

The Responsibilities of Land Deed Officials in Cases of Legally Null and Void Sale Agreements

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Abstract

The Land Deed Official (PPAT) often finds themselves as the defendant in legal cases. One notable example is the decision from the Makassar District Court No. 126/Pdt.G/2019/PN Mks. The purpose of this research is to analyze the responsibilities of the Land Deed Official (PPAT) when the deed they have prepared is declared null and void by law. This study employs a normative legal research approach, utilizing both legislative and case study methods. The legal materials for this research consist of primary legal materials and secondary legal materials, which will be analyzed using systematic interpretation and grammatical interpretation techniques. The findings indicate that the PPAT, as a public official responsible for drafting the Sale and Purchase Deed in Decision No. 126/Pdt.G/2019/PN Mks, must be accountable for the deed they create from an administrative perspective. This deed was declared null and void due to the failure to meet the contractual elements; consequently, the PPAT faced only administrative sanctions based on the ruling.

Keywords: *Land Deed Officer, Sale and Purchase Deed, Court Decision, Null and Void by Law*

INTRODUCTION

The function of a legal state is to provide legal protection, legal certainty, and legal order in order to achieve justice. These three elements require tangible evidence in social life as legal subjects to determine their rights and obligations (Anshori, 2009). Indonesia is a state based on law (*rechtstaat*), and therefore the government should ensure that the functions of the law are effectively implemented. The Indonesian government places significant emphasis on legal development, particularly in providing basic services to meet the needs of the community, as well as demonstrating the presence of the state (Karsayuda, Fadli, Khusaini, & Kusumaningrum, 2023). The government then established legal professions to support individuals with limited understanding of the legal procedures they must navigate in various issues, with the aim of raising legal awareness among citizens and relevant parties. One of the legal professions created is the Land Deed Official (PPAT).

In Indonesia, the Land Deed Official (PPAT) is subject to and must comply with Government Regulation No. 24 of 2016 regarding the Amendment to Government Regulation No. 37 of 1998 on the Regulation of the Position of Land Deed Officials, hereinafter referred to as PP PPAT (Thamrin, 2011). Referring to Article 1, Paragraph (1) of PP PPAT, it regulates that the authority of a Land Deed Official (PPAT) is to create authentic deeds related to land or land rights in Indonesia, specifically concerning Land Rights or Ownership Rights over Apartment Units. This authority means that a PPAT is empowered to provide public services to the community by creating authentic deeds, which serve as irrefutable evidence in legal actions related to land matters.

The authentic acts created by the PPAT are always related to the valid requirements of agreements as regulated in the Civil Code (KUHPdt). These provisions are outlined in Article 1320 of the Civil Code, which states: 1) Mutual Consent; 2) Capacity; 3) A Specific Matter; and

4) A Legal Cause. Requirements 1 and 2 are subjective requirements, while 3 and 4 are objective requirements. This means that if the subjective requirements are not met, the legal consequence is that the agreement can be annulled, whereas if the objective requirements cannot be fulfilled, the legal consequence is that the agreement is null and void (considered never to have existed) (HS, 2016). The cancellation of acts created by the PPAT can occur not only due to errors or negligence on the part of the PPAT during the drafting process but also as a result of negligence or errors by the parties involved in the creation of the act. Additionally, the cancellation of acts made by the PPAT may also be carried out based on a court decision.

In carrying out its duties, the PPAT often becomes a defendant. However, the PPAT merely explains the legal actions of the parties involved and then formalizes them in an act. The PPAT being sued is, in fact, a way to compel the PPAT to provide testimony regarding the act, which has now become evidence in legal proceedings (Sukisno, 2008). It is important to emphasize that if the act becomes evidence in legal proceedings, it requires proof that demonstrates the act is invalid in terms of its external form, formalities, and substance in cases challenging the validity of the act created by the PPAT. However, if no evidence of invalidity is found, the act remains valid and "binding" on the parties involved. If the act is proven invalid, and a request for annulment is not made in a lawsuit, the judge does not have the authority to annul the act created by the PPAT, as judges are not permitted to issue decisions on matters that are not requested by the concerned parties (Mertokusumo, 1998).

Referring to a case regarding a PPAT act that is null and void based on Court Decision Number: 126/Pdt.G/2019/PN Mks, which occurred in Makassar, South Sulawesi, it raises the question of the PPAT's responsibility for a sale and purchase deed that is deemed null and void according to that ruling. Consequently, the act that is null and void cannot serve as a valid instrument to provide legal certainty for the parties involved. The concept of legal responsibility for the PPAT, who has misused their authority in creating the act, requires them to be held legally accountable for specific actions if such actions are subject to legal sanctions for unlawful conduct, as this constitutes the concept of legal liability (Asshiddiqie & Safa'at, 2006). Based on this, the purpose of this study is to analyze the responsibility of the Land Deed Official (PPAT) regarding the Sale and Purchase Deed based on the Makassar District Court Decision Number 126/Pdt.G/2019/PN Mks.

Previous research conducted by (B, 2022) examined the responsibility of the Land Deed Official (PPAT) regarding sale and purchase deeds that were not submitted to the land office. The essence of this research highlights the unlawful act committed by the buyer against the seller and the PPAT, as they failed to register the Sale and Purchase Deed with the land office within eight months of its signing. According to (Subastyo, 2019) researched the time limits of a notary's responsibility as a public official concerning the acts executed before them after their term has ended. The essence of this study focuses on the notary's accountability for the acts created during their tenure and the extent of their responsibility for those acts once their term has concluded.

The most recent research by (Mulyana & Abdughani, 2021) found that a Sale and Purchase Deed proven to be legally defective due to the non-fulfillment of the requirements for the validity of an agreement and/or the failure to meet the formal and material requirements for the preparation of the deed results in the nullification of the Sale and Purchase Deed as an authentic deed. Consequently, the deed is either canceled or declared null and void by law, and it no longer holds binding legal force. The research specifically examines and analyzes deeds made by notaries and officials authorized to draft land deeds. The three previous studies, especially in this study, have their own novelty, especially with regard to the responsibility of PPAT for the Sale and Purchase Deed which is null and void.

Based on previous research, this study specifically uses the theory of legal responsibility to analyze this research. The theory of responsibility is based on two underlying theories: First,

the theory of “*fautes personnelles*” which asserts that losses suffered by a third party must be borne by the official responsible for the actions that caused those losses. Second, the theory of “*fautes de services*,” which holds that losses incurred by a third party are the responsibility of the institution where the official works.

Based on the aforementioned explanation, this theory of responsibility reflects human behavior. The manifestation of human behavior is related to the control of one's psyche and is part of their intellectual or mental deliberation. Once a decision has been made or rejected, it becomes the responsibility and consequence of that choice. There are no other justifications for the actions or omissions. This decision is regarded as the result of their intellectual understanding (Efendi, 1994). Thus, this theory of responsibility is employed to analyze the accountability of the Land Deed Official (PPAT) regarding the Sale and Purchase Deed based on the Makassar District Court Decision Number 126/Pdt.G/2019/PN Mks.

RESEARCH METHODS

The type of research in this writing employs a normative legal approach. This normative legal research is conducted to generate arguments and theories (new concepts) as prescriptions for resolving the issues (Marzuki, 2019). Specifically, this research focuses on the responsibility of the Land Deed Official (PPAT) regarding Sale and Purchase Deeds that are null and void. The research approach consists of two methods: First, the Statute Approach, which involves examining the provisions governing the responsibility of the PPAT concerning Sale and Purchase Deeds. Second, the Case Approach, which analyzes the case of Makassar District Court Decision Number 126/Pdt.G/2019/PN Mks related to the legal issues at hand. The legal materials used include Primary Legal Materials (comprising positive law related to the responsibility of the PPAT for the Sale and Purchase Deeds they have created) and Secondary Legal Materials (consisting of publications related to the responsibility of the PPAT for the Sale and Purchase Deeds they have created). These legal materials are analyzed using systematic and grammatical legal analysis techniques. Systematic interpretation involves carefully analyzing legislation and identifying relationships among the secondary legal materials, while grammatical interpretation emphasizes assigning meaning to a text within legal principles (Khalid, 2014).

RESULT AND DISCUSSION

The Authority of the Land Deed Official in the Transfer of Rights and the Creation of Land Deeds

The Land Deed Official (PPAT) is a public official who plays a crucial role in the process of transferring land rights. The authority granted to the PPAT is regulated by various legal provisions, including Government Regulation Number 24 of 1997 concerning Land Registration. Referring to the primary duties of the Land Deed Official, these are defined in the Government Regulation. Among the tasks of the PPAT, some activities involve land registration by creating deeds as evidence of specific legal actions regarding land rights or ownership of apartment units, which will serve as the basis for registering changes in land registration data resulting from legal actions, as stipulated in Article 2, paragraph (1) of the PPAT Regulation.

One of the powers of the PPAT, according to Article 2, paragraph (2) of the PPAT Regulation, is to create authentic deeds concerning eight types of legal actions: Sale and purchase; Exchange; Donation; Contribution to a company (inbreng); Division of common rights; Granting building rights/use rights over property; Granting mortgage rights; and Granting

authority to encumber mortgage rights. The eight powers of the PPAT mentioned above are closely related to land rights and ownership of apartment units. Furthermore, it is important to note that the PPAT can only exercise their authority within their designated working area (Lubis, 2009).

As a public official authorized to create deeds related to land, the Land Deed Official (PPAT) must possess specialized skills and knowledge in the field of land affairs to ensure that the deeds they create do not lead to issues in the future. This is important, considering that the deeds serve as evidence of the legal actions involved in the transfer of rights or the annulment of land rights. The PPAT deed, as an authentic act, holds absolute validity regarding the matters or events described in the deed, meaning that the event itself is what is being proven (Sutedi, 2012).

Analysis of the Makassar District Court Decision Number 126/Pdt.G/2019/PN Mks

In the civil case numbered 126/Pdt.G/2019/PN Mks, decided by the panel of judges on January 21, 2020, held at the Makassar District Court, the Plaintiff, Ir. Muhsin Abdullah, residing at Jalan Ade Irma Nasution Blok B/12, Rukun Tetangga 002, Rukun Warga 004, Kelurahan Ujung Pandang Baru, Kecamatan Tallo, Makassar, authorized Hannani Parani, SH, through a special power of attorney dated October 15, 2018, against Defendant I, Salim Abdullah, residing at Jalan gg. Langgar, Rukun Tetangga 006, Rukun Warga 010, Kelurahan Cawang, Kecamatan Kramat Jati, East Jakarta. The Second Defendant, Taufiq Arifin, SH, is located at Jalan Kancil Utara Nomor 50, Kelurahan Mamajang Dalam, Kecamatan Mamajang, Makassar, while the Head of the Makassar Land Office, located at Jalan A.P. Petherani, Makassar, is named as the Co-Defendant.

On February 1, 2016, Salim Bin Abdullah (Defendant I) sold land belonging to the late Sajid Abdullah Al Hamid, with Land Certificate Number 23740 and Measurement Certificate Number 04275/2015, issued on September 11, 2015, for a parcel of land measuring 260 m² located in South Sulawesi Province, Makassar City, Manggala District, Borong Village. This sale was based on a power of attorney from Muhsin Bin Abdullah (Plaintiff I) along with the 13 other heirs, which was legalized by Notary Sofiah Alatas, SH, under Power of Attorney Number 02/X/L/2002, granting authority to Salim Bin Abdullah (Defendant I) to act on their behalf. The transaction took place in front of Notary Taufiq Arifin, S.H. (Defendant II), as documented in Sale and Purchase Deed Number 12/2016.

Power of Attorney Number 02/X/L/2002, legalized by Notary Sofiah Alatas, SH, was granted and signed by Muhsin Bin Abdullah (Plaintiff I) along with the 13 other heirs to Salim Bin Abdullah (Defendant I) for the purpose of selling the land with Land Certificate Number 23740 owned by the late Sajid Abdullah Al Hamid. This power of attorney was intended for the sale of the land to a third party; however, in reality, Salim Bin Abdullah (Defendant I) sold the land to himself. According to Muhsin Bin Abdullah (Plaintiff I) and the 13 other heirs, there was a misunderstanding or error regarding the identity of the buyer, as they believed the buyer of the land left by the late Sajid Abdullah Al Hamid was someone else or a third party. Had Muhsin Bin Abdullah (Plaintiff I) and the 13 other heirs known that the buyer was Salim Bin Abdullah (Defendant I), they would not have granted their consent in the form of the Power of Attorney.

Due to the misunderstanding or error in the sale of the land, the granting of consent in the form of Power of Attorney Number 02/X/L/2002, legalized by Notary Sofiah Alatas, SH, is well-founded in declaring that the Power of Attorney is null and void. This is because the subjective requirements outlined in Article 1320 of the Civil Code have not been met. In Decision Number 126/Pdt.G/2019/PN Mks, under ruling number 4, the panel of judges decided that Sale and Purchase Deed Number 12/2016, created before Notary/Land Deed Official (PPAT) Taufiq Arifin, SH (Defendant II), is null and void. In contract law, the phrase “null and void” is often encountered. This nullity occurs when 2 out of the 4 conditions for the validity of a contract, as outlined in Article 1320 of the Civil Code, are not met: 1) Agreement; 2) Capacity; 3) A Specific

Subject Matter; and 4) A Legal Cause. Conditions 1 and 2 are subjective requirements, while 3 and 4 are objective requirements. The subjective requirements pertain to the parties entering into the contract, and if these are not fulfilled, the contract may be annulled. On the other hand, the objective requirements relate to the subject matter of the contract, and if these are not met, the contract is deemed null and void (Khudhori & Ma'ruf, 2018).

The Responsibility of the Land Deed Official (PPAT) Regarding Sale and Purchase Deeds Based on the Makassar District Court Decision Number 126/Pdt.G/2019/PN Mks

A deed is a written document that is signed and prepared to be used as evidence for the benefit of the person for whom the deed is created (Nurfauzi, Putri, Pangesti, & Maharani, 2023). A deed serves two important functions: first, as a formal function, meaning that a legal action is more complete when it is documented in a deed. Second, as an evidentiary function, where the deed serves as proof created by the parties bound by a contract, intended for future verification (Mertokusumo, 1999). It has been stated earlier that a Sale and Purchase Deed is an authentic deed, as the element of authenticity is in accordance with Article 1868 of the Civil Code, which stipulates that a deed must be made in the form prescribed by law by or in the presence of a competent public official at the location where the deed is created. The authenticity of the deed renders it a definitive and perfect instrument of proof.

The evidentiary power is divided into three types; 1) The Evidentiary Power of Formal Evidence refers to the evidentiary power of a document that arises from the document itself. When viewed from the perspective of its origin as an authentic deed, which was created in accordance with applicable legal rules, the document is considered an authentic deed until proven otherwise. This means that it remains valid until someone provides evidence that the document is not an authentic deed. 2) The Evidentiary Power of Formality means that this authentic deed serves as proof that what is stated and recorded in the deed represents the intent of the parties involved. It reflects the intentions of the parties as expressed in the document, in front of a competent official exercising their authority. 3) The Evidentiary Power of Materiality indicates that certainty regarding the substance of a document is crucial. The contents of the document serve as valid proof against the parties who created the document or those who receive rights from it and are enforceable against the public, unless proven otherwise (Pramono, 2015).

In relation to Decision Number 126/Pdt.G/2019/PN Mks, under ruling number 4, the Sale and Purchase Deed (AJB) Number 12/2016 lacks evidentiary strength, specifically External Evidentiary Strength. This is because, according to the definition of external evidentiary strength, it must be established as an authentic deed that has been created in accordance with applicable legal regulations. The process of the creation of Sale and Purchase Deed (AJB) Number 12/2016 is invalid, as it was based on a General Power of Attorney, whereas a Special Power of Attorney should have been used. The latter is a binding agreement that accompanies the principal agreement, namely the Sale and Purchase Agreement. The Formal Evidentiary Strength is also lacking because it is evident that what is stated and recorded in this deed represents the intentions of the parties. In the creation of Sale and Purchase Deed (AJB) Number 12/2016, both parties involved are the same individual, Salim Bin Abdullah (Defendant I), who acted based on a Power of Attorney. It is clear from the substance of the case that the party granting the power, Muhsin Bin Abdullah (Plaintiff I), along with the 13 other heirs, intended for the Power of Attorney to facilitate a sale to a third party, not to Salim Bin Abdullah (Defendant I) as the attorney-in-fact. Thus, it can be concluded that the intentions of both parties do not align. The Material Evidentiary Strength is absent because the contents of the deed are supposed to serve as valid proof for the parties involved in its creation. However, the basis for the creation of Sale and Purchase Deed (AJB) Number 12/2016 is derived from Power of Attorney Number 02/X/L/2002, which was legalized by Notary Sofiah Alatas, SH. The grantor of this power of attorney has

explained the purpose of its creation and has filed for its annulment. Therefore, it can be concluded that Sale and Purchase Deed (AJB) Number 12/2016 lacks a valid basis.

The consequences of a nullity are fundamentally the same whether it is void by law, voidable, or considered non-existent; all three result in the legal action being rendered ineffective or lacking legal consequences, meaning that there is no essential element in the agreement. From a causal perspective, a legal act is void by law when the objective requirements are not met, and when the essential conditions of the agreement are not satisfied due to the failure to meet the formal requirements mandated by law or applicable regulations, which is referred to as being non-existent (Mulyoto, 2012). If an agreement does not meet the objective requirements and a lawsuit is filed concerning that agreement, the judge is obligated to render a decision stating that there has never been an agreement or obligation in existence due to the lack of essential criteria (Subekti, 2005). As a result of the judge's decision declaring that the deed is void by law, not only are the parties held accountable, but the Land Deed Official (PPAT), as the creator of the Sale and Purchase Deed, must also bear the legal consequences as part of their accountability for their authority in drafting that authentic deed. This aligns with the Theory of Accountability, known by the principle “geen bevoegdheid zonder verantwoordelijkheid,” which is commonly expressed in English as “there is no authority without responsibility,” meaning that authority cannot exist without corresponding accountability (Ridwan, 2009).

The theory of legal responsibility, as articulated by Hans Kelsen, is known as legal liability and presents the traditional theory of accountability. Within this traditional framework, responsibility is categorized into two types: a) Fault-based liability; and b) Strict liability. Fault-based liability refers to the responsibility attributed to a legal subject or actor who commits an unlawful act due to negligence or carelessness. Negligence is a situation where the legal subject or actor fails to be vigilant, exercises insufficient caution, neglects their duties, or forgets to fulfill their obligations.

Although regulated by law, it is still possible for the Land Deed Official (PPAT) to make errors in performing their duties, resulting in legal consequences for the parties involved. If it is proven that the Land Deed Official (PPAT) colluded with one party to act in a manner that harms another party, then the Land Deed Official (PPAT) must be held accountable for the violation committed. The nature of the liability of the Land Deed Official (PPAT) will ultimately depend on the court's ruling (Rizal, 2022). However, if the party that feels aggrieved does not pursue criminal or civil action against the Land Deed Official (PPAT), then the judges are not permitted to rule on that matter.

In the ruling of Case Number 126/Pdt.G/2019/PN Mks, the plaintiff, Muhsin Bin Abdullah, did not pursue civil or criminal claims against the Land Deed Official (PPAT) Taufiq Arifin, SH (Defendant II). Consequently, the panel of judges did not rule on civil or criminal liability for Taufiq Arifin, SH (Defendant II). The plaintiff, Muhsin Bin Abdullah, only requested that Taufiq Arifin, SH (Defendant II) comply with the ruling issued by the judges, which was reinforced by the decision in point number 7 stating, “Orders Defendant II and the Co-Defendant to comply with this Ruling”.

However, the concept of legal liability is fundamentally related to, yet not identical with, the concept of legal obligation. An individual is legally required to behave in a certain manner; however, the opposite behavior triggers the enforcement of coercive actions. Such coercive actions do not necessarily need to be directed at the individual who is required, referred to as the “offending party”, but may also be directed at other individuals associated with the first individual, in accordance with the established legal framework. An individual subjected to sanctions is said to be “liable” or legally responsible for the violation. Based on this, the scheme of liability regarding the sale and purchase agreement of the land that is null and void can be illustrated in the following scheme:

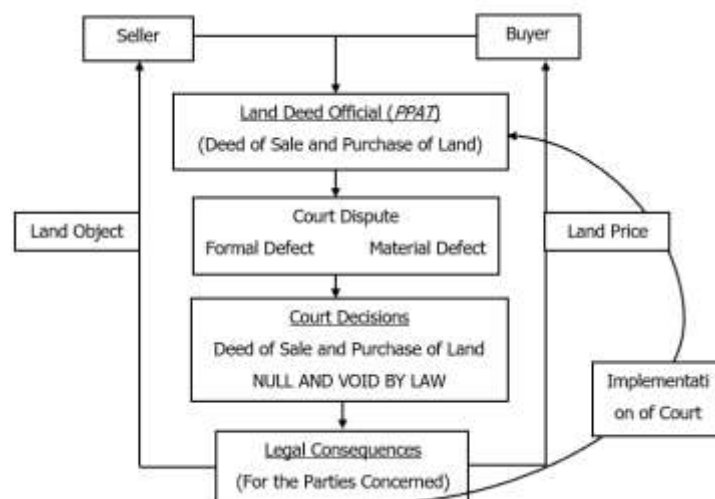


Figure 1. Scheme of Liability for Null and Void Sale and Purchase Agreement

Although the ruling in Case Number 126/Pdt.G/2019/PN Mks did not address claims for criminal or civil liability, this does not mean that the Land Deed Official (PPAT) Taufiq Arifin, SH (Defendant II) is exempt from sanctions. In this case, a PPAT found to have committed unlawful acts may be subject to administrative sanctions. Taufiq Arifin, SH (Defendant II) has violated the obligations outlined in Article 3 letter (f) of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Decree Number 112/KEP-4.1/IV/2017 by acting in favor of one party. His bias as a PPAT is evident from his acceptance of the Power of Attorney submitted by Salim Bin Abdullah (Defendant I) as the basis for the creation of Sale and Purchase Agreement (AJB) Number 12/2016. As a PPAT, he should have known that the use of the Power of Attorney presented by Salim Bin Abdullah (Defendant I) was inappropriate, and that the AJB should not have been executed. Therefore, according to applicable regulations, and since the plaintiff did not pursue civil or criminal claims in the ruling of 126/Pdt.G/2019/PN Mks, the potential sanctions could include reprimand, warning, temporary dismissal, dismissal, or termination with disrespect.

Regarding the theories of legal responsibility and authority, the Land Deed Official (PPAT) is a public official authorized to create authentic deeds concerning specific legal acts related to land rights and the ownership of strata title units. In Case Number 126/Pdt.G/2019/PN Mks, the PPAT Taufiq Arifin, SH, had the authority to create Sale and Purchase Agreement (AJB) Number 12/2016. Therefore, when the AJB is contested in court, this public official must bear responsibility for the legal acts performed. In this ruling, although the form of responsibility is not specified as civil or criminal, the PPAT must still be accountable administratively in accordance with applicable regulations.

CONCLUSION

The Land Deed Official (PPAT) has the authority to create authentic deeds related to land rights, including Sale and Purchase Agreements (AJB). In the case of Decision Number 126/Pdt.G/2019/PN Mks, PPAT Taufiq Arifin, SH, is responsible for the deeds he has executed. Although this responsibility is not characterized as civil or criminal, he is still obligated to bear administrative accountability in accordance with applicable regulations. This underscores the

importance of the PPAT's role in maintaining the validity and integrity of legal documents related to land transactions.

Recommendations for Enhancing PPAT Understanding include: Training and Socialization: Implementing more intensive training and socialization programs for PPATs regarding their legal responsibilities, both administrative and other legal consequences, to improve their understanding of their roles and authorities. Regulatory Improvement: The government should strengthen regulations governing the authority and responsibilities of PPATs to ensure that the deeds they create have a clear legal basis and can be held accountable. Process Transparency: Ensuring that the process of deed creation is conducted transparently, including providing public access to information about procedures and the rights involved in land transactions. Enhanced Oversight: Implementing stricter oversight of PPAT actions to ensure that all applicable procedures are followed, thereby reducing the potential for disputes in the future.

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