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Temporary PPAT: Between Authority and Responsibility in Making Land Deeds in Indonesia

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Abstract: This article will discuss the role of Temporary PPAT which held by Camat in land registration as preparation for deed making and its legal consequences. The legal basis used is Law Number 2 of 1998 on the Regulation of the Position of Land Deed Maker which has been amended through Government Regulation Number 24 of 2016 on the Regulation of the Position of Land Deed Maker. Temporary PPAT plays a role in making an authentic deed of transfer of land rights from the sale and purchase of the land in question by examining the certificate at the National Land Agency. With this obligation, the Temporary PPAT is responsible for the material and formal requirements of a deed by ensuring that the Temporary PPAT's obligations are carried out so that the parties can avoid land sale and purchase disputes. The method used is descriptive analysis with the conclusion that the position of Temporary PPAT has collided with the constitution that regulates PPAT is prohibited to be held by Civil Servants.

Keyword: PPAT, Temporary PPAT, Civil Servant, Deed

INTRODUCTION

The implementation of land registration by the government is a government policy in land administration that aims to create orderly administration in the land sector. As a country of law, this land registration must be carried out based on laws that guarantee legal protection for the community. Land management is the process of making and implementing decisions (*beschikking*) by the government regarding how land and the resources attached to it are used, protected and distributed. Land administration plays a vital role in the distribution of land control.

Indonesia is a country whose governance system is based on positive law. Therefore, the government must be able to provide legal certainty which is certainly created by the implementation of good governance through land registration officials and related agencies, in this case the Temporary Land Deed Making Officer (hereinafter referred to as PPAT) and the National Land Agency under the auspices of the Ministry of Agrarian Affairs and Spatial Planning. PPAT can issue deeds related to legal acts in the land sector and the National Land Agency can issue land certificates. The two documents must be able to guarantee legal certainty in accordance with the objectives of orderly administration.

The party who registers the land will later receive a certificate of proof of rights in the form of a land certificate. A land certificate is defined as a certificate of proof of rights for land rights, management rights, waqf land, ownership rights to apartment units and mortgage rights, each of which is recorded in a land book (Government Regulation Number 24 of 1997). Empirically, it is an irony that from the issuance of Law Number 5 of 1960 until now, Indonesian society still has land that has not been registered. The unregistered land is especially located in remote areas where there is still a shortage of available PPATs. To accommodate this, the government adopts a negative publication system that contains positive elements. This means that legal protection for land is not only given to people who have registered their land ownership rights, but also to people who have succeeded in proving themselves as the actual owners of the land rights.

On the other hand, the government also appoints the Sub-district Head as the Temporary Land Deed Making Officer (hereinafter referred to as Temporary PPAT) to be responsible for helping to register unregistered land rights. With the presence of the Sub-district Head, it is expected to be able to prevent land disputes. In practice, land registration minimizes land disputes because parties who are entitled to land are protected by the state to control and utilize the land according to its designation. By registering land, it provides benefits to the government regarding land data information so that it becomes the basis for providing recommendations for making public policies.

METHOD

The method used in this study is the descriptive analysis method, namely a method regarding solving problems that exist today by comparing the similarities and differences of certain phenomena by classifying, telling, interpreting existing data, explaining and then analyzing it (Surahman, 1990). This study also uses a normative legal research method approach, namely a research method that takes material from an event to then be analyzed and linked to laws and regulations (Surahman, 1990). In conducting descriptive analytical research, the researcher also uses a description of the problems studied regarding the position of the Sub-district Head who acts as a Temporary Land Deed Making Officer in answering land problems in the area his position and the problem of the Sub-district Head as a Civil Servant who is prohibited from serving as a Land Deed Making Officer. The data used in this study are secondary data collected by collecting materials and data elaborated using library study techniques. To conduct this study, the researcher conducted a qualitative analysis of data processing. In other words, it is a study of various regulations as positive legal norms to be further analyzed using qualitative analysis.

RESULTS AND DISCUSSION

Accountability is defined by Titik as having a basis, namely that which causes the emergence of a legal right for a person to sue another person as well as something that gives rise to a legal obligation for another person to provide an account. The theory of legal responsibility is interpreted as legal responsibility for actions taken by a person or group that are contrary to the law. Thus, the concept of legal responsibility is intertwined with legal responsibility for actions taken by a person or group. Hans Kelsen said that legal obligation is a concept of responsibility that means that a person is responsible for certain actions or he is responsible for a sanction if his actions are contrary (Boedi Harsono, 2008)

The situation of a person who is required to be legally responsible for a legal act is aimed at the direct perpetrator, namely a person who directly carries out the act in question. In relation to land registration, the subject of the legal responsibility is the National Land Agency through the General Official, namely the Land Deed Making Officer.

In Indonesia, there are 4 (four) types of Land Deed Making Officials. The four types are PPAT, Substitute PPAT, Temporary PPAT and Special PPAT. This study will focus on the existence of Temporary PPAT held by the Sub-district Head as the head of government in the sub-district. The Temporary PPAT is specifically designed to fill the PPAT formation that has not yet fulfilled the existing PPAT quota (Santoso, 2012).

Adapted from the validity of Article 1365 of the Civil Code which regulates every unlawful act that causes harm to another person, requires the person whose fault causes the loss to compensate for the loss. This rule focuses on the negligence of a person who causes harm to another person, even if the negligence is intentional or unintentional. Negligence is an act where the perpetrator knows the possibility of consequences that can cause harm to others (Mulyono, 2019).

The Land Deed Making Officer (PPAT) is primarily responsible for carrying out part of the land registration activities by making deeds as evidence of certain legal acts concerning land rights or Ownership Rights of Apartment Units, which will be used as the basis for registering changes to land registration data resulting from legal acts. The legal acts referred to above are buying and selling, bartering, granting, entering into a company (inbreng), sharing joint rights, granting building use rights/use rights over land ownership rights, granting mortgage rights, and granting power of attorney to encumber mortgage rights.

Basically there are two provisions in land rights registration, namely systematic land registration and sporadic land registration. These two provisions are realized to carry out the first land registration activities and land data maintenance. Systematic land registration has a legal basis in Government Regulation Number 24 of 1997 that the authorized institution to organize land registration in Indonesia is the National Land Agency (*Badan Pertanahan Nasional or BPN*).

If the land is registered with this scheme, the applicant will go through the stages of planning, determining the location of the land registration activity, forming an adjudication committee, counseling, collecting physical and legal data, land inspection, announcing physical and legal data and proof of rights, issuing a Decision granting land rights, issuing a certificate and handing over the certificate to the applicant.

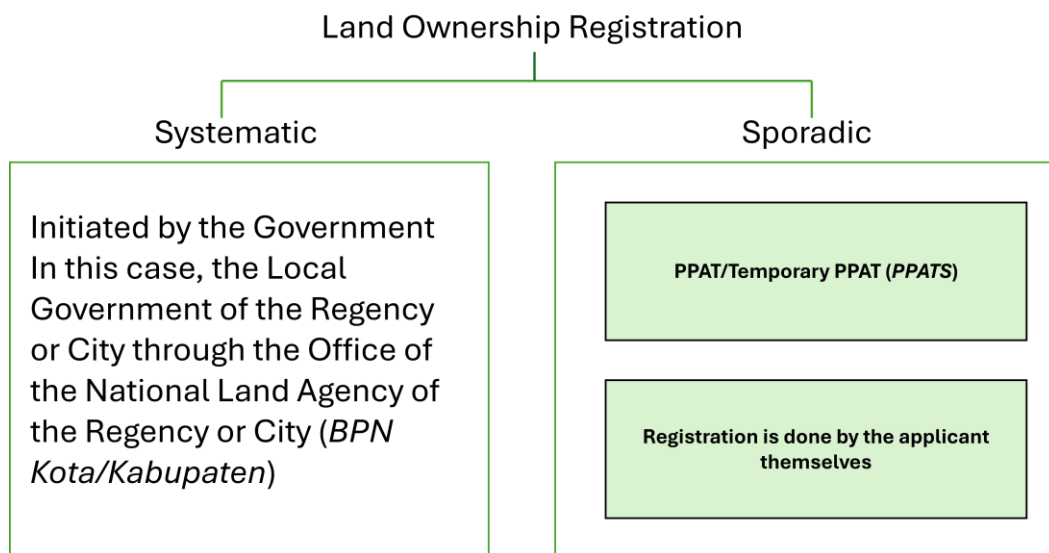


Figure 1. Conceptual Framework

Article 1 paragraph (1) of Government Regulation Number 24 of 1997 stipulates that systematic land registration is the activity of registering land for the first time which is carried out simultaneously and which includes all land registration objects which have not been registered in the area or part of the area of a village or sub-district.

Meanwhile, sporadic land registration is a land registration activity for the first time for a land registration object where all costs are borne by the applicant. This provision is also regulated by Government Regulation Number 24 of 1997. The relevant officials in the sporadic land registration scheme include PPAT and Temporary PPAT (*Camat*). The land title certificate as the final result of the land registration process contains physical data on the location, boundaries, area of the land plot, and buildings that are considered necessary and data on the status of the land.

One of the evidences of land rights registration is the issuance of a land certificate by the National Land Agency. This provision is regulated by Article 32 of Government Regulation Number 24 of 1997, namely:

"A certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data contained therein are in accordance with the data contained in the relevant measurement letter and land book.

In the event that a Certificate has been legally issued for a plot of land in the name of a person or legal entity who has obtained rights to the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand implementation if within 5 (five) years from the issuance of the Certificate they do not submit a written objection to the Certificate holder and the Head of the relevant Land Office or do not file a lawsuit in court regarding control of the land or the issuance of the Certificate."

The purpose of issuing a certificate for land registration activities is so that the rights holder can easily prove that he is indeed the rights holder for the land object stated in the certificate in question. Issuance of a certificate is useful for the interests of the land rights holder. The certificate is issued by the Land Agency National in accordance with the complete systematics so that the evidence becomes the strongest evidence, which is based on Government Regulation Number 24 of 1997 concerning the land registration publication system. The National Land Agency is an institution that is given the authority to regulate administration in the land sector, including issuing land certificates in land registration activities.

The evidentiary nature of land certificates as regulated by Article 32 paragraph (1) of Government Regulation Number 24 of 1997 has weaknesses. These weaknesses can be seen from the state not guaranteeing the accuracy of the physical data and legal data attached to the certificate, resulting in the absence of guarantees for the owner or holder of the certificate.

Therefore, it is possible that one day the land certificate may be sued by another party who feels aggrieved by the issuance of the land certificate. In order for the land certificate to provide legal protection for the parties involved, provisions in Article 32 paragraph (2) are made which regulate that land certificates can become absolute proof of rights when they meet cumulative elements, including:

- a. The certificate is issued legally in the name of a person or legal entity;
- b. The land is obtained in good faith;
- c. The land is actually controlled;
- d. Within five years since the certificate was issued, no one has submitted a written objection to the certificate holder and the head of the local district or city land office or has filed a lawsuit in court regarding land ownership or the issuance of the certificate.

The deed made by PPAT and Temporary PPAT is one of the data sources for maintaining land registration data. Therefore, it must be made in such a way that it can be used as a strong basis for registering the transfer and encumbrance of the rights concerned. Therefore, PPAT and Temporary PPAT are obliged to check the requirements for the sale and purchase of land for the validity of the legal act concerned.

One of the functions of the deed made by the Temporary PPAT was once mentioned in the opinion of the Supreme Court in its Decision No. 1363/K/Sip/1997 that Article 19 of

Government Regulation No. 10 of 1961 (as amended by Government Regulation No. 24 of 1997) clearly stipulates that the PPAT deed is only a means of evidence and does not mention that the deed is an absolute requirement for the validity of a land sale or purchase. This rule means that registration of a sale and purchase may only be carried out with a PPAT deed as evidence, while without a PPAT deed a person will not obtain a certificate, even though the sale and purchase is legally valid. Therefore, no later than 7 working days from the date the deed was signed, the PPAT is required to register with the Land Office to strengthen the evidence against third parties, which is also regulated in PP Number 24 of 1997.

Temporary PPAT is obliged to ensure the conformity of the data attached to the related legal act. If there is a legal defect in a deed, it will result in the invalidity of the legal act carried out later. If this happens, the Temporary PPAT must defend itself, although the provisions regarding the defense of PPAT and Temporary PPAT have not been regulated.

For this reason, the Temporary PPAT needs to ensure the guarantee of truth given by the person facing the information included in the deed as a party deed. Therefore, the Temporary PPAT acts based on complete material evidence provided to him. When the Temporary PPAT is sued by a third party who feels aggrieved, the Temporary PPAT can request legal protection from IPPAT. It should be remembered that the Temporary PPAT has limitations on requests for accountability, namely being asked for information related to the deed he made. If the Temporary PPAT is proven legally and convincingly guilty, the Temporary PPAT can be subject to administrative sanctions or criminal sanctions, it is also possible that the injured party will be sued for compensation in a civil manner.

Before carrying out his duties and authority as a Temporary PPAT, the sub-district head in question is of course obliged to take part in training in the form of technical land training organized by the National Land Agency and the Ministry of Agrarian Affairs and Spatial Planning, which organizes the training can cooperate with the PPAT professional organization. The purpose of providing technical land training is to increase the ability of Temporary PPATs in carrying out their duties. Therefore, after carrying out technical land training, the relevant Sub-district Head will receive a certificate stating that the person concerned has attended the technical training and the relevant Sub-district Head will receive a decree appointing the Sub-district Head as PPAT as regulated in KBPN regulation number 23 of 2009 in Article 18. Education regarding land by the National Land Agency can be attended once, if there is a job rotation or a change in the sub-district's work area, then for the application for appointment of the Sub-district Head, it is not necessary to re-attend the education because he/she has received a certificate charter which is proof of participation in the previous Land Education.

However, implementation in the field still encounters obstacles. In Government Regulation Number 37 of 1998 which was amended by PP Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation on the Position of Land Deed Making Officials, it is stipulated that PPAT in carrying out their duties as officials authorized to register land by issuing land deeds, there are still several Sub-district Heads who are at risk of making improper records of land ownership rights, which of course results in land disputes that also cause prolonged conflicts between residents, the Temporary PPAT concerned and the government (Alvian, 2018). Of course, as a public official, Temporary PPAT is required to work professionally and with integrity for the convenience of the land office to verify land both for Land Rights and Ownership Rights for Apartment Units. PPAT who based on the PPAT Position Regulation are required to take a Masters in Notary studies must of course be in line with the obligations of Temporary PPAT. It is an injustice and unprofessionalism when Temporary PPATs do not receive adequate and comprehensive training considering that the responsibilities of Temporary PPATs are equal to those of PPATs.

Another problem can be seen from the status of the Sub-district Head as a State Civil Apparatus, in this case a Civil Servant as regulated through Article 224 of Law Number 23 of 2014 which in essence explains that

the Sub-district is led by a Sub-district Head in the form of a Sub-district Head who is under and directly responsible to the Mayor/Regent. Therefore, the Mayor/Regent is required to appoint a Sub-district Head from among Civil Servants who have technical knowledge related to government and have fulfilled all the requirements for employment. This clearly violates the constitution, specifically the prohibition of Government Regulation Number 24 of 2016 in Article 7 paragraph (2) which in essence regulates that PPATs are prohibited from holding concurrent positions as Civil Servants (*PNS*). This overlapping regulation has implications for the legal uncertainty of the implementation of the Temporary PPAT position and there is no clear follow-up from the government as the lawmaker so that this legal uncertainty harms the national constitution.

CONCLUSION

Temporary PPAT has a big responsibility in ensuring the validity and truth of every deed that they make. Obligation to verify the data provided by the parties concerned is important in order to avoid legal disputes in the future. However, legal protection for Temporary PPATs facing lawsuits has not been clearly regulated. To improve competence and knowledge, Temporary PPATs are required to attend technical land training organized by the National Land Agency.

This briefing aims to equip Temporary PPAT with sufficient knowledge in carrying out their duties. The briefing certificate obtained is valid for life, so Temporary PPAT who changes work area does not need to undergo re-briefing. The implementation of Temporary PPAT duties by the Sub-district Head still faces various obstacles, especially related to qualifications, training, and conflicts of interest in office. The unclear regulations and lack of training for Temporary PPAT have a serious impact on the quality of land services and have the potential to cause land disputes. The government needs to immediately conduct a comprehensive evaluation and revise related laws and regulations to provide legal certainty and protection for the community.

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