imposition of criminal sanctions against PPAT can be carried out as long as the limitations mentioned above are violated, meaning that apart from fulfilling the formulation of violations stated in the laws and regulations relating to PPAT, the IPPAT code of ethics must also fulfill the formulation stated in the Criminal Code (KUHP), The criminal cases related to the formal aspects of PPAT deeds in making authentic deeds are as follows:³⁷

1. Making fake/forged letters and using fake/forged letters (Article 263 (1) and (2) KUHP).
2. Forgery of an authentic deed (Article 264 KUHP).
3. Ordering to include false information in the authentic deed (Article 266 KUHP).
4. Ordering to do something, participating in doing it (Article 55 in conjunction with Article 263 (1) and (2) KUHP or Article 266 KUHP).
5. Helping to make fake/or forged letters and using fake/forged letters (Article 56 paragraphs (1) and (2) in conjunction with Article 263 (1) and (2) KUHP or Article 266 KUHP).

A PPAT cannot be held criminally responsible for the deeds they make if the PPAT concerned has carried out its duties in accordance with the procedures as regulated in the relevant laws and regulations. On the other hand, a Notary/PPAT can be held criminally liable for the deed he or she made based on Articles 263 and 264 KUHP if:³⁸

- a. PPAT knows that when a person approaches him to make an authentic deed, whether in the form of an agreement for sale and purchase or another agreement, that person cannot fulfill the requirements for the validity of an agreement based on the applicable laws and regulations. However, PPAT did not pay attention to the conditions for the validity of the agreement and continued to make the deed as requested by the parties.

³² Wawancara dengan Ahmad Rifqi S.H., M.Kn, PPAT, Kuta Alam, Banda Aceh, 11 Juni 2024.

³³ Salim HS dan Erlies Septiana Nurbani, *Loc Cit*, hlm. 217.

³⁴ Pasal 62 Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah.

³⁵ Laily Eka Trisdianti, Pelaksanaan Pertanggungjawaban Ppat Dalam Pembuatan Akta Jual Beli Tanah Yang Obyeknya Ada Sengketa Di Kabupaten Blitar, *Jurnal Hukum dan Kenotariatan*, Vol. 6, No. 1, Februari 2022, hlm. 630-620

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

- b. The PPAT did not pay attention and continued to make an authentic deed even though he knew that when the person who approached him to make the authentic deed had provided incorrect information to be included in the deed.

As for this research, the author wants to see the legal consequences for PPATs who issue sale and purchase deeds using sporadic rights as a basis, which after conducting research, the author found that the making of deeds using sporadic rights as a basis is legal. Because sporadic is one of the grounds of permitted rights other than the authentic deed (certificate) which is valid according to PP No. 24 of 1997. However, sporadic has weak legal force in proof. So if there is a dispute regarding the sale and purchase deed made by PPAT using sporadic use, then the legal consequences that must be borne are:

- a. If PPAT does not know the authenticity of the sporadic submitted by the parties, then he can be free from accusations. The PPAT will only be made a co-defendant, to be asked for information regarding the authenticity of the deed issued by the PPAT. Regarding the authenticity of the sporadic submissions submitted by the parties, this is outside the responsibility of PPAT. The PPAT only maintains the authenticity of the deed he made and takes responsibility for the deed, because the notary's job is to receive documents from the parties and make a sale and purchase deed, to check the authenticity of the document the PPAT has no authority.³⁹
- b. However, if PPAT finds out that the sporadic items submitted are fake and are even involved in making the fakes, then PPAT can be subject to criminal sanctions, because they intentionally committed an unlawful act.⁴⁰

The responsibility carried out by PPAT if he is not involved in sporadic forgery is only responsibility for the authenticity of the deed he made. Just like the theory of responsibility explained by Hans Kelsen which also consists of:

- a. Individual responsibility means that an individual is responsible for his or her own violations.
- b. Collective liability means that an individual is responsible for an offense committed by another person.
- c. Liability based on fault means that an individual is responsible for a violation that he committed intentionally and predictably with the aim of causing harm.
- d. Absolute liability means that an individual is responsible for violations committed because they were unintentional and unexpected.⁴¹

So here the responsibility borne by PPAT who is not involved in counterfeiting is absolute liability, which means that an individual is responsible for violations committed because they were unintentional and unforeseen. The PPAT must be able to prove that he is innocent and not involved in

any unlawful acts even though he has issued a sale and purchase deed, but he must be able to take responsibility for the fact that the deed he issued is correct and in accordance with the provisions of the applicable laws and regulations.

However, if PPAT is involved in sporadic counterfeiting, then the responsibility that must be carried out is responsibility based on error, which means that an individual is responsible for the violation committed intentionally and with the expected aim of causing loss. So, the PPAT must bear all the risks and sanctions that will be imposed on it.

Conclusion

In the event that legal problems or disputes occur in the future regarding the land created by the PPAT as AJB, the PPAT will adhere to the basic rights brought by the parties, because the basis for creating the AJB was initially sporadic as a basis of rights which proves that the land is indeed owned by the the seller. Regarding the authenticity of the sporadic cases, PPAT cannot check further, PPAT is only authorized to make sale and purchase deeds. However, it is better for PPAT to be more careful when making sale and purchase deeds using the basis of Sporadic rights whose legal force is weak and difficult to justify. So PPAT must ask questions to the parties to see the honesty of the parties. If they genuinely do not know about the fake Sporadik that was brought, then PPAT can defend itself by sticking to the Sporadik, however, if PPAT also knows about it and is involved in counterfeiting the Sporadik, then PPAT must be held accountable for its actions. Therefore, one way that the PPAT can do to free itself from actions beyond its control is by adding a clause which states that the parties who made the deed if they uttered false statements, misleading or false information, fake documents, then it will be the responsibility of the parties and free the PPAT and witnesses from all forms of legal action.

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