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Legal Analysis of Land Sale And Purchase Deeds Made Not in Accordance With the Provisions of Government Regulation Number 24 of 2016 (Case Study of Supreme Court Decision Number 3507 K/PDT/2023)

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Abstract: This research aims to examine the validity of the deed made by the Deed Official. The State of Indonesia declares itself as a State of law which means that all aspects of life including all activities, regulations, and decisions to be taken by the Government must be based on all applicable laws in the State of Indonesia. The leadership system adopted by Indonesia is a Presidential government where the President is given the duty and trust as the Head of State. In exercising his governmental powers, the President is assisted by state ministers appointed and dismissed by the President. Regarding the scope of Land Registration in Indonesia, the Government is assisted by the National Land Agency and the Land Deed Official. The presence and role of the Land Deed Official in ensuring legal certainty of land status and ownership is very important because it is the main pillar, the condition for the authenticity of a deed, as proof that a legal action has occurred regarding land rights. In carrying out his position, the Land Deed Official is obliged to comply with statutory regulations, namely Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials. The presence and role of the Land Deed Official in ensuring legal certainty of land status and ownership is very important because it is the main pillar, the condition for the authenticity of a deed, as proof that a legal action has occurred regarding land rights. In carrying out his position, the Land Deed Official is obliged to comply with statutory regulations, namely Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials. This research, namely by examining the Supreme Court Decision Number 3507 K / Pdt / 2023, and the statutory approach to understanding how the law is applied in the concrete situation of the case.

Keyword: Deed of Sale and Purchase of Land, Land Deed Official, Wrongful Act, Legal Defect..

INTRODUCTION

Indonesia's role as a State of law also includes the obligation of the State to be able to ensure that law enforcement carried out in the State of Indonesia is carried out fairly and equally for every citizen regardless of position, race, ethnicity, religion and other aspects. The application of the concept of the rule of law is of course also a challenge for the State of Indonesia, in this case the Government as a representative of the State to be able to guide, nurture all Indonesian people to be able to obey and comply with all applicable legal regulations in the State of Indonesia because to be able to realize every design, change, development, every activity and decision that will be carried out by a State without the active participation of the people of the State then it can certainly never be realized and implemented. The State of Indonesia recognizes Pancasila as the source of all sources of State law, this is by and written in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia which states:

The problem formulation contains article questions that must be explained in the discussion and answered in the conclusion.

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and strengthened in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which states that the President is given the duty and trust as Head of State as well as Head of Government and in exercising his governmental powers, the President is assisted by state ministers who are appointed and dismissed by the President. Regarding the scope of government in the field of agrarian or land and spatial planning, the President is assisted by the Ministry of Agrarian Affairs and Spatial Planning and the National Land Agency, while in terms of land administration, namely in detail regarding the scope of Land Registration in Indonesia, the Government is assisted by the National Land Agency and Land Deed Officials, The purpose of land registration is also a form of government commitment in realizing the status of the State of law, namely by conducting land registration is expected to provide legal certainty and legal protection to all holders of land rights as stipulated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Government Regulation Number 24 of 1997 concerning Land Registration.

“The State of Indonesia is a state of law. ”

The presence and role of the Land Deed Official in ensuring legal certainty of land status and ownership is very important because it is the main pillar, the condition for the authenticity of a deed, as proof that a legal action has occurred regarding land rights. The Land Deed Official for this reason, in carrying out his position, is obliged to comply with laws and regulations, especially those related to land and agrarian affairs, to ensure that this is obeyed by all PPATs, a PPAT professional organization was formed, namely the Association of Land Deed Officials (IPPAT) which is required to compile a regulation or procedure that guides the behavior of PPATs in carrying out their duties and positions or better known as the PPAT Code of Ethics which is written:

“To maintain the dignity and honor of the PPAT and/or Temporary PPAT profession, a PPAT and/or Temporary PPAT professional organization shall be formed. Then added in Article 2, The professional organization of PPAT and or Temporary PPAT as referred to in paragraph (1) must compile 1 (one) PPAT Professional Code of Ethics that applies nationally to be obeyed

by all members of PPAT and Temporary PPAT” (Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Official, 2006).

Any violation of the code of ethics that has been determined may be subject to sanctions by applicable provisions and regulations to make this code of ethics not only a guideline in behavior but also has legal force. The Legal Basis for the PPAT Code of Ethics is regulated in Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials which generally regulates the roles, functions, and responsibilities of PPATs, including the obligation to carry out duties per the code of ethics regulated in:

“PPATs must carry out their duties with full responsibility under the provisions of the applicable laws and regulations. Then added in Article 6 paragraph (1), PPAT in carrying out the duties of his position must comply with laws and regulations, oaths or promises of office, and PPAT code of ethics. And Article 25, PPATs who violate the provisions in laws and regulations or code of ethics may be subject to administrative sanctions, which are further regulated by the Minister of Agrarian Affairs/Head of BPN.” (Government Regulation No. 24 of 2016 on the Amendment of Government Regulation No. 37 of 1998 on the Regulation of the Position of Land Deed Officials of the Republic of Indonesia, 2016, 2016).

The government regulation above clarifies the position of the deed made by the land deed maker in the land registration process because it can be concluded that based on the legal regulations above, without the transfer deed from the PPAT, the National Land Agency or the Head of the land office cannot carry out the registration of land rights, which clearly shows the relationship between these two institutions that complement and influence each other in the land registration process, namely in making transfer deeds and land certificates. Overall, land registration in Indonesia has made significant progress in terms of digitization and policy. However, challenges such as bureaucracy, legal uncertainty, limited resources, and the need for further education still need to be addressed to ensure a more effective and efficient land registration system. Continued efforts to improve the land registration system will be essential to support legal certainty and better land management in Indonesia.

Disputes related to land registration in Indonesia often involve PPAT as someone who is given authority by the State to make authentic deeds. One clear example of a land dispute involving PPAT is Supreme Court Decision Number 3507 K/PDT/2023. This case relates to the Deed of Sale and Purchase Number 134 of 2016 and Number 135 of 2016 made by Notary/PPAT Roy Pudyo Hermawan. It started when Retno Probowati as the Plaintiff applied for a loan to H. Triyo Sugeng as Defendant III to pay off her debt at the bank and promised will make repayment within 5 months and then submit collateral for the Ownership Certificate (SHM) Number 681 and SHM Number 682 for the loan. However, until the repayment period promised, Retno Probowati was unable to pay off the debt, so in the debt and receivable process, H. Triyo Sugeng carried out the transfer of land rights assisted by Roy Pudyo Hermawan as Notary/PPAT without the knowledge and consent of Retno Probowati as the owner, which was then issued. Deed of Sale and Purchase Number 134 of 2016 and Number 135 of 2016 and the sale and purchase transaction was carried out on the land by H. Triyo Sugeng as seller and Henky Indresworo as buyer and Defendant IV. So in the end, Retno Probowati filed a lawsuit regarding ownership of the land rights which went through three levels of justice, namely at the Malang District Court, Surabaya High Court, and the Supreme Court, which resulted in different decisions. (Supreme Court Decision Number 3507 K/PDT/2023, 2023).

METHOD

The research carried out in this study is normative legal research, which focuses on the analysis of applicable legal norms. This research focuses on applicable written legal norms and their application in the context of land disputes involving the profession of land deed officials in Indonesia. This research aims to analyze legal rules conceptually, by examining legal documents such as laws, court decisions, and legal literature, and in this research, the author tries to find answers to legal problems experienced through a doctrinal approach and legal interpretation (Soerjono, Soekanto, 2008).

The data and data sources used in this research are primary data and secondary data. Primary legal sources used in this research include statutory regulations, and court decisions which are used as a reference for understanding and analyzing applicable legal norms because they have valid legal force and directly regulate the rights and obligations of society. The secondary legal sources used by researchers to help explain the primary legal material for this research consist of related literature, articles, journals, and expert opinions. and also interviews to examine the research object. The data analysis technique used is qualitative data collection and prescriptive techniques to describe the responsibilities of Land Deed Making Officials regarding the validity of sale and purchase deeds that are made not per GOVERNMENT REGULATION NUMBER 24 OF 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds.

RESULTS AND DISCUSSION

The legal force of the Land Sale and Purchase Deed made by the Land Deed Making Official in Supreme Court Decision Number 3507 of 2023

PPAT's position as the sole institution with authority to record legal acts regarding land rights is recognized as having absolute authority in carrying out activities within the scope of land as regulated in Article 37 and Article 45 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. deed made by the land deed official in the land registration process because it can be concluded that based on the legal regulations above. Without a deed of transition from the PPAT, the National Land Agency or the Head of the Land Office cannot carry out registration of land rights which clearly shows the interconnectedness of the relationship between these two institutions. which complement and influence each other in the land registration process, namely in making transition deeds and land certificates which clarify the position of the deed made by the land deed making official in the land registration process because it can be concluded that based on the legal regulations above without a transition deed from PPAT, the National Land Agency or The head of the land office cannot carry out registration of land rights which clearly shows the interconnectedness of the relationship between these two institutions which complement and influence each other in the land registration process, namely in making transfer deeds and land certificates.

The legal force of the Deed of Sale and Purchase (AJB) made by the Land Deed Making Officer (PPAT) in the Supreme Court Decision Number 3507 K/Pdt/2023 experienced various interesting polemics to be discussed before seeing the results of the decision from the Supreme Court Judges, namely:

Issuance of the Deed Without the Knowledge of the Legal Owner, the Plaintiff (Retno Probowati) stated that the AJB was issued without his knowledge and consent as the legal owner of the two land certificates (Ownership Certificate Number 681 and Number 682). This is a violation of the principles of prudence and legality in making AJB by PPAT.

Engineering in Making a Deed, the Deed is considered to be engineered by the parties involved. The Supreme Court considered that this action was an Unlawful Act (PMH), which led to the invalidation of the deed as a legal instrument

Violation of AJB Making Procedures, the making of AJB does not comply with the procedures stipulated in land law and applicable laws and regulations. The relationship between the plaintiff and another party (Defendant III) is a debt and receivable relationship, where the two property rights certificates are used as collateral for the debt. When the debt could not be repaid, the certificate was transferred to another party (Defendant IV) without going through the auction procedure that should have been carried out. The sale and purchase deed made based on this debt and receivable is considered invalid according to law.

So the sale and purchase deed was declared defective and null and void by law. In this case, the Deed of Sale and Purchase Numbers 134/2016 and 135/2016 made by PPAT Roy Pudyo Hermawan were considered invalid because the procedure for making it did not comply with applicable regulations. The Supreme Court considered that the issuance of the deed involved engineering and was an unlawful act (PMH), so the AJB lost its binding legal force (Supreme Court Decision Number 3507, 2023).

The legal basis used in this decision refers to the principle that every sale and purchase agreement, including the making of a Sale and Purchase Deed by PPAT, must fulfill the legal requirements for an agreement as regulated in Article 1320 of the Civil Code. (Civil Code, 2007)

and for not complying with the PPAT code of ethics in making the AJB. (GOVERNMENT REGULATION NUMBER 24, 2016) Apart from that, in this case, there was a procedural violation regarding the transfer of debts and receivables underlying the sale and purchase transaction, so the sale and purchase based on these receivables could not be justified. In addition, the Supreme Court also emphasized the importance of carrying out collateral auctions per the provisions of the sale and purchase are based on debt collateral, not through direct transfer.

Responsibility of the Official Land Deed Maker for making a Sale and Purchase Deed that is legally flawed Civil Liability

PPAT is civilly responsible for every deed it makes. If the Deed of Sale and Purchase made by PPAT is legally flawed because it does not meet formal or material requirements, then the party who feels disadvantaged can sue PPAT based on Unlawful Actions (PMH). This is based on Article 1365 of the Civil Code, which states that "any unlawful act that causes harm to another person requires the party causing the harm to compensate for the loss." (Civil Code, 2007)

PPAT is responsible for the validity and accuracy of the deeds they make and issue. If an error occurs that harms another party, the PPAT can be held responsible. This is stated in Article 1868 of the Civil Code (KUHP) which regulates liability for compensation in the event of an error in making a deed.

In the case of Supreme Court Decision No. 3507 K/Pdt/2023, the Deed of Sale and Purchase was declared legally defective because it was made without the knowledge and consent of the entitled party, and there was an element of engineering in the making of the deed. In this context, PPAT can be sued to provide compensation to the injured party.

Administrative Responsibilities

Administratively, PPAT is also subject to the rules set by the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN). The administrative responsibilities of the Land Deed Drafting Officer (PPAT) include obligations that must be fulfilled in carrying out their duties under statutory regulations, namely:

Preparation of Legal and Correct Deeds

1. PPAT is obliged to prepare a deed that meets formal and material requirements and reflects the actual situation.

Land Deed Registration

2. PPAT is obliged to register the deed made to the authorized agency, such as the National Land Agency (BPN).

PPAT Activity Reporting

3. PPAT must report activities and documents related to deeds made to the relevant agencies, usually in the form of an annual report.

Document Storage

4. PPAT is responsible for storing deed documents and other supporting evidence properly and safely.

Comply with the Code of Ethics

5. PPAT is obliged to comply with the code of ethics established by the authorized professional organization.

Compliance with Legislation

PPAT must comply with all applicable laws and regulations related to its field of duties.

PPAT can be subject to administrative sanctions if it violates applicable regulations, such as revoking its permit as a PPAT. By fulfilling this administrative responsibility, PPAT plays an important role in maintaining the legality and security of land transactions, as well as providing legal protection for the community.

If it is proven that PPAT has violated the provisions stipulated in Government Regulation no. 24 of 2016 concerning Amendments to Government Regulation no. 37 of 1998 concerning PPAT Position Regulations, PPAT can be subject to administrative sanctions. These sanctions include:

1. Reprimand
2. Written warning
3. Temporary suspension of PPAT positions
4. Dismissal from the PPAT position

In making the AJB, the PPAT is obliged to ensure that the deed it makes meets all applicable terms and conditions, such as having approval from the entitled party, and following valid legal procedures.

Criminal Liability

The criminal responsibility of Land Deed Officials (PPAT) relates to violations of the law which can result in criminal sanctions which include:

1. Making Fake Deeds

PPATs who make deeds that do not correspond to reality or falsify documents may be subject to criminal sanctions.

2. Abuse of Position

If the PPAT abuses its authority for personal interests or those of other parties, it may be subject to criminal sanctions.

3. Involvement in Illegal Land Transactions

PPATs involved in land transactions that do not comply with the law, such as buying and selling land without a valid certificate, may be subject to criminal sanctions.

1. Involvement in Corruption

PPAT can be subject to criminal sanctions if it is involved in corrupt practices, such as accepting bribes in the process of making deeds.

2. Violating Reporting Obligations

If PPAT does not report suspicious transactions or does not comply with established reporting obligations, they may be subject to criminal sanctions.

If it is proven that PPAT deliberately falsified data or carried out engineering in making the AJB, then PPAT can be subject to criminal sanctions based on forgery or other criminal acts

under the provisions in Article 263 of the Criminal Code concerning Document Forgery, which regulates that anyone who intentionally makes a fake or falsified document Letters that can give rise to rights, obligations or discharge of debts can be punished with criminal penalties. Thus, PPAT is legally responsible for every deed it makes, both from a civil, administrative, and criminal perspective. This responsibility arises when the deed made is declared legally defective and causes losses to other parties.

CONCLUSION

The Deed of Sale and Purchase (AJB) made by the Land Deed Making Officer (PPAT) has legal force as an authentic deed. Based on Article 1868 of the Civil Code (Perdata), an authentic deed is a deed made by or in the presence of an authorized official, which in the case of buying and selling land is PPAT. This authentic deed has perfect evidentiary power regarding what is stated in the deed, both formally and materially. However, making a Sale and Purchase Deed that is not under the Position Regulations for Land Deed Making Officials has implications for the validity, the legal force of the sale and purchase deed is not recognized or is declared legally defective. (Government Regulation Number 24, 2016) As in the case of Supreme Court Decision Number 3507 K/Pdt/2023, where the Land Sale and Purchase Deed made by PPAT was declared null and void due to engineering and procedural violations so that the deed was declared to have no legal force.

Land Deed Making Officials (PPAT) have a big responsibility in making the Sale and Purchase Deed (AJB) because the AJB they make is an authentic deed which is the legal basis for the transfer of land rights. Mistakes, negligence or deliberate actions made by the PPAT that cause legal defects in the Deed of Sale and Purchase can give rise to legal liability which includes Civil Liability, Administrative Responsibility, and even Criminal Liability. For this reason, PPAT in carrying out its duties and positions is obliged to apply the precautionary principle to ensure that every action taken is by regulations and does not harm any party.

REFERENCE

- Asshidiqie, Jimly, Pengantar Ilmu Hukum Tata Negara, (Sekretariat Jenderal dan Kepaniteraan Mahkamah Konstitusi Republik Indonesia, 2006)
- Notoatmojo, S, Metodologi Penelitian Kesehatan, (Jakarta: Rineka Cipta, 2018)
- Radbruch, G, Gesetze und Verbrechen, (Heidelberg: Carl Winter, 1950)
- May, W, The Physician's Covenant : Images of the Healer in Medical Ethics (Philadelphia: Westminster John Knox Press, 1983)
- Hadjon, Philip M, Perlindungan Hukum bagi Rakyat di Indonesia (Surabaya: Bina Ilmu, 1987)
- Soerjono, Soekanto, Penelitian Hukum Normatif (Jakarta: Raja Grafindo Persada, 2008)
- Sugiyono, Metode Penelitian Kuantitatif, Kualitatif, dan R&D (Bandung: Alfabeta, 2017)
- Huberman, Matthew B., and A. Michael, Qualitative Data Analysis: An Expanded Sourcebook (Thousand Oaks, CA: Sage Publications, 1994)
- Indonesia, Undang-Undang Dasar Negara Republik Indonesia 1945 (Lembaran Negara Republik Indonesia, No. 75, 1959).
- Indonesia, Kitab Undang-undang Hukum Perdata, (Jakarta: Sinar Grafika, 2002.)
- Indonesia, Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria (Lembaran Negara No. 104, 1960)
- Indonesia, Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Perubahan Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta

Tanah Republik Indonesia Tahun 2016 (Lembaran Negara Republik Indonesia Nomor 120, Tambahan Lembaran Negara Republik Indonesia Nomor 5899)
Indonesia, Peraturan Menteri Agraria dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 2 Tahun 2018 tentang Kode Etik dan Tanggung Jawab Jabatan PPAT
Indonesia, Peraturan Kepala Badan Pertanahan Nasional Nomor 1 Tahun 2006 tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah (Berita Negara Republik Indonesia Tahun 2006)
Indonesia, Kode Etik Ikatan Pejabat Pembuat Akta Tanah (IPPAT)
Putusan Nomor 3507 K/Pdt/2023