

THE NOTARY'S RESPONSIBILITY FOR DEFECTIVE LEGAL SALE AND PURCHASE DEEDS (A REVIEW OF THE DECISION OF THE DISTRICT COURT OF WONOGIRI NUMBER 13/PDT.G/2021/PN WNG)

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ABSTRACT

This research discusses the authority of the Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT) to issue authentic deeds, specifically Sale and Purchase Deeds (Akta Jual Beli or AJB), in the process of transferring land rights through sale and purchase, where authentic deeds hold full probative force. The case under consideration involves the misuse of PPAT authority in the execution of their duties. PPAT, in carrying out their responsibilities in creating authentic deeds, must adhere to the principles of caution and precision. The responsibility of the PPAT for a legally defective Sale and Purchase Deed in the Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN Wng. is discussed. In the judgment, it is explained that the PPAT violated the law due to the failure to meet the legal requirements of the agreement as per Article 1320 of the Indonesian Civil Code. This research is normative juridical, utilizing a qualitative data analysis method. To examine legal issues, primary legal sources, secondary legal sources, and tertiary legal sources are used, and these sources are subsequently analyzed using descriptive analytical techniques.

KEYWORDS PPAT Responsibility, Authentic Deed, Null and Void, Legally Flawed



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INTRODUCTION

In the view of the Indonesian nation, land is considered a gift from the Almighty God to the entire Indonesian nation, representing a scarce natural resource and a fundamental human need, while also possessing economic, social, cultural, religious, and ecological value. It must be used to the greatest extent for the

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prosperity of the people. In the customary perspective, communal land is the land shared by the customary community members, and in the National Land Perspective, all land within our country is collectively owned by the Indonesian people, who have become one nation as stated in Article 1 (1) of Law No. 5 of 1960 concerning Basic Agrarian Regulations. This statement reflects the communal nature of our National Land Perspective (Irayadi, 2022).

Article 19 (1) of the Basic Agrarian Law specifies that land registration in the entire territory of the Republic of Indonesia is the responsibility of the government. Government Regulation No. 24 of 1997 explicitly designates the government institution responsible for land registration in the territory of the Republic of Indonesia as the National Land Agency (Badan Pertanahan Nasional or BPN). In Article 6 (1), it is stipulated that the execution of land registration is carried out by the Head of the Land Office in Regencies/Cities (Wirjono, 2011).

The existence of an imbalance involving land scarcity and high land prices has led to various issues, particularly in the context of sale and purchase transactions, which are essential for the transfer of land ownership. As stated in Article 19 of Law No. 5 of 1960 regarding Basic Agrarian Regulations and Article 37 (1) of Government Regulation No. 24 of 1997 concerning Land Registration, the registration of land ownership transfers through sale and purchase can only be executed if there is a Sale and Purchase Deed (Akta Jual Beli or AJB) that is created by authorized officers in accordance with prevailing laws and regulations (Boedi, 2008). At this stage, the role of a PPAT (Land Deed Official) as a recorder of customary transactions to formalize deeds is crucial, and the transfer becomes legally valid with the existence of this AJB. Through the AJB, a new status will be granted through the application for name change according to the will of the recipient of the transfer (Gunawan, 2003).

In the District Court of Wonogiri Decision Number 13/PDT.G/2021/PN WNG, the AJB Number 564/2017 created by the PPAT was deemed invalid in the eyes of the law because, according to the judge's consideration, it had legal defects and lacked legal binding power. This was because the Sale and Purchase Deed was based on a Power of Attorney to Sell Number 68 dated September 19, 2017, and a Power of Attorney to Buy Number 69 dated September 19, 2017, which were created by a Notary and were absolute in nature, regulated in the Minister of Home Affairs Instruction Number 14 of 1982, concerning the Prohibition of Using Absolute Power as a Transfer of Land Rights, and further governed by Government Regulation Number 24 of 1997 concerning Land Registration, Article 39 (1) letter d. Therefore, the issues to be examined in this paper are: How is the validity of the Sale and Purchase Deed created by the PPAT based on the District Court of Wonogiri Decision Number 13/PDT.G/2021/PN WNG? And what is the responsibility of the PPAT in creating a legally defective Sale and Purchase Deed based on the District Court of Wonogiri Decision Number 13/PDT.G/2021/PN WNG?.

RESEARCH METHOD

The Research Method used in this legal paper is a type of juridical-normative research with a descriptive research nature. The objective is to provide an overview of a legal event and analyze it using theories based on principles, norms/principles,

and legal regulations (Soekanto, 2006). This is achieved by conducting a literature review using various secondary data sources such as legal regulations, court decisions, legal theories, and expert opinions, which are then processed through selection and systematic, logical, and qualitative classification. Subsequently, these data are analyzed in a descriptive-analytical manner, which is a method of selecting data accurately and presenting a clear representation of existing facts (Subekti, 1978).

RESULT AND DISCUSSION

1. The validity of the Deed of Sale and Purchase made by the PPAT based on the Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN Wng

The validity of a deed pertains to whether the deed is legally sound or not, and it is crucial for the parties involved in the respective deed. However, if the validity of the deed is found to be lacking, the deed loses its legal force. It becomes an underhand deed, also known as a deed under private signature. The role of a PPAT (Land Deed Official) is crucial in land administration and registration, as the transfer and encumbrance of land rights can only be recorded through a deed issued by a PPAT (Adrian Sutedi, 2023).

Regarding the invalidation of deeds, one must first understand the requirements for a valid agreement. According to Article 1320 of the Indonesian Civil Code, there are four requirements for a valid agreement, namely:

- a. Consensus, meaning that both parties must genuinely agree.
- b. Capacity to make an agreement, meaning that the parties must be legally competent to act on their own.
- c. Purpose, meaning that the agreement must have a specific, lawful object.
- d. A lawful cause.

The first two requirements are considered subjective conditions, as they relate to the parties themselves and their capacity to enter into an agreement. The last two are objective conditions because they relate to the agreement itself or the subject matter of the legal act. If the objective conditions are not met, the agreement is considered void. In other words, it is as if the agreement never existed. If the subjective conditions are not met, the agreement is not void but can be annulled by one of the parties.

- a. Consensus, meaning that both parties must genuinely agree:

Both parties involved in an agreement must have the free will to bind themselves, and this free will must be declared. What one party intends is also intended by the other party, so both parties are bound by mutual consent without coercion, error, or fraud.

- b. Capacity to make an agreement:

Both parties must have the capacity to act in order to act on their own. Capacity means being of adult age, of sound mind, and not prohibited by law from entering into a specific legal act.

- c. Purpose, meaning that the agreement must have a specific, lawful object:

The object of the agreement must be clearly defined and lawful. The lawful object in this context refers to the property or subject of the agreement.

d. A lawful cause:

Law requires that a valid agreement has a cause, which is the reason for entering into the agreement. This cause is what the parties intend with the agreement. According to Article 1335 of the Indonesian Civil Code, an agreement without a cause or one based on a false or prohibited cause is invalid (Mulyana & Abdughani, 2021).

The Deed of Sale and Purchase (Akta Jual Beli) is an authentic deed made by the Land Deed Official (PPAT), representing a legal act for the transfer of land ownership through a sale. Article 37 of Presidential Decree No. 24 of 1997 stipulates that the transfer of land rights can only be registered if it is evidenced by a deed made by a designated official, in the case of land sales, it's the PPAT. In general, a deed of sale and purchase contains information about:

- a. The parties involved, namely the seller and the buyer.
- b. Confirmation of the sale and purchase transaction.
- c. Details about the land being sold, including its status, size, location, boundaries, and any related information.
- d. The sale price and payment details as agreed upon by the seller.
- e. Any specific terms and conditions related to the sale and purchase, as outlined in the articles of the deed.

In the Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN Wng, the cancellation of the ownership deed (Akta Jual Beli) with the number 564/2017 dated 19 September 2017, executed before NOOR SAPTANTI, S.H., M.H., acting as the Land Deed Official (PPAT) in the Ngadrojo District, Wonogiri Regency, the issue at hand is the annulment of the deed due to errors by the PPAT that rendered the deed invalid, as it did not comply with applicable regulations. There are two main factors that led to the annulment of the deed in this case:

1. The deed was not read aloud in front of the parties.
2. The essential legal requirements were not met.

The case initiated with the Defendants, WIRANATA GANDA WIGUNA and NIRMALA RATNA SARI, engaging in deceit to make the opposing party sign Deed of Sale and Purchase Number 564/2017. Plaintiff was never present before the PPAT, NOOR SAPTANTI, S.H., M.H., in the deed-making process. The PPAT did not exercise due diligence in performing their duties, which is contrary to Article 38 of Government Regulation No. 24 of 1997 concerning Land Registration. This is because the PPAT did not read the deed aloud in the presence of the parties. According to Government Regulation No. 24 of 1997 concerning Land Registration, Article 39, the PPAT must refuse to create a deed if one or more parties are acting based on a general power of attorney that fundamentally represents a legal act of land transfer.

Furthermore, the Plaintiff claimed that the Deed of Sale and Purchase Number 564/2017 was created based on the Deed of Sale Power of Attorney No. 68 and Deed of Purchase Power of Attorney No. 69 dated September 19, 2017, made before Dana S.H., a notary in Surakarta. According to the Supreme Court's decision, any sale or purchase of land made under a general power of attorney is against the law, and such deeds are deemed invalid.

It is essential to point out that the essence of the legality of the deed was not met. It was also not read aloud before the parties involved, thus rendering the transaction invalid. This verdict is in line with the previous Supreme Court decision on the prohibition of using a general power of attorney as a means of transferring land ownership.

Consequently, the Deed of Sale and Purchase Number 564/2017, dated 19 September 2017, was declared invalid and legally void due to its violation of the law. Therefore, the transfer of land ownership from the Plaintiff to the Defendant should also be declared invalid. To address this, the Plaintiff has the right to request the annulment of the certificate with legal defects, according to the Minister of Agrarian Affairs/Head of the National Land Agency Regulation No. 9 of 1999, Article 106, Paragraph (1), which states that the annulment of land rights due to administrative legal defects can be carried out at the request of the party concerned or by an authorized officer without a request.

2. PPAT's responsibility for making the Deed of Sale of Bell which was made legally defective based on Neger Wonogr Adjutant Decision Number 13 / PDT. G/2021/PN Wng

There are two terms in legal dictionaries that refer to accountability: liability and responsibility. Liability is a broad legal term that refers to almost all forms of risk or responsibility, whether past, present, or potential, that relates to the rights and obligations of individuals. This includes damages, threats, crimes, costs, or conditions that create a duty to comply with the law. Responsibility refers to what can be held accountable for an obligation, which includes decisions, actions, capabilities, and competence required for the responsibility of implementing the law. In interpretation and practical use, the term liability pertains to legal accountability, such as the liability for mistakes made by a legal entity, while the term responsibility refers to political accountability.

According to Budi Harsono, in Government Regulation No. 37 of 1998, Article 1, Number 1 states that the PPAT is a public official authorized to create authentic deeds related to land rights or ownership rights in condominium units, and deeds for granting power of attorney to impose Mortgage Rights (Harsono, 2007). A public official is a person appointed by the competent authority with the task of serving the general public in a particular field or activity. From the elaboration of the role of a Land Deed Official in the regulation above, it can be seen and confirmed the significant role and function of a Land Deed Official in meeting the needs, interests, and legal certainty of the community to obtain land rights, new rights, or other matters related to land rights.

The Deed of Sale and Purchase (Akta Jual Beli) is an authentic deed made by the Land Deed Official (PPAT) for the legal act of transferring land rights through a sale. Article 37 of Presidential Decree No. 24 of 1997 stipulates that the transfer of land rights can only be registered if it is evidenced by a deed made by a designated official, which, in the case of land sales, is the PPAT.

Administrative errors, also referred to as maladministration, committed by the PPAT in the land registration process will have legal consequences. The PPAT can be held accountable for their actions. A PPAT who is negligent in carrying out

their responsibilities is considered to have committed maladministration. The sanctions against such a PPAT can range from a warning to dishonorable discharge. Furthermore, for wrongful acts, the PPAT can be required to pay compensation to the party harmed by the act.

Article 1365 of the Civil Code describes that the law provides protection to the parties involved in authentic deeds created by a PPAT, enabling them to claim compensation from the PPAT for the damages resulting from the loss of authenticity of the deed, rendering it merely an underhand deed.

Professional responsibilities of PPAT can be divided into two categories: effective responsibility and legal responsibility. Legal responsibilities can further be classified into three types: administrative law, civil law, and criminal law. There are two theories underlying these divisions: *fautes personnelles* and *fautes de services*:

- a. *Fautes personnelles* theory states that the liability of the third party is assigned to the official responsible for the act leading to harm. According to this theory, the responsibility lies with the person as an individual.
- b. *Fautes de services* theory states that the liability of the third party is assigned to the official's organization or the relevant authority. According to this theory, the responsibility is attached to the position.

Based on the *Fautes personally* theory, the writer's opinion is that the PPAT is responsible for the creation of the Deed of Sale and Purchase based on a general power of attorney. The harm to the parties due to the PPAT's negligence is attributed to the official who, through their negligence, caused the harm. In this theory, the responsibility falls on the PPAT as an individual.

1. Administrative / Ethical Responsibilities

In the practice of a Land Deed Official (PPAT), a PPAT can face administrative sanctions for violating the PPAT Code of Ethics (Article 6, Paragraph 1 of the PPAT Code of Ethics). These sanctions can include:

1. Warning;
2. Reprimand;
3. Suspension (temporary removal) from the PPAT association membership;
4. Dismissal from the PPAT association membership; and
5. Dishonorable discharge from the PPAT association membership.

Even though, in practice, if a PPAT commits administrative violations, they may not immediately impose sanctions on the PPAT in the jurisdiction of Kab. Wonogiri. Instead, PPAT Kab. Wonogiri would typically initiate discussions with the concerned PPAT. In the context of the case of Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN Wng, the defendant (PPAT) clearly violated the provisions as stipulated in Article 39, Paragraph 1, letter d, and in Instruction of the Minister of Home Affairs Number 14 of 1982, concerning the Prohibition of the Use of Absolute Power of Attorney for the Transfer of Land Rights. Therefore, the Land Deed Official, according to the writer, is administratively responsible based on the provisions in Article 62 of Government Regulation No. 24 of 1997 concerning Land Registration. Administrative sanctions are imposed as administrative responsibility for the position of the PPAT.

Furthermore, based on the Circular Letter of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 2 of 2018 regarding the Establishment and Supervision of Land Deed Officials, in point number 19, it is stated:

"The creation of deeds made based on an absolute power of attorney that essentially relates to a legal act of transferring rights shall result in a temporary suspension with a maximum duration of one year."

This means that PPATs who create deeds based on absolute power of attorney, which essentially involve the legal act of transferring rights, may face a temporary suspension of up to one year as an administrative sanction.

2. Civil Liability

Civil liability can arise from actions that involve Unlawful Acts (Perbuatan Melawan Hukum). The legal elements that must be met for an act to qualify as an Unlawful Act (onrechtmatig) under Article 1365 of the Civil Code (KUHPerdata) are as follows:

1. The act must cause harm.
2. The act must be committed with fault.
3. There must be a causal relationship between the act and the resulting harm.

Civil damages in the field of law are divided into two categories: general damages and special damages, which are explained as follows:

- a) General damages, as stipulated in Articles 1243-1252 of the Civil Code (KUHPerdata), apply to all cases in which an Unlawful Act causes material harm.
- b) Special damages occur due to specific circumstances or actions.

In the case of the Decision of the District Court of Wonogiri Number 13/PDT.G/2021/PN Wng, the plaintiff incurred damages due to the loss of the certificate of ownership No. 1623, with an area of 329 square meters, located in Sengdang Sub-District, Wonogiri District, which was estimated to be worth Rp. 350,000,000 (three hundred fifty million rupiahs). In the context of civil liability under Civil Law, the first aspect concerns liability based on fault, which means that someone is responsible for causing harm to another due to their negligence. In this case, concerning the Deed of Sale and Purchase (AJB) made by the Land Deed Official (the defendant) as a public official, it was created without the knowledge and consent of the plaintiff and was based on an absolute power of attorney. As a result, the plaintiff's right to the property in question was harmed, which obliges the party causing the harm to compensate for the loss, as stipulated in Article 1365 of the Civil Code.

3. Criminal Responsibility

According to Habib Adjie, the formal aspects of a Land Deed Official's deed can be the basis or limitation for holding the Land Deed Official accountable if: (Adjie & Gunarsa, 2013)

- a) The formal aspects are intentionally proven (with full awareness and intention and planned by the respective Land Deed Official) to have turned the deed they created into an instrument for committing a criminal act.

b) The Land Deed Official is aware and intentionally, together with the parties involved, engages in a legal action known to them as unlawful.

In conclusion, a Land Deed Official cannot be held accountable as long as the procedures they follow comply with the existing regulations and are carried out in accordance with those procedures. If a Land Deed Official commits a violation of the formal aspects, the possible sanctions that can be imposed are civil sanctions and administrative sanctions, depending on the type of violation or the Land Deed Official's code of ethics. Criminal sanctions can only be imposed if it is proven that the Land Deed Official has indeed committed a criminal act.

CONCLUSION

This research examines the validity of Sale and Purchase Deeds (Akta Jual Beli or AJB) created by Land Deed Officials (PPAT) in Indonesia, particularly in the context of land transactions. The study delves into the intricacies of land ownership, emphasizing the communal nature of land in Indonesia. It discusses the legal framework and requirements for a valid agreement, emphasizing that a valid AJB should fulfill specific conditions, both subjective and objective.

The research then scrutinizes a specific case, the District Court of Wonogiri Decision Number 13/PDT.G/2021/PN WNG, which declared an AJB created by a PPAT as invalid due to legal defects. These defects stemmed from the use of a general power of attorney and the failure to meet essential legal requirements, such as reading the deed aloud in front of the parties involved.

In conclusion, this research underlines the importance of valid AJBs in land transactions, the responsibilities of PPATs, and the legal consequences they may face if they fail to adhere to the established regulations and procedures. It provides a comprehensive analysis of the legal framework and practical implications, offering valuable insights into land ownership and transactions in Indonesia.

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