

PPAT Responsibilities in the Procedure for Making a Sale and Purchase Deed Without the Seller's Attendance

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ABSTRACT

One of the duties and authorities of the PPAT is to make a deed of sale and purchase on land, and the deed must be made before the parties and the PPAT, but there are several cases when the sale and purchase process was carried out in the past, the deed of sale and purchase had not been made, and when a deed of sale and purchase is made, one of the parties, namely the seller, is not known, and so that the buyer submits an application to the court so that the buyer can continue to make the deed of sale and purchase before the PPAT and the request is granted by the court by stating that the buyer can act as both a buyer and a seller. , and with the granting of the application, it will potentially cause problems for the PPAT who made the deed, if the seller or his heirs sued and filed for cancellation of the deed. Based on this description, of course, it is known that the problem to be discussed is regarding PPAT's responsibility in making a sale and purchase deed that is not attended by the seller, and regarding the validity of making a sale and purchase deed made by PPAT without the presence of the seller.

Keywords: Deed of Sale and Purchase, PPAT, Buyer and Seller

1. INTRODUCTION

The official making the land deed, or commonly known by the term or abbreviation PPAT, is an official appointed and given the authority to make a deed related to legal actions related to land. PPAT itself has duties, obligations and responsibilities which are regulated in Government Regulation Number 37 of 1998 which has been updated by Government Regulation Number 24 of 2016 concerning Land Deed Maker Officials, as well as Government Regulation Number 24 of 1997 concerning Land Registration.

One of the duties and authorities of PPAT is to make a deed of sale and purchase of land, based on the explanation of Irma Devita Sari it is known that "in the provisions of Article 38 of Government Regulation Number 24 of 1997 concerning Land Registration, it is known that the absolute requirement for the presence of the parties in the process of making and signing the deed is a obligations and notaries/PPATs who violate these provisions may be subject to sanctions in the form of a code of ethics, as well as other sanctions" [1].

In addition, in the provisions there is a prohibition on making a PPAT deed without the presence of the parties which is regulated and explained in Article 10 paragraph 3 and an explanation of Article 10 paragraph 3 letter A number 9 Government Regulation Number 37 of 1998 which has been updated by Government Regulation Number 24 of 2016 , which stated, "what is meant by a serious violation is...making a deed without the presence of

the parties." The sanctions for such violations can be in the form of dishonorable dismissal [2].

In reality itself in the community, it is known that it is not uncommon to have conditions that indicate a buying and selling process, which was carried out in the past, but a sale and purchase deed has not been made, and nowadays when a sale and purchase deed is about to be made, one of the parties, namely the seller, is its whereabouts are known, and so that the buyer submits an application to the court so that the buyer can continue to make a deed of sale and purchase before the PPAT and the request is granted by the court by stating that the buyer can act as both a buyer and a seller, as happened in Decision Number 54/Pdt.G/ 2019/PN.Bks, and with the granting of the application, it will potentially cause problems for the PPAT who made the deed, if the seller or his heirs sued and filed for cancellation of the deed.

In case Number 54/Pdt.G/2019/PN.Bks, it is known that the purchase of houses and land has been made by the seller named Heri Susanto and the buyer, namely Suriasih, but the deed of sale and purchase has not been made, and when the buyer has paid the payment for land and houses that have been purchased from the seller, and the buyer wants to make a deed of sale so that he can register the ownership of the house and land he owns, it turns out that previously Heri Susanto had bought the land and house from Nellyarti where Heri Susanto had not made a Deed of Sale and Purchase , and has not registered the land and house in his name, so the land and house are still written in the name of Nellyarti, while Nellyarti's whereabouts are unknown, making it difficult for Heri Susanto and Suriasih to make a deed of sale and purchase and register the land, and in the

end Suriasih filed a lawsuit in court against the seller Heri Susri anto and Nellyarti in order to make a deed of sale and purchase without Nellyarti being attended. And in this case Suriasih's lawsuit is declared granted and Suriasih may make a deed of sale without Nellyarti's presence.

From this description it is known that the problem to be discussed in this research is related to how the PPAT's responsibility in making the deed of sale and purchase is not attended by the seller, and how the validity of the making of the deed of sale made by the PPAT is without the presence of the seller.

Sri Purwanti's research is known to examine "the legal consequences of making a deed of sale and purchase of land that is not in accordance with the procedures for making a PPAT deed" [3], and is known to have a difference with this study, the difference is that the researcher wants to examine the problem of the validity of the deed made by PPAT which was not attended by the seller or legal owner of a plot of land, while Sri Purwanti's research focused more on discussing the sanctions and behavior of PPAT who made the deed of sale and purchase of land that was not in accordance with the procedures for making the PPAT deed. Sumaryono's research is known to have examined "the transfer of land rights carried out under the hands in the sense that it was not carried out in accordance with applicable regulations and the status of buying and selling land carried out without a deed of Land Deed Officials (PPAT) in particular" [4],

Achmad Kurniadi's research is known to examine "the validity of the receipt in the land sale and purchase agreement and the legal settlement of the sale and purchase transaction of land not before PPAT" [6], and is known to have differences with this study, namely the difference is that researchers want to examine the problems contained in the case of Decision No. 54/PDT.G/2019/PN Bks, while Achmad Kurniadi's research discusses the problem in the Cassation Decision Number 2949 K/Pdt/2016.

Fajar Adhitya Nugroho's research is known to examine "legal protection for buyers against buying and selling land rights carried out under the hands" [7], and is known to have differences with this study, namely the difference is that researchers want to examine the problem of making a sale and purchase deed made without the seller whose name is in the certificate, after the sale and purchase is under the hands, while Fajar Adhitya Nugroho's Thesis only discusses the sale and purchase of land rights which is only limited to being carried out under the hands. the presence of the seller.

From this description it is known that the problem to be discussed in this research is related to how the PPAT's responsibility in making the deed of sale and purchase is not attended by the seller, and how the validity of the making of the deed of sale made by the PPAT is without the presence of the seller.

2. METHOD

This paper uses a normative juridical research method, which according to Mukti Fajar ND is "a research method that uses a statutory approach, as well as legal dogmatics as a tool to analyze the problems to be discussed" [8]. The data used in this study is secondary data, namely in the form of library data in the form of primary legal materials, secondary legal materials, and tertiary materials [9]. Regarding the analysis technique used is descriptive analysis, namely an analysis that contains details of the results of thoughts and discussions that are explained in detail and detail [10].

The data in this research is qualitative data. In this case in this case take reference from the legal books, existing laws and regulations, interviews related to this writing and, with the intention to acquire basic knowledge of basic theory with respect to the subject matter of research to be discussed in this paper. By type and in its form, the data is divided into secondary data that is data obtained in a source that has been collected by other parties that have been finished and divided. The secondary data in question is divided into primary, secondary and tertiary legal materials, namely: Primary Secondary, and Tertiary legal materials.

The technique of collecting legal materials in this study uses literature research "(library research)". Literature study is "a method (procedure) of collecting or extracting library data". Data that has been documented so that the excavation of library data does not require directly to the community (field) understanding of the library data.

The nature of the research used in this study is that the author is descriptively analytical. The definition of descriptive research itself is that research is intended to provide data as accurate as possible about humans, circumstances or hypotheses in order to help in strengthening old theories or in the preparation of new theories.

3. DISCUSSION

3.1. PPAT's Responsibilities in Making a Sale and Purchase Deed Not Attended by the Seller

Regarding the issue of responsibility owned by PPAT, it is necessary to understand in advance, that related to responsibility, it is always related to authority, so to find out how the form of PPAT's responsibility is, it is necessary to know in advance about the authority possessed by PPAT.

Boedi Harsono, stated "There are two types of Land Deed Making Officials, namely Land Deed Maker Officials who come from the Government, namely the Village Head or Camat, as regulated in Article 5 paragraph 3 letter a Government Regulation Number 37 of 1998 which has been updated by Government Regulation Number 24 of 2016 concerning Land Deed Maker Officials, which states, "To serve the community in making PPAT deeds in areas where there is not enough PPAT or to serve certain community

groups in making certain PPAT deeds, the Minister may appoint officials under this as Temporary PPAT or Special PPAT:... a. Camat or Village Head to serve the making of deeds in areas where there is not enough PPAT, as Temporary PPAT. [11]"

Then there is also PPAT who doubles as a notary where this can be seen from the explanation "Article 1 number 1 jo. Article 6 letter F of Government Regulation Number 37 of 1998 which has been updated by Government Regulation Number 24 of 2016 concerning Land Deed Maker Officials and Article 1 Number 1 of Law Number 30 of 2004 which has been updated by Law Number 2 of 2014, where Article 1 Number 1 Government Regulation Number 37 of 1998 which has been updated by Government Regulation Number 24 of 2016 concerning Land Deed Making Officials states, "The Official Making Land Deeds, hereinafter referred to as PPAT, are public officials who are authorized to make authentic deeds concerning certain legal actions regarding land rights or Ownership Rights to Flat Units. [12]"

As for the duties and authorities of the PPAT, Darwin Ginting explained that "the duties and authorities of the PPAT are to carry out activities such as land registration by making a deed which proves that certain legal actions have been carried out regarding land rights or ownership rights to flat units which will be used as the basis for the registration carried out is a change in land registration data caused by existing legal actions, and carrying out legal actions here will be explained as intended, first there is buying and selling, then exchanging, grants, entry into the company, sharing of joint rights, granting building use rights or usufructuary rights over proprietary land. Then there is the granting of mortgages and finally the granting of power to impose mortgages[13]"

In addition, the authority of PPAT according to Oloan Sitorus and Widhiana Putri "among others, are:

- a. Copy of legality according to the original. Confirm that the Document is compatible with the Original Document.
- b. Waarmerking/Register. Recording Documents in the Register of Land Deed Officials.
- c. Legalization. Confirm that the Document is properly made and signed by the Authorized Person.
- d. Credit agreement. Individual Debt Agreements, Conventional Bank Loans, Syndicated Bank Loans, Sharia Bank Loans, Financing Company Loans/Multi Finance.
- e. Making SKMHT: Making Power of Attorney to impose Mortgage for the entire territory of Indonesia except for the South Jakarta area.
- f. Making a Power of Attorney Deed of Power of Attorney is made by the person who has the right to authorize another person who is trusted and can be made with the right of substitution, including the Deed of Power of Attorney for a Company, Deed of Power of Attorney for a Public Company, Deed of Power of Attorney for Foreign Investments/PMDN, Deed of Power of Attorney for Cooperatives/Business Entities/Institutions Certain, Individual Power of Attorney.
- g. Deed of Engagement Agreement, Making of Deeds of Engagement Agreement.
- h. Making SKMHT: Making Power of Attorney for Imposing Mortgage for the South Jakarta area.
- i. APHT Making Management. Making the Deed of Assignment of Mortgage Rights for the South Jakarta area.
- j. Making of Sale and Purchase Deed. Making the Deed of Sale and Purchase of Land and Buildings.
- k. Making Deed of Grant. Making the Deed of Granting Land and Buildings while the giver is still alive.
- l. Making Deed of Inheritance. Making the Deed of Granting Land and Buildings where the giver has died.
- m. Making a Deed of Sharing Joint Rights. Making Deeds in order to split the Land and Building Certificates according to the number of Owners in accordance with the existing Juridical Data.
- n. Deed of Exchange. Making Deeds of Exchange of Land and Buildings from One Owner to another.
- o. Certificate Check. Checking the authenticity of the data listed in the Certificate.
- p. Roya Note. Deletion of credit information in the Certificate.
- q. Buying and Selling Certificates. Based on the existing Sale and Purchase Deed, the Certificate is sold and purchased to the Buyer.
- r. Certificate Solving Management. Assist in the management of the Master Certificate which is divided into several Fractional Certificates as needed.
- s. Certificate Renewal Management. Extension of the validity period of HP Certificates, HGU, HGB, Management Rights, etc.
- t. Management of Lost Certificate Replacement. Assisting in the management of police reports, placing advertisements in newspapers, making reports, measuring, up to the issuance of new certificates.
- u. Management of Customary Land Certification. Assist in the management of juridical and physical data from the local environment, taxation, measurements, committee examinations, Head of BPN Decision, until the issuance of a new certificate.
- v. Management of State Land Certificate. Assist in the management of juridical and physical data from the local environment, taxation, measurements, committee examinations, Sk. Head of BPN, until the issuance of a new certificate.
- w. Tax Management. Assist in the calculation and management or payment of PBB Tax, PBB Tax arrears, Seller Tax, Buyer Tax, Inheritance Tax, BPHTB (Duty on Acquisition of Land and Building Rights), Validation of These Taxes.
- x. District Court Licensing Management: Assisting in the administration of CV., PD, UD, PB, Foundation Permits.
- y. Management of Company Licensing: Making Principle Permits for company establishment from BKPM, Certificate of Domicile, NPWP, SIUP, TDP, Special Business Permits from Related Agencies" [14].

From this description, it can be seen that one of the PPAT's authorities is regarding the making of the deed of sale and purchase of land and buildings, which is in accordance with the provisions of Article 1 number 1 of Government Regulation Number 24 of 2016 concerning Land Deed Maker Officials.

Then regarding the form of PPAT responsibility in making the deed of sale and purchase made, it can be in the form of civil, criminal and administrative responsibilities and or professional codes of ethics.

Regarding PPAT's responsibilities with regard to the sale and purchase deed made, related to responsibilities in the form of civil can be seen in the provisions of Article 62 of Government Regulation Number 24 of 1997 which states, "PPATs who in carrying out their duties ignore the provisions as referred to in Article 38, Article 39 and Article 40 as well as the provisions and instructions given by the Minister or the appointed official are subject to administrative action in the form of a written warning to dismissal from their position as PPAT, without reducing the possibility of being sued for compensation by parties who suffer losses caused by the neglect of the provisions. it."

As for PPAT's responsibility in the form of criminal liability regarding the deed made, it can be seen in the provisions of Article 264 paragraph 1 of the Criminal Code, which states "Forgery of letters is punishable by a maximum imprisonment of eight years, if committed against:

- a. Authentic deeds;
- b. Debt certificates or debt certificates from a country or part thereof or from a public institution;
- c. Sero letters or debts or certificates of holdings or debts from an association, foundation, company or airline;
- d. Talon, proof of dividends or interest from one of the letters described in 2 and 3, or proof issued in lieu of such documents;
- e. Letter of credit or trade letter intended for circulation. [15]"

Then with regard to PPAT's responsibilities regarding the sale and purchase deed made, it can be seen in the provisions of Article 10 paragraph 3, and the Elucidation of Article 10 paragraph 3 of Government Regulation Number 24 of 2016,. As for the provisions of Article 10 paragraph 3 of Government Regulation Number 24 of 2016, states, "PPAT is dishonorably dismissed as referred to in paragraph (1) letter b, because: committing a serious violation of the prohibition or obligation as PPAT; and/or sentenced to imprisonment based on a court decision that has obtained permanent legal force for committing a crime punishable by imprisonment of 5 (five) years or more. [16]" Regarding the sanctions for serious violations as referred to in the provisions of Article 10 paragraph 3, it can be seen that the categories of serious violations are stated in the explanation of Article 10 paragraph 3 which states, "What is meant by serious violations include:

- a. Helping to carry out evil agreements that result in land disputes or conflicts;
- b. making a deed as an evil conspiracy which results in a dispute or land conflict;

- c. Making a deed outside its working area, except for the expansion of regency/city, provincial expansion, or making a deed of exchange, deed of entry into the company, or deed of joint distribution regarding several land rights/Ownership Rights to Flat Units, which are not all located within its working area;
- d. Provide incorrect information in the deed that results in land disputes or conflicts;
- e. Opening a branch or representative office or other forms within and/or outside its working area;
- f. Violating the oath of office as PPAT;
- g. Make a PPAT deed without being attended by the parties;
- h. Make a deed regarding land rights/Ownership Rights on Flat Units whose objects are still in dispute;
- i. PPAT does not read the deed he made in front of the parties,
- j. PPAT makes a deed before the parties authorized to take legal actions according to the deed he made; and/or
- k. PPAT makes the deed during the period of being subject to a sanction of honorable dismissal, temporary dismissal, or in a state of leave. [17]"

From this description, it can be seen that regarding the PPAT's responsibility to make a deed of sale and purchase without being in front of the seller, it can be seen that the form of responsibility that must be accepted by PPAT if in the future there is a dispute between the buyer and the seller and/or his heirs, then the PPAT can be responsible civilly and administratively and/or professional code of ethics, and it is known that the responsibilities of a notary in a civil manner based on Article 62 of Government Regulation Number 24 of 1997, the form of PPAT responsibility is in the form of providing compensation to parties who feel aggrieved, as for PPAT's administrative and professional code of ethics, then based on Article 10 paragraph 3 and the explanation of Article 10 paragraph 3 of Government Regulation Number 24 of 2016, is in the form of receiving a code of ethics sanction in the form of being permanently dismissed.

3.2. The validity of making a deed of sale and purchase made by PPAT without being attended by the seller

Before discussing the validity of the deed of sale and purchase made by PPAT without the presence of the seller, it is necessary to know in advance what are the legal requirements of the deed of sale and purchase itself.

In relation to the sale and purchase of land and buildings in order to make a deed, according to Nurhasan Ismail, "the conditions that need to be met include:

- a. Original Certificate
- b. Photocopy of the ID cards of the parties and their proxies
- c. Photocopy of deed of establishment and legalization of legal entity (for legal entities)
- d. Photocopy of the current year's SPPT PBB which has been matched with the original by the counter staff

- e. Submit proof of local tax deposit (BPHTB) that has been validated
- f. Validated proof of SSP/PPh.
- g. Permit to transfer rights if the certificate/decision contains a sign stating that the right may only be transferred if permission has been obtained from the competent authority.
- h. Land use permit for legal entities
- i. Original Deposit Receipt (STTS) Land and Building Tax (PBB).
- j. Letter of Approval of Husband/Wife (or it can be given in AJB).
- k. Original Death Certificate if husband/wife has died.
- l. Original Certificate of Heirs if the husband/wife has died and there are children born from their marriage. [17]"

The procedure for making a deed of sale and purchase, explained by Urip Santoso, that "the procedure for making a deed of sale and purchase includes:

- a. Certificate and PBB Examination
Generally, the first step taken by PPAT before the transaction is carried out is to examine the certificate of land rights and Land and Building Tax (PBB). For the examination, PPAT will ask for the original land title certificate and the PBB and the Seller's Letter of Deposit Receipt (STTS). Examination of land rights certificates is required to ensure the suitability of technical and juridical data between land certificates and the Land Book at the Land Office. PPAT also conducts inspection of land rights certificates to ensure that the land is not involved in a legal dispute, is not being pledged or is not being confiscated by the authorities. The STTS PBB examination was carried out by PPAT to ensure that the land was not in arrears in PBB payments.
- b. Husband/Wife Approval
Another thing that needs to be ensured before signing the AIB is that there is an agreement from the seller's husband or wife in the event that the seller is married. In a marriage, there will be a mix of assets with the wealth of each husband and wife, even with land rights. Because land rights are joint assets in the planning, the sale requires the approval of the husband or wife. The approval can be given by signing a special Approval Letter, or the husband or wife and the seller also sign the AJB. In case the husband or wife of the seller has died, then this situation needs to be proven by a Death Certificate from the Kelurahan office. With the death of a husband or wife, then the children who are born and their marriage will be hactir as ahil waiis of the land to be sold. These children are also required to provide consent in the AIB as ahil wanis in place of the consent of the deceased husband or wife.
- c. Cost Components in AJB
In addition to the sale and purchase price of land, other cost components that need to be incurred by both the seller and the buyer are Income Tax (PPh) and Customs for the Acquisition of Land and Building Rights (BPHTB). Income Tax must be paid by the Seller at 5% of the land price. while the Buyer is obliged to pay the

BPHTB of 5% after deducting the selling value of the Non-Taxable Taxable Olek (NJOPTKP). Apart from taxes. Other costs that need to be incurred are PPAT services which are generally borne jointly by the Seller and the Buyer.

- d. AJB signing
After the Seller and Buyer submit the land certificate, proof of tax deposit and identity documents of the parties and pay the component of the transaction fee, then the Seller and the Buyer shall appear before the PPAT to sign the AJB. The signing must be done before the PPAT and is usually witnessed by 2 witnesses who also signed the AJB. Generally, the two witnesses came from the PPAT office in question [18].

From this description, it can be clearly seen that one of the legal requirements and procedures in the process of making a deed of sale and purchase made by PPAT is that the parties who make the deed of sale and purchase must sign the deed of sale and purchase before the PPAT. This is also regulated in the provisions of Article 38 paragraph 1 of Government Regulation Number 24 of 1997 which states, "The making of the deed as referred to in Article 37 paragraph 1 is attended by the parties carrying out the legal act concerned and witnessed by at least two witnesses who qualified to act as a witness in the legal action."

Then in the provisions of Article 39 paragraph 1 letter C Government Regulation Number 24 of 1997 also stipulates that PPAT must refuse to make a deed, if it is known that one of the parties who will carry out the legal action concerned, or one of the witnesses as referred to in the provisions of Article 38 paragraph 1 is not entitled or does not meet the requirements to act so, even though in the provisions of Article 39 paragraph 1 letter E, it is stated that the refusal is not valid if permission has been obtained from the official or authorized agency.

As for the explanation of Article 39 paragraph 1, it is known that the agency in question is the Land Office, not the court, as happened in the Decision on Case Number 54/Pdt.G/2019/PN.Bks.

The court's authority regarding the making of the sale and purchase deed is only limited to being an institution that has the right to examine the settlement of disputes over the deed as regulated in Article 30 paragraph 3 of Government Regulation Number 24 of 1997, examining objections to physical data and juridical data as regulated in the provisions of Article 27 paragraph 3, cancellation of the deed of Sale and Purchase and or the deed made by PPAT as regulated in Article 45 paragraph 1 letter F, as well as examining the problem of changes in land data related to the deed of sale and purchase, as regulated in Article 55 paragraph 1 of Government Regulation Number 24 of 1997. In addition, the consequences that are received from making a deed of sale and purchase that are not attended by one of the parties, or in this study the seller is the seller, then the consequences that can be accepted if a dispute occurs in the future are:

- a. There is a cancellation of the Sale and Purchase Deed made by PPAT,

- b. There is a cancellation of the land certificate that has been issued by the Land Office,
- c. There is a claim for compensation that can be charged to the buyer and/or PPAT, as well as.
- d. There are sanctions that can be imposed on PPAT in the form of permanent dismissal.

From this description, it can be seen that the validity of the deed of sale and purchase made by PPAT without the presence of the seller is basically invalid according to law, even though there is an order from the court to decide and order the deed of sale and purchase by PPAT to be made without the presence of the seller, because does not meet the legal requirements of the agreement and the making of the sale and purchase deed as regulated in Article 37 and Article 38 of Government Regulation Number 24 of 1997 concerning Land Registration.

4. CONCLUSION

Based on the previous explanation, it can be seen that the first conclusion of this research is related to PPAT's responsibility to make a deed of sale and purchase without being in front of the seller, it can be seen that the form of responsibility that must be accepted by PPAT if in the future there is a dispute between the buyer and the seller and or his heirs, then the PPAT can be held civilly and administratively responsible and or the professional code of ethics, and it is known that the civil responsibilities of the notary are based on Article 62 of Government Regulation Number 24 of 1997, the form of PPAT's responsibility is in the form of providing compensation to the party who feels aggrieved, As for PPAT's administrative responsibilities and or professional code of ethics, then based on Article 10 paragraph 3 and the explanation of Article 10 paragraph 3 of Government Regulation Number 24 of 2016, is in the form of receiving a code of ethics sanction in the form of being permanently dismissed.

The conclusion of the two studies is that the validity of the deed of sale and purchase made by PPAT without the presence of the seller is basically illegitimate according to the law, even though there is an order from the court to decide and order the deed of sale and purchase by PPAT to be made without the presence of the seller, because it does not fulfill the legal requirements of the agreement and the making of the sale and purchase deed as regulated in Article 37 and Article 38 of Government Regulation Number 24 of 1997 concerning Land Registration.

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