

## **The Making of a Sale and Purchase Deed by the Land Deed Officer Process before the Signing of a Blank Form**



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**ABSTRACT:** In preparing the Sale and Purchase Deed, the Land Deed Making Officer must consider the interests of the parties and fill out the form in compliance with the accompanying documents. If the PPAT orders the appearers to sign a blank form first and they are unaware of the contents of the Sale and Purchase Deed, this violates their authority because the deed is not read and the appearers are unaware of its contents, which is detrimental to the appearer and the PPAT must be held accountable for his actions. This research aims to find out the PPAT's responsibility in making the Sale and Purchase Deed which was preceded by the signing of the blank form and to find out the validity of the making of the Sale and Purchase Deed which had previously been signed on the blank form by the appearers. This is normative research in the legal sector. This law was written using both a conceptual and a statute approach. The legal materials utilized in this normative legal study include both primary and secondary legal materials. The method of data collecting used in this paper is literature study. In composing this study utilizing qualitative data analysis techniques.

**KEYWORDS:** Land, Sale and Purchase, Land Deed Officer, Sale and Purchase Deed, Signature, Blank Form.

### **I. INTRODUCTION**

Three basic human requirements must be met: clothing, food, and shelter. In order to carry out everyday activities, a location to eat and sleep is one of the most important components. In Indonesia, land is a human necessity that can be traded as a profitable venture, used to construct a dwelling, or handed to heirs. Thus, the transfer of property rights continues today, and sales have consistently increased from year to year over the past few decades.

According to Boedi Harsono, the concept of purchasing and selling property is a legal act consisting of the transfer of land ownership rights (permanently) from the seller to the buyer, who simultaneously pays the purchase price to the seller (Utomo, 2020). As a legal act, the sale of land and buildings must take place in front of an authorized public official, namely the Land Deed Making Officer (hence referred to as PPAT), as indicated in the Sale and Purchase Deed, and those who must appear are the appearers, namely the seller and the purchaser. Purchases made by PPAT are thereafter regarded as admissible evidence because they fulfill the demand of being clear and genuine, which is a prerequisite for the legal action in question to be valid.

According to Article 1 point 1 of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1997 concerning the Regulation of the Position of Land Deed Maker Officials (hereinafter referred to as PP Number 24 of 2016), PPAT is a public official authorized to make authentic deeds for certain legal actions involving land rights or Ownership Rights to Flat Units. In performing its authority, PPAT is not only required to create valid deeds but also to preserve them so that they are protected by law and to avoid actions that are detrimental to PPAT and the parties involved in the deed.

Article 2 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official for Making Land Deeds (hereinafter referred to as PP Number 37 of 1998) governs the authority of the PPAT, specifically paragraph (1), which states that the PPAT's primary responsibility is to carry out certain land registration activities by making a deed as evidence that the act has been committed. Certain laws pertaining to land rights or ownership rights to flat units will be utilized as the basis for registering changes in land registration data resulting from such legal actions and in paragraph (2) such legal actions are as follows:

- a. Buy and sell
- b. Exchange
- c. Grant
- d. Income into the company (inbreng)
- e. Share rights
- f. Granting the right to use the building/right to use the land with the right of ownership g. Giving mortgage

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### h. Granting power of encumbrance encumbrance

The PPAT deed has a very important in the transfer of land rights and/or ownership rights to apartment units due to its uses or advantages as evidence. (Salim HS, 2019) There are two (two) purposes of the PPAT deed, which are:

1. Evidence that a legal act has been committed
2. To be used as a strong basis for registration of the transfer of rights and the imposition of the rights in question

Evidence has been regulated in Article 1866 of the Civil Code (hereinafter referred to as the Civil Code) which consists of:

1. Written evidence
2. Evidence with witnesses
3. Allegations
4. Confession and
5. Vow

Written evidence is written evidence that consists of two types, namely authentic deed, and private deed. Article 1868 of the Civil Code defines an authentic deed as one performed by or in the presence of public officials with the authority to do so in the location where the deed was executed. The Authentic Deed contains a declaration in which an official describes what he has witnessed.

A deed of sale and purchase is an actual form of deed. Sale and Purchase Deed refers to a document that certifies the transfer of land rights from the seller to the buyer. In general, the sale and purchase of land is conducted in the presence of the Land Deed Making Officer (PPAT) and with full payment of the purchase price (Hadijah, 2016). Therefore, at the time of the signing of the Sale and Purchase Deed in front of the PPAT, it must be considered paid off and the selling price must have been paid in full by the buyer to the seller. Because in one of the premises it is stated that the first party claims to have received the above-mentioned funds in full from the second party, and because this deed likewise serves as a valid receipt for receiving the funds, it is valid as a receipt (receipt).

The Sale and Purchase Deed is deemed valid and meets the requirements because an authentic deed is one that fulfills the procedures and conditions for the transfer of ownership of land carried out before the PPAT, namely the seller and buyer who wish to carry out the sale and purchase before the PPAT by submitting documents such as copies. Attach the BPHTB, the original certificate of land rights, a copy of each party's Tax Numbers, and the SPPT PBB to the identity card of each party. If permitted, it is accompanied by the interested party's power of attorney. These documents serve as data for filling in blanks on the PPATmade Sale and Purchase Deed. Because the filling must be tailored to the specifics based on the information provided by the parties. After the Sale and Purchase Deed is created, the appearers must sign the Sale and Purchase Deed, which must also be witnessed by 2 (two) PPAT officers, and PPAT must also read and explain the contents of the deed to the appearers.

The PPAT must adhere to the provisions outlined in Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 Concerning Amendments to the Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 Concerning Implementation Provisions for Government Regulation Number 24 of 1997 Regarding Land Registration when drafting the Deed of Sale and Purchase (hereinafter referred to as Perkaban 8 of 2012). However, there were numerous instances in which PPAT ordered the parties to sign a blank form before reading the contents of the deed, because PPAT sided with one of the parties or the parties themselves, who wished to sign the blank Sale and Purchase Deed in a blank condition prior to the settlement of the selling price of the land. For instance, in the case of the district court of Tegal's decision number 105/Pdt.G/2013/PN.KPG.

This case began with the Plaintiff as the holder of land rights on Jalan PU Bundaran RT.006/RW 002, Tuak Daun Merah Village, Oebobo District, Kupang City, with a certificate of ownership with the number 253/Oebofu, which is the subject of the dispute. Although the land is inherited from the Plaintiff's parents and based on the distribution of inheritance made by the Plaintiff's younger brother, who is entitled to inherit from his parents, legally the object of the dispute is still written in the Plaintiff's name. In addition, the land has never been sold.

In February 1988, Defendant I approached the Plaintiff to borrow the Plaintiff's certificate because Defendant I was the Plaintiff's brother-in-law. The Plaintiff agreed, and Defendant I, along with Defendant II, went to the PPAT Notary to explain to the Plaintiff that the Plaintiff's certificate had only been borrowed. Haji Ilyas was the witness. Plaintiff provided Defendant II with Certificate of Ownership No. 253/Oebofu as PPAT. When the Plaintiff appeared before Defendant II with Defendant I and Haji Ilyas, the Plaintiff was given a deed in the form of a Blank Blank with the Plaintiff's thumbprint and Defendant I's signature due to the Plaintiff's poor vision.

After a period of time, the Plaintiff learned from the Plaintiff's younger brother that his land had been sold. While the Plaintiff never signed the Sale and Purchase Deed or engaged in a sale and purchase with anyone. The Plaintiff next requested from Defendant II a copy of the deed of borrowing certificate. Then, Defendant II issued Deed No. 01/III.KKTENG/1988, dated March 3, 1988 in the form of a photocopy legalized by Defendant II, which was received by the Plaintiff on May 16, 2013; it was a deed that had been signed with a thumbprint on a blank form by the Plaintiff and Defendant I for the purpose of borrowing a certificate; however, by Defendant II, the Deed of Sale and Purchase

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Defendant II as PPAT is suspected of misusing the signature of the Sale and Purchase Deed in the form of a blank form, given the preceding rationale. Whereas PPAT, as a public official, must not violate the PPAT-related laws and regulations when carrying out his duties and authorities. PPAT's role in creating the Sale and Purchase Deed by signing a blank form must be investigated further in this instance.

### **II. RESEARCH METHOD**

This study used normative legal research, which is legal research that focuses on rules or principles in the sense that law is viewed as norms or rules derived from legislative regulations, judicial decisions, and doctrines from top legal experts. (Bachtiar, 2018). This is a prescriptive research, in that it provides an argument for the research outcomes. Arguments are made to provide a presumption or an evaluation of what should or should not be in accordance with the law, basic legal norms and legal principles, legal doctrines or theories of facts or studied legal events (Muhaimin, 2019). This statute was written using both a conceptual and a statute approach. The legal materials utilized in this normative legal study include both primary and secondary legal materials. According to Peter Mahon Marzuki, primary legal resources are authoritative legal documents containing official records or minutes of lawmaking and judicial decisions. Secondary Legal Materials include all non-official literature on the law. This paper's data collection method is a literature review collected through reading, citing books, and evaluating relevant statutes, regulations, documents, and information. In the writing of this paper, qualitative data analysis approaches were utilized, particularly a descriptive analysis of data used for normative aspects (Ishaq, 2017).

### **III. RESEARCH RESULTS**

According to Hans Kelsen's theory of legal responsibility, a person is considered legally responsible for a particular act if he can be punished for the opposite act. According to traditional theory, there are two distinct sorts of responsibility: responsibility based on fault (based on fault) and absolute responsibility (absolute responsibility). (Asshidique, Safa'at, 2006). According to Abdulkadir Muhammad, the theory of responsibility for violating the law (tort liability) is comprised of the following theories:

- 1) Liability due to unlawful acts committed intentionally (international tort liability), the defendant must have committed an act in such a way as to harm the plaintiff or know that what the defendant did would result in a loss.
- 2) Liability due to unlawful acts committed due to negligence (negligence tort liability), based on the concept of fault related to morals and laws that have been intermingled.
- 3) Absolute responsibility for violating the law without questioning the fault (strict liability), based on his actions either intentionally or unintentionally (Hizkia A.M, 2019)

If it relates to Civil Law, PPAT as Defendant II instructed the witnesses to sign a blank form before filling out the deed, including unlawful activities outlined in Article 1363 of the Civil Code, which states that any conduct that violates the law and causes harm to a person is unlawful. Otherwise, the person responsible for causing the loss is required to compensate for it. According to Munir Fuady, there are three types of illegal acts: unlawful acts owing to intent, unlawful acts without error (lacking aspects of intent or negligence), and unlawful acts due to negligence (Sari, 2020). The sort of accountability that corresponds with PPAT's acts is accountability based on an error, as PPAT purposefully harmed the victim and is therefore liable for compensating for the losses incurred as a result of his actions.

Regarding PPAT's responsibility for abuse of authority in the deed he drafted, Article 55 of Perkaban Number 1 of 2006 states that PPAT has full responsibility for the drafting of the deed he drafted. This obligation is the personal responsibility of the PPAT involved, hence the PPAT is liable for the deed and all of its contents until his death. The actions taken by PPAT in the decision of the Tegay district court with decision number 105/Pdt.G/2013/PN.KPG which ordered the parties to sign the Sale and Purchase Deed which is still in the form of a blank and has not been filled out with any data in this case have violated Article 3 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 the rat And has undertaken conduct that are banned by article 4 letter (1), namely sending clients minutes to be signed. In Article 6 of IPPAT, sanctions for violations of the PPAT code of ethics are specified. The five sanctions outlined in this article include:

1. Reprimand
2. Warning
3. Temporary dismissal from IPPAT association membership
4. Dismissal from membership of the IPPAT association
5. Disrespectful dismissal from IPPAT association membership

Regarding the problem of purchasing, selling, and constructing, the 1960 Basic Agrarian Regulations (UUPA) stipulate that all transactions must be conducted openly and in cash. Because it must be completed before the PPAT, we will now discuss what the nature of light signifies. It is referred to as cash because the act of giving over the land and paying the price of the land are deemed to occur simultaneously, as the sale and purchase have been completed once the land is handed. So the understanding of light and cash means that the process of handing over rights to land and buildings must be in advance of the authorized official, in this case

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the PPAT and paid in cash with evidence of a deed of sale and purchase as a document of evidence of the transfer of land rights from the control of the owner as the seller who then switches to the new owner, who is the seller (Tunas, Pandamdari, 2019).

PPAT must adjust the form of the Sale and Purchase Deed to the data owned by each party based on facts such as the identity of the parties, the original certificate of the rights concerned, or the certificate submitted in accordance with the lists when executing the making of the Sale and Purchase Deed. In the Land Office, the time and place of the sale and purchase of a land right, as well as the price of the agreement on the land object being traded, are not determined based on the PPAT's own wishes, as this could lead to a case of deed forgery if there is a discrepancy between what the parties want and what is written in the deed. Article 53 paragraphs (1), (2), and (3) of the Regulation of the Head of the National Land Agency No. 1 of 2006 concerning the provisions for the implementation of government regulation No. 37 of 1998 concerning the regulation on the position of officials making land deeds (hereinafter referred to as Perkab No. 1 of 2006) stipulate as follows:

- (1) The PPAT deed is created by filling up the blank of the available deed in accordance with the instructions for its completion.
- (2) In the context of executing the PPAT deed referred to in paragraph (1), the deed form must be completed with correct events, status, and data, and must be backed by documents in line with statutory regulations.
- (3) The PPAT deed is performed in the presence of 2 (two) witnesses who attest to the contents of the document:
  - a. Identity and capacity of the presenter
  - b. The presence of the parties or their proxies
  - c. The truth of the physical data and juridical data of the object of legal action in terms of the object before being registered
  - d. The existence of the documents shown in the making of the deed
  - e. The legal action has been carried out by the parties concerned.

If it relates to the matter in decision 105/Pdt.G/2013/PN.KPG, PPAT immediately handed over a blank form to be signed by the Plaintiff and the Defendant, indicating that the deed has not been filled up and no information concerning its contents has been reviewed. Whereas a PPAT who is a public official must serve clients as efficiently as possible, if the client requests a deed that violates the applicable rules and regulations, the PPAT shall deny the request. However, in this case, PPAT sided with one of the parties, namely the Defendant, who initially only borrowed the certificate, but by PPAT it was changed to buying and selling and PPAT filled out the form of the deed without the knowledge of the Plaintiff as the owner of the certificate of ownership of the land, which was then transferred to the Defendant without an agreement or payment transaction.

Article 22 of Government Regulation Number 37 of 1998 (henceforth referred to as PP No. 37 of 1998) stipulates that the PPAT deed must be read/explained to the parties in the presence of at least two witnesses prior to their instant execution. Also by the parties, witnesses, and PPAT, Article 101 paragraph (3) of the Regulation of the State Minister of Agrarian Affairs / Head of the National Land Agency No. 3 of 1997 concerning the provisions of government implementing regulations No. 24 of 1997 concerning land registration (hereinafter referred to as Permen ATR / BPN No. 3 of 1997) stated that:

- (1) The PPAT deed must be performed in the presence of the parties to the relevant legal action or a person authorized by them with a signed power of attorney in accordance with applicable laws and regulations.
- (2) The making of the PPAT deed must be witnessed by at least 2 (two) witnesses who meet the requirements to act as witnesses in a legal act and who attest, among other things, to the presence of the parties or their proxies, the existence of documents - documents shown in the making of the deed, and the execution of the legal action by the parties concerned.
- (3) The PPAT is required to read the deed to the parties involved and explain the content and purpose of the deed, as well as the procedure for registering the deed in accordance with applicable provisions.

The signing on the deed is equally as significant as the reading of the deed because the signature on an authentic deed serves two key legal functions: as an indication of the signer's identity and as an indication of the signer's acceptance of the duties attached to the deed. On the basis of these two legal purposes, it may be concluded that the signature is an identification that serves as an indication of consent to the duties associated to the deed. According to Habib Adjie, the function of the appearer's signature comprises self-identification or the identity of the person concerned, evidence that the person has previously appeared, and confirmation that the appearer agrees with everything expressed or stated in the deed (Adjie, 2015). The National Land Agency has granted PPAT the authority and legal certainty to create their own land documents for the transfer of rights, as stated in Article 96, paragraph 4. This means that the PPAT form, whose contents are based on the attached documents and the consent of the appearers, must be filled up by the PPAT before being signed by the appearers and the PPAT. If a blank is signed on a blank, the signers are unaware of the substance of the deed because it has not been read nor completed.

The validity of an agreement that must fulfill the conditions for a valid agreement as regulated in Article 1320 of the Civil Code which refers to 4 (four) conditions, namely:

1. Agree on those who bind themselves
2. The ability to make an engagement
3. A certain thing
4. A lawful cause

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If any of the four conditions are not met, then the strength of the deed lacks perfect proof power due to a flaw in the deed. Based on the provisions of the terms of the validity of the agreement, if it is related to the action in decision number 105/Pdt.G/2013 PN.KPG PPAT, it is manifestly contrary to the provisions of Article 1320 of the Civil Code, namely that there is a difference between the deed requested by the appearer and the deed issued by the PPAT, where the Plaintiff was initially only asked to make a certificate borrowing deed which intends to lend Nonetheless, PPAT provided a blank document and forced the Plaintiff and Defendant to sign it. Without the Plaintiff's knowledge, however, the land object whose certificate was borrowed by the Defendant turned out to have transferred the land's ownership rights to the Defendant. While the Plaintiff did not engage into a buy and sell agreement with anyone. And it turns out that PPAT has issued a Deed of Sale and Purchase with the deed number 01/III.KKTENG/1988 for the purpose of selling and purchasing Certificate of Ownership number 253/Oebofu. The PPAT ruled in favor of one of the claimants, the Defendant, to take actions in violation of his power. In accordance with the rules of Article 1320 of the Civil Code, the agreement is deemed invalid since the difference between the desired deed and the deed issued by the PPAT is not fulfilled.

### IV. CONCLUSION

For the sale and purchase of land rights before the PPAT to satisfy the clear and cash requirements, the appearers, the PPAT, and any witnesses must be present. In creating the Deed of Sale and Purchase, the PPAT must complete the blank deed depending on the appearers' associated information and their desires. The deed is then read to provide an explanation of its contents to the appearers, after which it can be signed by the appearers, witnesses, and PPAT, at which point it is an authentic deed that fits the requirements. Article 22 PP No. 37 of 1998, which says that the PPAT deed must be read/explained to the parties in the presence of at least two witnesses before being signed promptly by the parties, witnesses, and PPAT, was violated by the execution of the blank deed. Moreover, according to article 101 paragraph (3) of Permen ATR/BPN No. 3 of 1997, PPAT is required to read the deed to the parties involved and explain the content and purpose of making the deed as well as the registration procedures that must be carried out in compliance with applicable legislation. In the decision 105/Pdt.G/2013/PN.KPG, PPAT ordered the appearers to sign a blank form before filling out the deed that had violated Article 53 of Perkaban No. 1 of 2006, thereby violating the applicable laws and abusing his authority. Consequently, PPAT is liable for both administrative and civil liability.

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