

# The Legal Binding Force of a Sale and Purchase Deed Containing Falsified Data (Case Study of the Depok District Court Decision Number 226/Pdt.G/2018/PN.Dpk)

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## ABSTRACT

The officials appointed to handle land-related deeds (*Pejabat Pembuat Akta Tanah/PPAT*) has a very important role in land registration, namely helping the Head of Regency/Municipal Land Institution (BPN) to carry out certain activities in land registration, but in practice there are various forms of legal violations committed in those activities, among them being the falsification of data either carried out by an observer or other parties. The problem faced at hand is how to determine the legal force of the sale and purchase deed which data is falsified based on the Depok District Court Decision Number 226/Pdt.G/2018/PN.Dpk; and to what extent is the responsibility of PPAT with regards to said deed, which has been declared null and void by the court. The research method used in writing this thesis is a normative juridical research method. The results showed that based on the Decision of the Depok District Court Judge Number 226/Pdt.G/2018/PN.Dpk. there is clearly a juridical defect in AJB No. 156/8/Sawangan/1997 dated July 28<sup>th</sup>, 1997 which was made before Soekaimi, S.H., PPAT for the Bogor Regency area so that the deed did not meet the material requirements of an authentic deed and resulted in the cancellation of the deed by a court decision. PPAT needs to better understand the existing provisions to avoid committing (un)intentional violations subject to sanctions, even to the point of dismissal, honorably or otherwise, as well as demands for compensation from the aggrieved parties. PPAT in carrying out their duties must hold themselves on high morality and integrity expected from the profession and position as PPAT.

**Keywords:** *Legal Binding Force, Sale and Purchase Deed, Falsified Data*

## 1. INTRODUCTION

Land is a property that has a high selling value because of its function as a means and source of community life. The function of land has developed so that the community's need for land rights also continues to develop. The constant availability of land and the increasing need for land due to the very high population growth in Indonesia makes the land supply unbalanced with the land needs so that it can trigger various kinds of problems.[1]

One of the efforts to reduce land problems or conflicts is to urge land owners to register the land they own or control, to ensure legal certainty and legal protection of land rights. Knowing the development of state land regulation is also very necessary in terms of clarifying the meaning of state land and its control authority. Understanding the regulation of the state's right to control land before and after the enactment of Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter

abbreviated as UUPA), as well as the implementing regulations will be very useful for setting and determining future policies on state land.

Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter abbreviated as PP No. 24/1997) states that land registration aims to provide legal certainty and legal protection to holders of rights to a registered plot of land so that they can easily prove themselves as holders of land rights. the rights in question.[2] Registering soil carried out on areas of land and apartment units. Land registration activities are carried out on property rights, use rights, building rights, use rights, management rights, property rights over flat units, mortgage rights and state land.[3]

Notaries and PPAT are very different legal institutions, as well as their authority. Even so, there are indeed many notaries who also work as PPAT. Concurrent professional positions are indeed allowed by the laws and regulations in Indonesia. Broadly speaking, a notary is a public official who is authorized to make authentic deeds and other

authorities as referred to in Article 1 number 1 of Law no. 2 of 2014 (hereinafter abbreviated as UUJN).

The notary has the authority to make an authentic deed to be used as evidence, including the deed of sale and purchase of land rights as stated in Article 15 paragraph (2) letter (f) UUJN. The existence of PPAT is shown in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Maker Officials which is a regulation of the existence of PPAT in carrying out some of the functions of public law in the realm of private law in the form of making authentic deeds containing a summir clause or run away.

Authentic deeds as the strongest and most complete evidence have an important role in every legal relationship in people's lives, both in various business relationships, activities in banking, land, social activities, and others. The need for written evidence in the form of authentic deeds is increasing in line with the growing demands for legal certainty in various relations at the national, regional and global levels. Through an authentic deed, a person's rights and obligations can be clearly determined, guarantee legal certainty, and at the same time are expected to avoid disputes.

In writing this thesis, the author raises the case in the Decision of the Depok District Court Number 226/Pdt.G/2018/PN.Dpk. This case began on May 9, 2018 when the Plaintiff made a Request for Information on the Status of Ownership Certificate Number 519 for an object located in Pangkalan Jati, Sawangan District (now Cinere), Depok City, registered in the name of Sri Suharnani covering an area of 220 square meters to the Co-Defendant 2.

On May 28, 2018, Co-Defendant 2 informs that the Certificate of Property Rights No. 519/PangkalanJati, originally written on Ny. Sri Suharnani obtained based on the Sale and Purchase Deed Number 06/SW/1983 drawn up by Dwi Swandiani, S.H. as PPAT. Based on the Sale and Purchase Deed Number 156/8/Sawangan/1997, the rights have been transferred to TirtaTjakradi Surya. With the entry of the blocking note from Sri Suharnani based on a letter dated April 17, 1998, the Sale and Purchase Deed Number 156/8/Sawangan/1997 drawn up by Soekaimi, S.H. was confiscated by the Depok Police, and while the signatures of Sri Suharnani and Imam Soeryanto on the Sale Deed The purchase was declared counterfeit so that until now the Certificate of Ownership Number 519/Pangkalan Jati is still registered in the name of Tirta Tjakradisurya.

Furthermore, on June 4, 2018, the Plaintiff filed an Application for Clarification of the Sale and Purchase Deed Number 156/8/Sawangan/1997 which was addressed to Co-Defendant 1 and received an answer that the first sheet of the Sale and Purchase Deed was in Co-Defendant 1. Archives in the Office Land of Depok as Co-Defendant 2 shows that the Deed of Sale and Purchase Number 156 of 1997 drawn up by PPAT Soekaimi, S.H. is the Deed of Sale and Purchase Number 156/05/Gn.Putri/1997, dated September 11, 1997. Based on this answer, it can be

concluded that the Deed of Sale Purchase Number 156/8/Sawangan/1997 dated July 28, 1997 was not made by PPAT Soekaimi, S.H., so Co-Defendant 1 could not show the requested Sale and Purchase Deed and the Certificate of Ownership Number 519/Pangkalan Jati is currently controlled by the Plaintiff.

Certificate of Ownership No. 519 Pangkalan Jati on the land was lost and the Plaintiff has reported it to the Police, but the Decree of the Land Office of Depok City records the transfer of rights from the Plaintiff to the Defendant based on the Deed of Sale and Purchase No. 156/8/Sawangan/1997 made by Soekaimi, S.H., as PPAT. This indicates an error and/or negligence by PPAT, both in ensuring the selection of rights and the identity of the appearer before signing. It appears that the actions taken by PPAT are actions that are contrary to the applicable laws and regulations and violate the general principles of good governance as referred to in Article 53 paragraph (2) letters a and b of Law no. 5 of 1986 in conjunction with Law No. 9 of 2004 resulting in losses for the Plaintiff.

The legal facts in this case show that based on the results of the Criminal Laboratory, the signature of the plaintiff (land owner) at AJB was allegedly fake and that this forgery was carried out by Co-Defendant I. Furthermore, the decision of the Depok District Court Number 226/Pdt.G/2018/PN.Dpk stated that the Deed of Sale and Purchase Number 156/8/Sawangan/1997 dated July 28, 1997 drawn up by Co-Defendant I regarding the grading legal event regarding the transfer of rights/sales and purchases of land and buildings based on the Certificate of Ownership No. 519, Pangkalan Jati, Sawangan District (now Cinere), Depok City is null and void and has no binding legal force.

The legal issue in this case is that there has been a rebuttal from the holder of the PPAT protocol, the late Soekaimi, S.H. Therefore, the author is of the opinion that it is necessary to carry out further investigations regarding PPAT's involvement in the implementation of AJB which was ultimately canceled by the Judge's Decision in case Number 226/Pdt.G/2018/PN.Dpk. considering that there are parties who are greatly harmed by the emergence of the AJB, so that the extend of responsibility of the PPAT can be determined in its administrative, civil, and criminal aspects. Based on the description of the above background, the problems faced in this research is: How enforceable is the deed of sale which data are falsified according to the Depok District Court's Decision No. 226/Pdt.G/2018/PN.Dpk?; and what is the PPAT's responsibility for the sale and purchase deed which is declared null and void by the court?

## 2. METHOD

The type of research used is normative legal research, namely research that provides a systematic explanation of the rules governing a certain legal category, analyzes the relationship between regulations that explain areas of

difficulty and possibly predicts future development.[4] The reason the author chooses this method in order to find a coherent truth is to get something that is axiologically a value or determination/rule as a reference to be studied.

This research is carried out with a *case approach*, namely by examining the case in the Depok District Court Decision Number 226/Pdt.G/2018/PN.Dpk, which is analyzed using several theories as analytical tools in dissecting and explaining the legal issues involved. raised in this study. The author describes the basic theories chosen to explain the object under study, including the theory of the Sale and Purchase Deed, the theory of legal protection, the theory of responsibility, the theory of identity forgery, and the theory of land registration. Legal analysis is carried out on matters that include legal risks arising from several problems related to the applicable legal rules so that appropriate conclusions and suggestions are obtained.

The data collection techniques used in this study was to review the body of literature (*library research*), namely by collecting legal materials from secondary legal sources derived from articles, journals, and interviews with some relevant practitioners. This study uses data analysis techniques with deductive logic or processing legal materials in a deductive way, namely by explaining something general and then drawing more specific conclusions.

### 3. DISCUSSION

#### ***3.1. The Legal Binding Force of the Sale and Purchase Deed which Data is Falsified Based on the Decision of the Depok District Court Number 226/Pdt.G/2018/PN.Dpk.***

Of course, a PPAT in carrying out the duties and authorities of his position sometimes makes mistakes, especially with regard to the procedure for making a deed, both regarding formal and material requirements. One of the mistakes made by PPAT is, for example, an error regarding the PPAT's inability to make an authentic deed, which results in the loss of the authenticity of the deed he made, or the strength of the proof of the deed is no longer complete/perfect evidence between and for the parties concerned, but relegated to a deed/letter under the hand. PPAT mistakes can be made intentionally or unintentionally by the PPAT concerned, or even due to an error on the part of the appearing party, for example in the case that the appearer provides false data to the PPAT.[5] Falsified data submitted by the appearer in making the PPAT deed resulted in an agreement not meeting the subjective requirements of the agreement because of a defect of will. What is meant by agreements containing defects in the element of will are agreements which "at the time of birth" contain defects in the will. Articles 1322 to 1328 of the Indonesian Civil Code regulate agreements that have been closed on the basis of a defect in the will. In

such a group of agreements, by doctrine, agreements containing elements of heresy, coercion, or deception are included at the time of the birth of the agreement.

In the making of the deed, of course, there was an agreement between the PPAT and the appearers, and in the cases raised in this discussion, one or the appearers in fact provided false data. As a result, the agreement which is then made contains a defect of will because of the falsified data submitted by one of the presenters and which is stated in the PPAT agreement/deed. Indeed, in this case it is necessary to implement the precautionary principle by PPAT in order to avoid problems.

The precautionary principle in the practice of PPAT is reflected and explained more clearly in Perkaban No. 1 of 2006. The provisions of Article 22 of the PPAT Position Regulations are re-described in Perkaban No. 1 of 2006 which is the implementing regulation, one of which is in Article 53 and Article 54.[6] In Article 53 Perkaban No. 1 of 2006 it is determined that the PPAT deed is made by filling in the form of the deed whose form has been determined. Filling in the form of the deed in the context of making the PPAT deed must be carried out in accordance with the correct incident, status and data and supported by documents in accordance with the legislation. Furthermore, in Article 53 paragraph (3) and paragraph (4) Perkaban No. 1 of 2006 it is reiterated that the making of the PPAT deed is witnessed by 2 (two) witnesses who have fulfilled the requirements in accordance with the legislation.[7]

The application of the PPAT prudence principle in carrying out the duties of the position is also reflected in Article 54 paragraph (1) Perkaban No. 1 of 2006, which states that prior to the making of the deed, the PPAT is obliged to check the suitability/validity of the certificate and other records at the local Land Office by explaining the intent and purpose. This provision was born in order to provide legal certainty and protection for the parties regarding the object to be transacted, especially regarding the authenticity of the evidence of ownership of land rights.

For each PPAT, the PPAT Code of Ethics also applies which regulates the prohibitions and obligations within the PPAT's scope of office. One of the obligations of PPAT is to work responsibly, independently, honestly, and impartially, as regulated in Article 3 letter f Attachment to the Decree of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 112/KEP-4.1/IV/2017 concerning Ratification of the Code of Ethics for the Association of Land Deed Authors ("PPAT Code of Ethics").

Sometimes even though they have been meticulous and careful in making an authentic deed, PPAT may still be sued by the appearer or a third party for the authentic deed he made. So, some PPATs are looking for ways to protect themselves from the demands of the parties or third parties. One way that PPAT can do is to include a clause at the end of the body of the deed which reads:

"The appearers in this deed state that they have understood the contents of this deed, so that the appearers hereby declare full responsibility for this

matter and release PPAT and the witnesses for any lawsuits from the appearers and third parties from any and all consequences arising from this deed of the making and implementation of this deed.”

Another clause which specifically address the possibility of risk on PPAT with regards to falsified data submission by the parties could read as follows:

“The appearers in this deed hereby guarantee and attest to the truth of their identity as provided by the identification document(s) presented to me and have acknowledged to bear full responsibility with regards to it.”

These clauses can be said to contain the principle of exoneration, a term that is also often used in consumer protection law. It can be said that the exoneration clause is used as a shield that allows the exclusion of obligations or responsibilities of a party in an agreement. The inclusion of a liability exemption clause in most Notary or PPAT Deeds is carried out by Notaries/PPATs as a form of guarantee of protection for themselves in carrying out their positions in making authentic deeds.

In accordance with the **theory of legal protection**, of course, the inclusion of a clause on the release of the responsibilities of a Notary/PPAT makes a Notary/PPAT feel more confident in carrying out their duties, because the more protection they have in addition to the legal protection provided by UUJN. With the inclusion of a clause in the release of the Notary/PPAT responsibility in the deed, the Notary or PPAT reaffirms to the parties against the unlawful acts in bad faith such as falsification of document data, providing falsified data, and others that are carried out under the responsibility of the parties themselves and not the responsibility of the parties themselves. the responsibility of the Notary/PPAT.

The inclusion of a clause on the release of the Notary/PPAT responsibility will protect the Notary/PPAT if it is true that it can be proven that those appearing in bad faith came to the Notary/PPA to make an agreement that is contrary to the law, decency, and public order by providing falsified data to the Notary/PPAT. Notary/PPAT guarantees that at a certain place and time, the appearers are right to carry out legal actions and declare as written in the deed, but Notary/PPAT does not guarantee the truth of what is stated by the appearers.

Based on this, from the point of view of **legal certainty theory**, the act of falsifying identity is an act that is not commendable, and this will be revealed when the proof is carried out. The act of forgery of identity has criminal sanctions, both for the appearer and for PPAT if involved. The crime in the form of forgery of letters is in the form of forgery of letters in the main form as stated in Article 263 of the Indonesian Criminal Code.

If a Notary/PPAT makes a deed with a false identity, a fake signature, or a forged document provided by his/her appearer, the Notary/PPAT deed will harm the other party or one of the third parties, so that the Notary/PPAT can be considered guilty or negligent in carrying out his/her duties. As a form of protection for a Notary/PPAT against

the bad faith of the appearer, the Notary/PPAT can include an exemption clause in the deed regarding the responsibility of the appearer for the identity, signature and documents.

Referring to the Depok District Court Decision Number 226/Pdt.G/2018/PN.Dpk. that according to Article 1869 of the Civil Code, an authentic deed may decrease or be degraded in its evidentiary power from having perfect evidentiary power to only having proof of power as written underhand, if the public official who made the deed is not authorized to make the deed or if the deed is defective in its form. . If the objective conditions are not met, then the agreement is null and void without the need for a request from the parties, thus the agreement is considered to never exist and does not bind anyone. An agreement that is absolutely void can also occur, if an agreement made is not fulfilled, even though the law has determined that the legal act must be made in a predetermined way or is contrary to decency or public order, because the agreement is considered non-existent, then it is no longer valid. there is another basis for the parties to sue each other or sue in any way and form.[8]

A notarial deed / PPAT can be canceled is a party deed that does not meet the two elements above. The cancellation of a notarial deed is a statement of the cancellation of a legal action against a claim from a party who is justified by law to demand the cancellation. Here, in fact, there is a legal action that contains defects, but according to the law, the action still has legal consequences as expected/intended by the perpetrator, it's just that the agreement that arises based on the agreement, on the demands of the other party, can be canceled. Cancellation is carried out by the judge at the request of the party who is given the right by law to sue as such. [9]

On the other hand, the legal act of buying and selling must also be clear (*terang*) and cash (*tunai*). Clear means that the act of transferring rights to land and/or buildings must be carried out before the customary head, who acts as an official who bears the order and validity of the act of transferring rights, so that the act is known to the public. Cash means that the act of transferring rights and paying the price are carried out simultaneously through a payment in cash. The buyer does not pay the rest, then the seller cannot claim the basis for the sale and purchase, but the legal basis for the debt.[10]

The author concurs with the Depok District Court Decision Number 226/Pdt.G/2018/PN.Dpk, where in this case the PPAT has carried out the profession in accordance with its authority as the Land Deed Maker Official. PPAT is only responsible to the extent of the formal truth of a document, and therefore to check the material information of the data is not the responsibility of PPAT. However, in this case there has been a clear loss suffered by the original owner of the land due to the authentic deed made by PPAT without checking the material truth first.

Referring to this, the agreement is basically divided into 2 types, namely that it does not meet the subjective requirements, namely it can be canceled (*voidable*) by the

court and does not meet the objective requirement, namely void by law, where this does not need a court decision. Therefore, the author is of the opinion that the sale and purchase deed whose data is false data is null and void, in which case there is no need for a court decision, but there must be further examination related to PPAT's involvement in the implementation of the sale and purchase which was ultimately canceled by the Judge's Decision. in case Number 226/Pdt.G/2018/PN.Dpk, because in this case there are parties who are very disadvantaged related to the emergence of AJB itself, so that later there will be responsibility from the notary in the form of administrative, civil and criminal liability. Based on this, the author is of the opinion that the cause of the annulment of the deed in the Depok District Court Decision Number 226/Pdt.G/2018/PN.Dpk was because it did not meet the subjective requirements, as explained above, so it was canceled by the court.

Regarding the decision of the Depok District Court Number 226/Pdt.G/2018/PN.Dpk, the author agrees with the opinion of Mr. Ramon Wahyudi as a Depok District Court Judge who stated that the decision was the authority of the judge, where in the AJB made by PPAT Soekaimi, S.H. there has been clearly a juridical defect, so that the deed does not meet the material aspects of an authentic deed, which results in the deed being annulled by a court decision.

Referring to the theory of identity falsification, forgery is a type of violation of truth and belief, with the aim of obtaining benefits for oneself or others. Regarding indications of identity falsification, either by the appearers or by PPAT, it is necessary to further carry out a separate examination of the parties involved in the deed to determine which party will be held accountable for the crime of forgery. Based on the foregoing, of course PPAT must check the correctness of the material to ensure the formal correctness of the transaction object data submitted by the appearers. The aim is to provide legal certainty for the parties who make the deed before the PPAT. It is a material obligation for PPAT to ensure the truth of the data presented by the appearers. This procedure must be carried out in accordance with the implementing regulations and procedure for land registration which, in the author's opinion is necessary to be amended, so that it shall apply to all PPATs in the future land buying and selling process.

### ***3.2. PPAT's Liability for the Sale and Purchase Deed That Is Declared Null and Void by the Court***

Referring to the **theory of responsibility**, where a person is said to be legally responsible for certain actions when that person can be subject to a sanction in the case of an act that is against the law.[11]

One of the PPAT responsibilities related to the PPAT authority based on the PPAT Position Regulations is to make evidence in the form of an authentic deed regarding legal actions related to land rights that can provide legal

certainty for the parties. This authority then becomes an offense or act that must be accounted for by PPAT.

PPAT must first be able to prove several things, including: a) the existence of a loss; b) the causal relationship between the losses suffered and the violation or negligence of the PPAT; and c) the violation (action) or omission is caused by an error for which the responsibility can be borne by the PPAT concerned.

Analyzing the Decision of the Depok District Court Number 226/Pdt.G/2018/PN.Dpk, it can be found that there are several PPAT responsibilities with respect to the deed he made which was declared null and void or contained legal defects that harmed other parties or other people, including the following:

#### **1. Administrative Responsibilities**

In land administration in Indonesia, PPAT officers have a very important role. For example, PPAT is the spearhead in the context of land administration. For this reason, the element of prudence is very necessary for PPAT in carrying out their duties. This also means that PPAT itself must be able to work professionally with high dedication to obey and obey the rule of law a PPAT person is temporarily dismissed if he commits a minor violation of the prohibitions and obligations of a PPAT, while a serious violation is dismissed as a PPAT member. Dismissal of PPAT can occur because in carrying out his duties he commits minor or serious violations.

#### **2. Civil Liability**

Civil liability, which in this case is the responsibility of the PPAT related to negligence, negligence, and/or intentional in making the deed of sale and purchase that is not in accordance with the formal requirements and material requirements of the procedure for making the PPAT deed, can be sued from the PPAT concerned. As a result, not only can the PPAT be subject to administrative sanctions but also does not rule out the possibility of being sued for compensation by the parties who feel aggrieved.

In relation to the making of PPAT deeds that have legal defects, what is often found is that the PPAT concerned does not pay much attention to and consistently applies the existing rules, while the element of intent to harm the parties or third parties is very rarely found. However, even for negligence.

PPAT must remain responsible for compensating for losses suffered by the parties in the form of reimbursement of costs and compensation for errors due to intentional or negligence in the form of carelessness, inaccuracy, and inaccuracy in the implementation of PPAT's legal obligations in making the deed of sale and purchase of land causing The exercise of a person's subjective rights will be disturbed if it causes a real loss to the parties or one of the parties.

#### **3. Criminal Liability**

The imposition of criminal sanctions against PPAT can be carried out as long as a PPAT has committed an act that is included in the category of criminal offense according to the Criminal Code of the Republic of

Indonesia as well as other laws and regulations that specifically regulate criminal acts, one of which is by making a fake letter, ordering other people to falsify data, or falsify deeds, which actions can qualify as a crime.

It is clear that the deed made by PPAT is one of the crucial data sources for the maintenance of land registration data. Therefore, PPAT is obliged to carefully examine all the requirements for buying and selling land for the validity of the legal action concerned, namely the material requirements and formal requirements. Material requirements will determine the validity of the sale and purchase of the land. Meanwhile, the formal requirements as evidence requirements are related to the PPAT notarial deed made before the PPAT.

#### 4. CONCLUSION

In light of the above elaborations, it can be concluded that:

1. Based on the Decision of the Depok District Court Judge Number 226/Pdt.G/2018/PN.Dpk. there is clearly a juridical defect in AJB No. 156/8/Sawangan/1997 dated July 28<sup>th</sup>, 1997 which was made before Soekaimi, S.H., PPAT for Bogor Regency area so that the deed did not meet the material requirements of an authentic deed and resulted in the cancellation of the deed by a court decision. Falsified data can be given or used by several parties in the transfer of land rights, either from the party or the PPAT. Falsified data submitted by the appearer in making the deed results in an resulting deed not meeting the subjective requirements of an agreement, because of a defect of will. Meanwhile, if the involvement of PPAT is related to the use of false data, it is necessary to carry out further examination of the parties in the deed to be held accountable for the crime of forgery, considering that PPAT only formulates the wishes of the parties so that their actions are stated in the form of an authentic PPAT deed.
2. PPAT is fully responsible for the deed he makes. However, regarding the alleged use of false data, of course, proof of this claim must be presented and verified, in which the parties who feel aggrieved and who intent to sue PPAT must first be able to prove several things, including: a) the existence of a loss; b) the causal relationship between the losses suffered and the violation or negligence of the PPAT; and c) the violation (action) or omission is caused by an error for which the responsibility can be borne by the PPAT concerned. Falsified data submitted by the appearers is entirely the responsibility of the appearers, while PPAT in this case is neither responsible nor liable for any losses arising from the presence of false statements of the appearers. The exoneration clause can be incorporated in the deed as an exception to obligations

or responsibilities in an agreement that limits, or even completely eliminates, the responsibility that would otherwise be imposed on the PPAT with regards to the use of falsified data.

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