

# The Forms Of Notary Public Responsibilities Regarding False Statements In Land Deed Making

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## Abstract.

*A Notary Public, as a public official authorized to create deeds related to land, must have specific expertise in the field of land to ensure that the deeds created do not cause issues in the future. If problems arise due to negligence on the part of the Notary Public, the deed may only have legal validity as an underhand deed. The purpose of this study is to identify the forms of accountability for Notary Publics for their negligence in creating land sale deeds based on false information. This research employs a normative legal research method to examine and analyze legal norms and the Verdict of the District Court Number 51/Pid.B/2022/PN.Bla. The findings of this research are the forms of Notary Public responsibility for deeds annulled by the court related to the case in this study, including: a) administrative sanctions, such as article 13 of Ministerial Regulation of ATR/BPN No. 2/2018, which involves temporary suspension for up to 1 (one) year and imposition of administrative fines; b) civil sanctions, such as Article 1365 of the Civil Code, which involves reimbursement of costs, compensation, and interest; and c) criminal sanctions, such as article 263 of the Penal Code (forgery of documents) carrying a maximum prison sentence of six years, and Article 264 paragraph (1) of the Penal Code (forgery of authentic deeds) carrying a maximum prison sentence of eight years.*

**Keywords:** Notary Public, Land Sale Deeds, and False Information.

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## I. INTRODUCTION

In Law Number 5 of 1960 concerning the Basic Agrarian Principles or commonly known as the UUPA, a legal framework in Indonesian agrarian law is created. Article 19 paragraph (1) of the Basic Agrarian Law states, "To ensure legal certainty by the Government, land registration is carried out throughout the territory of Indonesia according to the provisions stipulated in Government Regulations" (Lysanza Salawati, 2022). Basically, the purpose of land registration services is to improve the welfare of the people. In achieving this goal, the government's targets in land management are legal order in land, administrative order in land, orderly land use, and orderly land and environmental maintenance. In relation to land registration, the community requires legal certainty in services related to land registration. Indonesian legislation regulates matters related to public service or positions related to land interests through the Land Deed Maker (PPAT). Article 1 number 1 of the Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Maker states that: "Land Deed Maker, hereinafter referred to as PPAT, is a public official authorized to create authentic deeds regarding certain legal acts regarding land rights or ownership rights over condominium units" (Annisa Nur Azizah, 2023). In practice, it is often found that if a deed by the Land Deed Maker (PPAT) is disputed by parties or other third parties, the Land Deed Maker (PPAT) is often implicated as a party involved in or assisting in the commission of a criminal act or legal act that violates civil provisions. One example is if it is deemed that false information is made or provided in the Land Deed Maker (PPAT) deed and illegal acts are committed.

In this case, whether the Land Deed Maker (PPAT) intentionally or unintentionally, together with the party/applicant, creates a deed with the intention and purpose of benefiting only certain parties or the applicant to the detriment of others, must be proven in court. (Widayanto, 2015). One case that occurred is the making of a sales deed before the PPAT based on false information. As found in the Verdict of the District Court Number 51/Pid.B/2022/PN.Bla., PPAT DA had committed an illegal act in the process of making sales deed number 306/2013 by providing a sales deed form where some parts were still blank, taken from the PPAT DA office. Thus, forgery of signatures occurred in the sales deed because the sales procedure was not conducted before PPAT DA. In this case, PPAT DA was not sanctioned at all; the judge's verdict in

that decision was that the seller was proven to be legally and convincingly guilty of the crime of instructing the insertion of false information in the authentic deed. Based on these circumstances, any errors and/or negligence in carrying out duties as an authentic deed maker, both in terms of procedures and in the implementation of deed making itself, undoubtedly result in legal consequences for the deed. This is because such errors and/or negligence render the deed legally defective, and its status as an authentic deed is nullified. The legal consequences arising from the errors and/or negligence of the Land Deed Maker must be held accountable. Based on the aforementioned background, this research is conducted under the title "Accountability of Land Deed Makers for False Information in Land Sale Deed Making."

## **II. METHODS**

The type of research used is normative legal research, which focuses on examining the norms found in positive law and the Verdict of the District Court Number 51/Pid.B/2022/PN.Bla. Normative legal research is conducted by examining library materials as the basis for research, conducting searches of legislation and literature related to the issue being studied (Amiruddin, 2018). Normative legal research is a process aimed at finding legal principles, rules, and legal doctrines to address the legal issues under study through the statutory approach method, which involves studying all legislation and regulations related to the legal issue being addressed, such as Government Regulation Number 24 of 2016 concerning amendments to Government Regulation Number 37 of 1998 concerning Land Deed Makers (PPAT) and Ministerial Regulation of ATR/BPN No. 2/2018 concerning the guidance and supervision of PPAT (Marzuki, Legal Research (Revised Edition), 2014).

## **III. RESULT AND DISCUSSION**

The PPAT deed product potentially raises issues or disputes if there are deviations in the terms and procedures of its creation. If the valid conditions of the land and building purchase agreement are incomplete and there are deviations from the procedures for making the deed concerning material conditions (both subject and object) and formal conditions (procedures and requirements), it may result in problems. Legislation asserts that the responsibility of the PPAT is not only limited to the responsibility associated with creating the deed but also extends to a broader sense, including responsibility during the deed's preparation stage and post-signing responsibility. The PPAT's responsibility as a public official and a profession can be categorized into two: ethical responsibility (related to professional ethics) and legal responsibility. Legal responsibility may include criminal law, civil law, and administrative law responsibilities. As a public official, the PPAT, in executing the duties and authorities of the position, particularly regarding the creation of authentic deeds, may occasionally make mistakes, whether they involve formal or material requirements. Problems arise due to negligence, whether intentional or unintentional, by the PPAT.

This results in the deed having only probative force as an underhand deed or being legally void due to the failure to fulfill the valid requirements of the agreement. Consequently, this becomes grounds for the aggrieved party to claim damages from the PPAT. If a deed contains legal defects that can be annulled or voided, then the PPAT can be held accountable for their actions, whether or not it was their fault. (Yasin, 2022). Based on Hans Kelsen's theory of responsibility, which states, "One is legally responsible for a specific act or bears legal responsibility, which means that they are responsible for sanctions regarding the conflicting act." According to Hans Kelsen's theory, if a PPAT DA's action is unlawful, then the PPAT is obligated to be responsible because the action was knowingly done and understood the risks of the consequences of engaging in unlawful behavior. Therefore, it is only fair to hold them accountable for their actions that have harmed others. Analyzing "District Court Decision Number 51/Pid.B/2022/PN.Bla," there should be several responsibilities of the PPAT regarding the deeds made before them, declared legally void or containing legal defects that harm others or other parties, including the following:

### 1. *Administrative Responsibility*

Administrative sanctions that can be imposed on PPAT for violating the regulations applicable to their duties may result in their dismissal from office. The dismissal of a PPAT can occur due to committing minor or severe violations while carrying out their duties. Sanctions for violations committed by PPAT, in the form of administrative actions ranging from written warnings to dismissal, are stipulated in Article 6 paragraph 1 of the 2017 IPPAT Code of Ethics, whereby members who violate the Code of Ethics may face sanctions such as:

- a. Verbal warning;
- b. Warning;
- c. Temporary Dismissal (Schorsing) from IPPAT membership;
- d. Dismissal (Onzetting) from IPPAT membership;
- e. Dismissal with dishonor from IPPAT membership.

The imposition of such sanctions is adjusted according to the quantity and quality of the violations committed by the member (Article 6 paragraph 2 of the IPPAT Code of Ethics).

In the execution of their duties, PPAT is supervised by the Minister through the Head of the Regional Office of BPN or the Head of the Land Office and assisted by the PPAT Advisory and Supervisory Council, where such supervision is preventive and repressive aimed at ensuring that PPAT performs their duties in accordance with legal provisions. However, if violations are found to have been committed by PPAT, they are followed up with an examination by the PPAT Advisory and Supervisory Council. Violations committed by PPAT based on Article 12 paragraph 2 of the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency Number 2 of 2018 concerning Guidance and Supervision of Land Deed Making Officials (hereinafter referred to as Regulation ATR/BPN No.2/2018) include:

- a. Violations of the duties of PPAT;
- b. Failure to fulfill obligations as regulated in legislation;
- c. Violations of prohibitions regulated in legislation; and/or
- d. Violations of the Code of Ethics.

If a deed made by PPAT is proven to be based on false information provided by the parties involved, it can be categorized as a violation of the duties of a PPAT, and such violation is considered one of the severe violations against prohibitions or obligations listed in Annex II of Regulation ATR/BPN No.2/2018. The legal consequences of violations of the duties of PPAT related to false information provided by parties in the deed made by PPAT are through the imposition of administrative sanctions stipulated in Article 13 of Regulation ATR/BPN No. 2/2018. The administrative sanctions imposed on PPAT who commit violations based on Article 13 of Regulation ATR/BPN No.2/2018 may include:

- a. Written warning;
- b. Temporary dismissal;
- c. Dismissal with honor;
- d. Dismissal with dishonor.

For PPAT who violate provisions regarding the completion of deed forms for PPAT deeds, but do not do so according to the correct events, statuses, and accurate data and are not supported by documents according to legislation, they may be temporarily dismissed from their position for up to 1 year. Temporary dismissal is carried out by the head of the regional office of the national defense agency of the respective province as the PPAT's working area. Based on Article 10 paragraph (1) letter b of Government Regulation No. 24 of 2016, it stipulates that "PPAT who is dismissed by the Minister ... is dismissed with dishonor." A PPAT can be dismissed from their position if they violate the applicable provisions in carrying out their duties, and one of the sanctions is administrative sanctions. The dismissal of a PPAT can occur due to committing minor or severe violations while performing their duties. Sanctions for violations committed by PPAT, ranging from written warnings to dismissal, are stipulated in Article 10 of Government Regulation No. 37 of 1998 concerning Land Deed Making Official Position Regulations, namely:

#### Article 10

(1) PPAT is honorably dismissed from their position because:

- a. By their own request;
- b. No longer capable of performing their duties due to physical or mental health conditions, after being declared by a health examination team authorized by the Minister or designated official;
- c. Committing minor violations against prohibitions or obligations as a PPAT;
- d. Appointed as a civil servant or military personnel.

(2) PPAT is dishonorably dismissed from their position because:

- a. Committing severe violations against prohibitions or obligations as a PPAT;
- b. Sentenced to imprisonment because of committing criminal acts punishable by imprisonment for a maximum of 5 (five) years or more severe penalties based on a court decision that has obtained permanent legal force.

(3) The dismissal of PPAT for reasons as referred to in paragraph (1) letter c and paragraph (2) is carried out after the concerned PPAT has been given the opportunity to defend themselves to the Minister.

Administrative accountability is also determined in Article 62 of Government Regulation No. 24 of 1997 concerning land registration, namely:

"PPAT who neglects provisions as referred to in Article 38, Article 39, and Article 40 as well as provisions and instructions given by the Minister or designated officials in carrying out their duties are subject to administrative actions ranging from written warnings to dismissal from their position as PPAT, without prejudice to the possibility of being sued for damages by parties who suffer losses due to the neglect of these provisions." A PPAT can be dismissed from their position if they violate the applicable provisions in carrying out their duties, and one of the sanctions is administrative sanctions. The dismissal of a PPAT can occur due to committing minor or severe violations while performing their duties. Sanctions for violations committed by PPAT, ranging from written warnings to dismissal, are stipulated in Article 10 of Government Regulation No. 37 of 1998 concerning Land Deed Making Official Position Regulations, namely:

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(3) The dismissal of PPAT for reasons as referred to in paragraph (1) letter c and paragraph (2) is carried out after the concerned PPAT has been given the opportunity to defend themselves to the Minister.

Based on the above description, PPAT DA should be subject to administrative sanctions as stipulated in Annex II of Regulation No. 2/2018 page 43, for PPAT who fill in PPAT deed forms but do not do so according to the correct events, statuses, and accurate data and are not supported by documents according to legislation can be temporarily dismissed for up to 1 (one) year and imposed with administrative fines for negligence in their duties.

#### 2. *Civil Liability Responsibility*

The civil liability of PPAT (Land Deed Making Official) is related to discrepancies, negligence, and/or omissions in the creation of sale and purchase deeds. This responsibility is associated with the discovery of deviations related to authentic deeds, which involve juridical defects concerning material conditions (related to its subject and object) and formal conditions (related to procedures and requirements). Such deviations may involve errors, negligence, or even intentional actions that harm one of the parties. Not

only subject to administrative accountability, but these deviations may also lead to claims for damages by affected parties. Civil sanctions are imposed on PPAT for unlawful acts (*onrechtmatige daad*), which are acts that cause harm, and normatively, such acts are subject to Article 1365 of the Civil Code, which states, "Every act that violates the law, causing harm to others, obliges the person responsible for the act to compensate for the harm caused" (Prawira, 2016). PPAT is responsible for compensating the losses suffered by the parties involved in the form of reimbursement of costs and damages. As a result of errors due to intentional actions or negligence such as carelessness, lack of precision, and lack of diligence in fulfilling legal obligations for PPAT in the creation of land sale and purchase deeds, thus disrupting someone's subjective rights, resulting in losses for the parties involved. Regarding the issue of claiming compensation under Article 1365 of the Civil Code, according to M.A. Moegni Djojodirdjo, it includes:

- a. Compensation in the form of money,
- b. Compensation in kind or restoration to the original condition,
- c. Declaration that the act is unlawful,
- d. Prohibition to perform an act,
- e. Nullification of something done unlawfully,
- f. Announcement of the decision or something that has been rectified.

According to the District Court Decision Number 51/Pid.B/2022/PN.Bla, as a consequence of errors due to intentional actions or negligence such as carelessness, lack of precision, and lack of diligence in fulfilling legal obligations for PPAT in the creation of land sale and purchase deeds, thus disrupting someone's subjective rights, resulting in losses for the parties involved, then PPAT DA should be responsible for compensating the losses suffered by the parties involved in the form of reimbursement of costs, damages, and interest. Determination that the deed only has legal force underhand or declared null and void and/or voidable by law, and becoming an act of unlawfulness causing harm, must be based on a court decision that has obtained permanent legal force, so if there are parties who accuse or assess that the PPAT deed is false or incorrect because there has been a deviation from the material and formal requirements of the PPAT deed-making procedure (formal aspects), then they must prove the accusation or assessment themselves through the legal process of civil litigation. Based on the above description, if the PPAT deed is degraded to a deed underhand or declared null and void and/or voidable by law based on a court decision that has obtained permanent legal force, then it is categorized as an unlawful act causing harm to the parties involved, so PPAT can be held accountable in the form of reimbursement of costs, damages, and interest. Compensation in this case can be made by returning to the original condition to restore the land status to its original state under the name of the initial certificate owner.

### 3. *Criminal Responsibility*

Imposition of criminal sanctions against PPAT (Land Deed Making Official) can be carried out as long as a PPAT has committed an unlawful act categorized as a criminal offense according to the Indonesian Criminal Code or other specific regulations governing criminal offenses. One such offense is creating forged documents, instructing others to falsify data, or falsifying deeds, actions that can qualify as criminal offenses (Shela Oktaharyani Harahap, 2021).

The formal aspects of a PPAT deed can serve as the basis or limitation for prosecuting PPAT, as follows:

- a. The formal aspects are proven to be intentional (done with full awareness and consciousness and planned by the relevant PPAT) that the deed he/she created is used as a tool to commit a criminal act.
- b. The PPAT is knowingly and intentionally, together with the parties involved, engaging in an action that he/she knows violates the law.

The criminal cases related to the formal aspects of PPAT deeds in the creation of authentic deeds are as follows:

- a. Creating forged documents and using forged documents (Article 263 paragraph (1) and (2) of the Indonesian Criminal Code).
- b. Committing forgery of authentic deeds (Article 264 of the Indonesian Criminal Code).
- c. Instructing to include false information in authentic deeds (Article 266 of the Indonesian Criminal Code).

- d. Committing, instructing to commit, or participating (Article 55 in conjunction with Article 263 paragraph (1) and (2) of the Indonesian Criminal Code or Article 264 or Article 266 of the Indonesian Criminal Code).
- e. Assisting in creating forged documents and using forged documents (Article 56 paragraph (1) and (2) in conjunction with Article 263 paragraph (1) and (2) of the Indonesian Criminal Code or Article 264 or Article 266 of the Indonesian Criminal Code).

Based on the above description, as long as the actions of the relevant PPAT are proven to be intentional and planned either alone or together with one or more parties to create a deed used as a tool to commit a criminal offense, then the relevant PPAT can be subject to punishment according to the applicable regulations. PPAT DA has violated the rules regarding the creation of authentic deeds and inserting information that does not correspond to the truth into an authentic deed, resulting in PPAT DA should be charged under Article 263 and Article 264 paragraph (1) of the Indonesian Criminal Code. (Saranaung, 2017). The legal consequences of a PPAT deed that does not comply with the procedure for creating PPAT deeds, resulting in legal defects, can be caused by:

- a. Deviations from formal requirements

Article 1868 of the Civil Code states that the elements of creating an authentic deed must meet:

- 1. The deed must be made in the form specified by law.
  - 2. The deed must be made by a notary or in the presence of a public official.
- b. Deviations from material requirements. Article 1320 of the Civil Code states that the validity requirements of an agreement must meet four conditions, namely:
    - 1. Agreement of the parties binding themselves.
    - 2. Legal capacity of the parties to make an agreement.
    - 3. A certain subject matter.
    - 4. A legal cause. (Sutedi, 2012).

These four conditions can be grouped into two categories, namely:

- 1. Conditions (a) and (b) are subjective conditions because they concern the parties or subjects entering into the agreement. Violation of subjective conditions may render the deed voidable.
- 2. Conditions (c) and (d) are objective conditions because they relate to the content of the agreement. Failure to fulfill objective conditions may render the deed void ab initio. (Akbar Mastang, 2022).

#### IV. CONCLUSION

Based on the discussion above, the forms of responsibility of PPAT for the land sale and purchase deed containing false information according to the Decision of the District Court Number 51/Pid.B/2022/PN.Bla are as follows:

- a. Administrative Responsibility of PPAT:

PPAT DA should be subject to administrative sanctions as stipulated in Appendix II of Regulation No. 2/2018 page 43. PPAT who fills out the PPAT deed form but does not do so in accordance with the actual events, status, and correct data, and is not supported by documents according to the legislation can be temporarily suspended for up to 1 (one) year and subjected to administrative fines due to negligence in fulfilling their obligations.

- b. Civil Responsibility of PPAT:

The deed made by PPAT DA has degraded to a deed under private signature or declared null and void or null and void ab initio. Therefore, it is categorized as an unlawful act causing damage to the parties involved. Consequently, PPAT DA, based on Article 1365 of the Civil Code, can be held accountable in the form of reimbursement of costs, compensation, and interest.

- c. Criminal Responsibility of PPAT:

PPAT DA has provided false information in the sale and purchase deed, which can be categorized as Article 263 of the Indonesian Criminal Code (forgery of documents), punishable by a maximum prison sentence of six years, and Article 264 paragraph (1) of the Indonesian Criminal Code (forgery of authentic deeds), punishable by a maximum prison sentence of eight years.

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