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Legal Safeguards for Land Deed Officials in Judicial Proceedings of the Execution of their Primary Responsibilities and Roles as Public Officials

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Abstract

Government Regulation Number 37 of 1998, as amended by Government Regulation Number 24 of 2016 concerning the Regulation of the Position of Land Deed Officials, has not explicitly regulated the legal protection for Land Deed Officials in the examination process, where the concept of legal protection is closely related to the aspect of accountability in the performance of their duties. The legal process in the examination as a witness associated with the implementation of the main duties and functions in the Aceh Besar District has not yet accommodated the provisions for legal protection for Land Deed Officials in carrying out their official duties. The research method used in the preparation of this study is the empirical normative juridical research method. The purpose of this research is to analyze and explain the form of legal protection for land deed officials who are examined in the process of being questioned as witnesses or suspects. Based on the research results, it shows that normatively or explicitly, Government Regulation No. 37 of 1998, as amended by Government Regulation No. 24 of 2016 concerning the Regulation of the Position of Land Deed Officials (PPAT), has not explicitly regulated legal protection for PPATs during the examination process.

Keywords: Legal Protection, Land Deed Official, Examination Process, Witness, Suspect

Introduction

Land issues are "problems that are complex and multidimensional and touch upon justice due to the scarce and limited nature of land, and are a basic necessity for every human being" [1]. it is not always easy to design a land policy that is perceived as fair to all parties." Ownership of land and state guarantees for it are already regulated in the Constitution of the Republic of Indonesia [2].

Law is essential to create order in order to form an organized society. In this regard, Article 19 of Law Number 5 of 1960 concerning the Basic Agrarian Law, LN. 1960/No. 104, TLN No. 2043, hereinafter referred to as UUPA, mandates the implementation of land registration to ensure legal certainty.

To achieve administrative order, every piece of land, including the transfer, encumbrance, and deletion of rights over land and ownership of apartment units, must be registered. For the transfer of land rights and ownership of apartment units through sale, exchange, donation, company data entry, and legal acts of rights transfer due to auction, registration can be done if proven by an authentic deed made by a public official, namely the Land Deed Official [3]. In carrying out land registration, the Head of the Land Office is assisted by the Land Deed Official and other officials assigned to carry out specific activities according to Government Regulation Number 24 of 1997 concerning Land Registration.

PPAT is appointed by the Minister of ATR/BPN. The PPAT's duty is only to create authentic deeds related to certain legal acts/actions whose object is registered or certified land, such as land sales, grants, wills, and so on. Notaries have legal protection in carrying out their duties and obligations, but Land Deed Officials do not yet have legal protection regulations in carrying out their duties and obligations.

In the creation of deeds, it often happens that the deeds are made not in accordance with the procedures for making PPAT deeds. The legal consequences of such deviations will place the PPAT under a legal responsibility related to the authentic deed they have made. At this level, the aspect of legal protection for PPAT has not yet been accommodated by the PPAT Position

Regulation.

Research Method

empirical by combining normative and empirical approaches that examine the applicable legal norms and how those norms are applied in legal practice as well as the effects caused by their application, thus being able to monitor the development of law in society, assess the effectiveness of legal application, assist in the formulation of legal policies, in short, normative-empirical legal research is an important approach in understanding and developing law, because it provides a more complete picture of how law functions in society.

Results and Discussions

The phenomenon of the increasing number of legal cases involving PPAT indicates a gap in the legal protection system for this profession. On one hand, PPAT performs state duties that are administrative and authoritative in nature. However, on the other hand, these responsibilities are often imposed absolutely, even in situations where mistakes are made by other parties, or when there are changes in the legal status of the relevant object without the knowledge of PPAT. This condition raises significant questions about the form and position of legal protection that should be provided to PPAT, especially when they are being legally examined regarding the execution of their main duties and functions.

The forms of legal protection for PPAT in the inspection process can be classified into three main types, namely: procedural protection, substantive protection, and institutional protection.

Another important form of protection is the provision of clear limits regarding the extent of the PPAT's legal responsibility for the validity of the substance contained in the deed. So far, there has been no clear provision distinguishing the responsibility of the PPAT regarding the formal documents submitted by the parties from the responsibility for the substantive truth of the contents of those documents. In such circumstances, the PPAT is often burdened with legal responsibility for the statements of the parties in the deed, even though they do not have the authority to conduct an in-depth verification of the substantive truth of those documents. This is very detrimental and creates legal uncertainty, both for the PPAT and the parties involved in the transaction.

In addition, legal protection can also be realized through objective and transparent monitoring and reporting mechanisms. The examination of PPAT must be conducted based on clear data and evidence, and not solely based on one-sided reports from parties who feel aggrieved. The examination process must also guarantee the principle of audi et alteram partem (the right to be heard), where the PPAT is given the opportunity to present a complete defense before any decision affecting the status and reputation of their profession is made. In the event of procedural violations during the examination, the PPAT must also be granted the right to file an objection or appeal to a higher authority or through the administrative judicial mechanism.

Legal protection for PPAT during the examination process can also be provided through the establishment of a legal aid system, whether by professional organizations, state institutions, or relevant ministries. In many public professions, such as doctors, advocates, or notaries, legal aid institutions or professional defense teams are available to provide support when their members are being examined. A similar mechanism needs to be developed in the context of PPAT, so that when a PPAT faces legal issues, they are not left to face the legal process alone without professional and institutional support.

In addition, there is a need to strengthen internal supervision through a professional code of ethics that can clearly distinguish between ethical violations and criminal acts. Thus, if there is an allegation of a violation by PPAT, the examination process can first be conducted ethically and administratively before being referred to the criminal legal process. This process will provide an important initial filter to prevent excessive criminalization of the profession. This approach aligns with the principle of professional protection within the framework of the rule of law and human rights protection.

Legal protection for PPATs being investigated in legal proceedings must also consider the psychological and social aspects of the profession. The examination process conducted openly, protractedly, and disproportionately can permanently damage the reputation and credibility of a PPAT, even before a legally binding decision is made. Therefore, the examination of PPAT must be conducted carefully, based on the principle of presumption of innocence, and ensure confidentiality during the process, unless a legal violation has been convincingly proven.

As part of the reform of the legal protection system for public officials, the government and lawmakers need to consider drafting specific regulations that explicitly govern the forms and procedures of legal protection for PPAT. These regulations should include aspects of prevention, examination procedures, limits of liability, as well as appeal mechanisms and reputation restoration if proven innocent. Such regulations will provide stronger legal guarantees for PPAT and simultaneously enhance public trust in the land administration system in Indonesia.

Thus, it can be concluded that the form of legal protection for PPATs being examined in legal processes includes procedural, substantive, and institutional protection that must operate synergistically. Without adequate protection, the PPAT profession will always be under the threat of criminalization, which will ultimately harm the quality of legal services in the land sector and the national agrarian legal stability.

The purpose of legal resolution is to achieve justice, uphold the law, and ensure resolutions that align with the applicable legal norms. The applicability of the law means that people act as they should as a form of compliance and implementation of norms, if validity is the quality. The degree of legal effectiveness, according to Soerjono Soekanto is determined by the level of public compliance with the law, including its enforcers, hence the assumption that "a high level of compliance is an indicator of a functioning legal system." The functioning of the law is an indication that the law has achieved its purpose, which is to strive to maintain and protect society in social interactions [4].

The efforts made by the IPPAT organization and the Government are currently forming a draft law (RUU) on the professional supervisory board of PPAT, to provide legal protection for PPAT in carrying out their duties and responsibilities. The aspect of legal protection for PPAT in carrying out their duties is very important, because PPAT

are vulnerable to legal entanglements in the performance of their duties, in addition to maintaining a balance against the stringent supervision of PPAT in carrying out their duties. The guidance and supervision of PPAT's duties are carried out by the Head of the National Land Agency through the Head of the Provincial National Land Agency Regional Office and the local Land Office Head.

In general, in every country that adheres to the rule of law, three basic principles always apply: the supremacy of law, equality before the law, and due process of law. These three principles form the foundation of law enforcement. Additionally, another important principle in the rule of law is equal protection as part of equality before the law [5]. The principle of equality before the law is a fundamental pillar of the legal state that prioritizes the law above all else (supremacy of law). The recognition of each individual's position before the law is placed on an equal footing regardless of social status.

The provisions regarding the legal protection of PPAT are not normatively regulated in the Regulation on the Position of Land Deed Officials. Based on Article 1 number 4 of Government Regulation Number 24 of 2016 in conjunction with Article 1 number 4 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia No. 1 of 2006, the function of the Land Deed Official's Deed is as evidence of the execution of certain legal actions regarding land rights or ownership rights over apartment units. According to Subekti [6], "what is called a deed is a written document that is solely made to prove something or an event, therefore a deed must always be signed. According to Sudikno Martokusumo, "what is called an act is a letter that is signed and contains events that form the basis of a right/obligation, made from the beginning intentionally for proof" [7], so that the creation of an act can be used as evidence in a legal dispute, serving as a tool to recall past events. Article 1866 of the Civil Code (hereinafter referred to as the Civil Code) states, "that written evidence is one of the written forms of evidence," and similarly, Article 1867 of the Civil Code stipulates: "Proof by writing is carried out with authentic writings as well as with private writings." Based on the above explanation, there is a normative gap regarding the legal protection provisions for PPAT in carrying out their official duties, where this concept of legal protection is closely related to the aspect of accountability in the performance of their official duties.

The law must be upheld in Indonesia, especially in Aceh. The essence of law enforcement lies in the activity of harmonizing the relationship of values articulated in solid principles and manifested in actions as the final stage of value elaboration, to create, maintain, and preserve the peace of social interactions. Therefore, it can be said that law enforcement does not merely mean the implementation of legislation [8].

The principle of the rule of law guarantees certainty, order, and legal protection rooted in truth and justice. Certainty, order, and legal protection demand that the flow of law in societal life requires evidence that determines the rights and obligations of an individual as a legal subject in society [9].

For investigation, which until now has not been regulated, because legal protection must be understood as protection using legal means or protection provided by law, meaning that the regulation regarding its legal basis must be clearly stated in positive law, so that the regulation regarding special mechanisms in the law enforcement process for PPAT must be normatively and stipulated to have a binding force. Legal protection is an effort to protect someone's interests by allocating a certain power to them to act under those interests.

Concerning the execution of the duties of a PPAT, the aspect of legal protection needs to be allocated its regulation within Indonesian positive law. Philipus M. Hadjon stated that legal protection is the protection of dignity and honor and the recognition of human rights possessed by legal subjects in a state of law based on the applicable legal provisions in that country to prevent arbitrary actions. Legal protection generally takes the form of written regulations, making it more binding and resulting in sanctions that must be imposed on those who violate it [10].

The concept of legal protection for PPAT cannot be separated from the general concept of legal protection. Based on this conception as a framework of thought grounded in Pancasila, the principle of legal protection in Indonesia is the recognition and protection of human dignity and worth, which is derived from the principle of a state of law based on Pancasila.

Based on the interview with Mrs. Liawati Supena, she stated that the Land Deed Official must receive special attention from the Government in carrying out their main duties and functions as a public official to ensure the smooth implementation of Land Administration [11]. Regulations for the aspect of legal protection for PPATs in the realm of legislation related to PPATs are more internal or administrative in nature. The norms violated by a PPAT are the standard measures of professionalism that should be adhered to by all PPATs as the bearers of state authority in the creation of authentic deeds in the field of land affairs.

In this realm, the protection of PPAT from administrative decisions aims to provide a guarantee for a PPAT to defend themselves and uphold their rights in their role as a PPAT. The manifestation of legal protection for PPAT itself is that with oversight, every PPAT's behavior and actions, both in performing their duties and outside of them, are always within the legal framework. In carrying out their duties, a PPAT is required to always adhere to the laws and regulations in force in Indonesia and is also obligated to perform their tasks in accordance with the ethics mutually agreed upon in the form of a Code of Ethics.

The imposition of criminal sanctions against a PPAT can be carried out as long as a PPAT has created a false letter or forged a deed with the qualification of a criminal act. The material and formal requirements of the PPAT deed-making procedure are formal aspects that must be followed in the process of creating a land sale deed related to the duties of the PPAT office. Deviations from the material and formal requirements of the PPAT deed-making procedure must be viewed based on the limitations of these formal aspects, which have been determined by the legislation related to the PPAT.

From the perspective of legal protection, there are specific procedures in the law enforcement process, particularly in the examination and taking of the act minute by investigators, which differ between the Notary position and the PPAT position. Based on the provisions of Article 66 paragraph (1) of Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, it provides a special procedure in law enforcement against the position of Notary. Meanwhile,

such mechanisms or special procedures are not regulated by the Regulation of the Position of Land Deed Official for the position of PPAT. Thus, it can be concluded that there is a normative gap regarding special procedures in law enforcement for the position of PPAT when viewed from the perspective of legislation related to Land Deed Officials. When issues arise concerning PPAT related to criminal acts, for example, the supervisory board's authority can serve as a filter in determining such allegations, similar to the position of Notary Profession.

Legal protection for PPAT is an urgent need within the national land system. PPAT not only serves as a recorder but also as a guardian of legal validity in land rights transactions. Therefore, the position of PPAT must be safeguarded from unfounded criminalization threats and given space to perform their duties professionally, objectively, and fairly.

Conclusion

To conclude, the absence of a systematic legal defense mechanism and the lack of support from relevant institutions when PPAT faces legal scrutiny indicate that legal protection for PPAT has not been effective. This situation is exacerbated by the lack of clarity regarding the limits of PPAT's responsibilities in the deeds they create, so when land disputes or indications of criminal acts occur, PPAT often becomes the target of legal proceedings, even though their actions have followed the procedures. In practice, PPATs are often investigated in legal proceedings even though they have carried out their duties by the applicable regulations. The ambiguity in interpreting whether an action constitutes a violation or is part of the legitimate exercise of authority often triggers legal conflicts between PPAT and law enforcement officers. This gap indicates that there is a need for evaluation and harmonization of regulations with practice so that PPAT has proportional protection.

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