

Responsibilities of Land Deed-Making Officials in Making Sale and Purchase Deeds Made Without the Land Owner's Knowledge

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Abstract. This research aims to analyze legal action against the Deed of Sale and Purchase made by the Land Deed Official (PPAT) without the knowledge of the land owner and the responsibility of the Land Deed Drafting Officer regarding the Sale and Purchase Deed made without the knowledge of the land owner. This research is normative legal research. The approaches used in this research are the statutory, conceptual, and case approaches. The study results show that making a Deed of Sale and Purchase without the owner's knowledge can have legal consequences; this means that the deed, as stated in Article 1320 of the Civil Code, can be filed for cancellation due to the subjective and objective conditions of the agreement not being fulfilled. Therefore, Deed of Sale and Purchase No 6657/2004 dated 1 November 2004, issued by Defendant I, is invalid or legally flawed and does not have binding legal force. PPAT's responsibility in making the Deed of Sale and Defendant I, as PPAT, violated the provisions of Article 38 § 1 of Government Regulation 24 of 1997 by purchasing without the owner's knowledge, which is an administrative offence. As a result, Defendant I, acting as PPAT, can face dishonourable dismissal. In civil terms, Defendant I's proven commission of an unlawful act requires PPAT to compensate for losses suffered by the parties. Criminally, PPAT can face accountability if it is proven negligent in checking the identity of the person present and attending to other formal matters. Then, authorities can charge PPAT under Article 266 of the Criminal Code.

Keywords: legal consequences; responsibility; sale; purchase deed

INTRODUCTION

Economic, socio-cultural, and technological developments indicate that people's land needs are increasing daily. Legal events and actions can lead to the transfer of land rights [1]. In the event of a specific legal occurrence, such as the death of a person, the heirs automatically inherit the right to land transferred. The land rights holder can transfer land rights through legal actions, such as sale and purchase, grant, exchange, or other legal actions [2].

One of the powers given to PPAT is to make a Sale and Purchase Deed (from now on, written as AJB). AJB is a document that proves the transfer of land rights from the owner as the Seller to the buyer as the new owner. Before executing the deed relating to transferring land rights and

ownership rights to the apartment unit, the Seller and the buyer submit the AJB containing their wishes and desires to the PPAT.

In carrying out their duties and positions, PPATs should adhere to the provisions of the laws and regulations that apply to them, fulfil their obligations, and refrain from prohibited acts. Failure to do so may result in the annulment or avoidance of a PPAT deed by law and cause harm to the parties concerned.

Nowadays, it is not uncommon for PPAT to be sued or prosecuted in Court. Problems regarding PPAT's negligence in carrying out its obligations and authority or violations committed intentionally are why PPAT is being sued or prosecuted. PPAT's mistakes in violating its jurisdiction and/or obligations can cause losses to the party;

therefore, PPAT can be held accountable by the competent authorities authors [3]. As in the case of decision No 347/Pdt.G/2017/PN.Jkt.Tim.

In this case, the Plaintiff (Haji Muhamad Nurdin) is the owner of a plot of land and is also the legal certificate holder for a plot of land covering an area of 4,371 m². However, recently Plaintiff (Haji Muhamad Nurdin) only learned Defendant I (Notary/PPAT H. Harjono Moekiran, SH) made a Sale and Purchase Deed No 6657/2004 dated 4 November 2004 on land owned by Plaintiff, covering an area of 700 m². In the Deed of Sale and Purchase (AJB), Defendant I listed Plaintiff (Haji Muhamad Nurdin) as the Seller, and Defendant II (Dra. Hajjah Nurdiati Akma) and Defendant III (Orphanage and Madrasah for the Jemaah Haji Aisyah Family DKJakarta and Forsep) as the buyers. Plaintiff (Haji Muhamad Nurdin) never sold/assigned/transferred the land to Defendant II and Defendant III. Even the Plaintiff (Haji Muhamad Nurdin) never faced, let alone signed, the Deed of Sale and Purchase prepared by Defendant I (Notary/PPAT H. Harjono Moekiran, SH). Put his signature above his name in the AJB.

The Deed of Sale and Purchase of Land can be considered an authentic deed, as per the provisions in Article 1868 of the Civil Code (Civil Code), which states that it must be executed by the parties in the presence of an authorized official, where this official is a Notary/PPAT.

Article 38 § 1 Government Regulation No 24 of 1997 concerning Land Registration states that the making of a deed attended by the parties carrying out the legal action in question and witnessed by at least two witnesses who meet the requirements to act as witnesses.

According to Article 1320 of the Civil Code, those who bind themselves in the Deed of Sale and Purchase must reach an agreement, specifically a contract between the buyer and the owner of the land/object; this implies that land ownership may only occur through buying and selling with the landowner's consent.

Based on the above explanation, the author considers it necessary to conduct research by analyzing decision No 347/Pdt.G/2017/PN.Jkt.Tim, regarding problems involving PPAT in doing an authentic deed, the author wants to explore the consequences of legal actions and accountability for PPAT, which has made a Deed of Sale and Purchase of Land Rights by a non-owner.

METHOD

This research is normative juridical research that conceptualizes the law as written in statutory regulations (law in books) or as rules or norms that serve as benchmarks for human behaviour considered appropriate authors [4].

The approach used in this research is the Statute Approach. The approach is to examine all laws and regulations related to the legal issue being handled [5]. Conceptual Approach (Conceptual Approach) This approach departs from the views and doctrines developed in legal science. The case approach, or Case Approach, involves examining cases related to the issue and establishing decisions with permanent legal force authors [4]. The legal material collection techniques used are librarianship studies, namely the collection of legal materials by library study of legal materials, whether primary legal materials, secondary legal materials, or tertiary legal materials and/or non-legal materials. Searching for legal materials is done by reading, viewing, listening, and searching via the Internet authors [6]. After obtaining the legal materials using the legal material collection techniques above, researchers process and analyze them. In this preparation, researchers analyze the obtained legal materials using qualitative analysis, arrange them, and present them in sentences describing the research results. Next, we examine the related cases and statutory regulations by interpreting the law and conclude from the study results.

RESULTS AND DISCUSSION

Legal Action Against Deeds of Sale and Purchase Made by Land Deed Officials (PPAT) Without the Land Owner's Knowledge

1. Judges' Basis and Considerations in Trying Cases, East Jakarta District Court Decision No 47/Pdt.G/2017/PN.Jkt.Tim.

a) They were sitting Matters. This case began when the Plaintiff had just found out about the Sale and Purchase Deed. Sale and Purchase Deed No 6657/2004 on land owned by the Plaintiff covering an area of 700 m² made by Notary/PPAT Haji Harjono Moekiran (Defendant I), wherein the Deed of Sale and Purchase listed as the Seller, namely Haji Muhammad Nurdin (Plaintiff) and the buyer Dra. Hajjah Nurdiati Akma (Defendant II) and the Orphanage and Madrasah for the Family of the Haji Aisyah Con-

gregation DKI Jakarta and Forsep (Defendant III). The Plaintiff never sold/assigned/transferred his land, according to the SHM. 110/Cipayung to Defendant II and Defendant III, let alone signing and appearing before the Notary/PPAT(Defendant I). Apart from that, the Plaintiff never knew or received the amount of Rp. 199,500,000,- as stated in the Deed of Sale and Purchase or never signed the receipts related to the Deed of Sale and Purchase.

b) Judge's considerations. The Panel of Judges at the East Jakarta District Court thinks that. Muhammad Nurdin (Plaintiff) is the legal owner of a plot measuring 700 m² located on Jalan Tugu RT.004 RW 04, Cipayung Village, Cipayung District, East Jakarta Municipality. Furthermore, in this case, Defendant I, as Notary/PPAT, has acted carelessly (thoroughly and carefully) in the making AJB No 6657/2004, which contains the sale and purchase of land belonging to Plaintiff by SHM No 1110/Cipayung to Defendant II and Defendant III without the knowledge and consent based on the legal rights of the Plaintiff, contrary to the principles of decency, thoroughness, and prudence. Furthermore, the actions of Defendant I as the Official Land Deed Maker who made AJB No 6657/2004, which contains the sale and purchase of a plot of land belonging to Plaintiff to Defendant II and Defendant III without the knowledge and/or permission of the Plaintiff is an unlawful act.

c) Announcement of Decision.

- 1) Granted the Plaintiff's lawsuit in part;
- 2) States that the Plaintiff is the legal owner of a plot of land measuring 700 m² located on Jalan Tugu RT.004 RW 04, Cipayung Village, Cipayung District, East Jakarta Municipality, with boundaries;
North: Kodam dirt road.
East: Land belonging to Pransisca Leihitu.
South: Haji Matali dirt road.
West: Land belonging to Dra. Hj. Nurdiati Akma and channel Water (plug)/Kindergarten Aisyah Busthsnul Athfal 101 & Paud Aisyah Madrasah Building & Orphanage Aisyah Forsap.
- 3) Declare that Defendant I, Defendant II, and Defendant III have committed unlawful acts;
- 4) Declaring Sale and Purchase Deed No 6657/2004 on 700 m² of land created/issued by Notary/PPAT H. Harjono Moekiran (Defendant I) dated 1 November 2004 is Invalid Or legally defective and has no binding legal force;

5) Sentenced Defendant II and Defendant III to hand over 700 m² of disputed land to Plaintiff located on Jalan Tugu RT.004 RW 04, Cipayung Village, Cipayung District, East Jakarta Municipality, with boundaries;

North: Kodam dirt road.

East: Land belonging to Pransisca Leihitu.

South: Haji Matali dirt road.

West: Land belonging to Dra. Hj. Nurdiati Akma and water channels (solokan)/Kindergarten Aisyah Busthsnul Athfal 101 & Paud Aisyah Madrasah Building & Orphanage Aisyah Forsap.

6) Sentenced Defendant I, Defendant II, and Defendant III to pay court costs of Rp. 2,261,000- jointly and severally;

7) Reject the Plaintiff's claim for other than that.

2. Legal consequences of a Sale and Purchase Deed made by a Land Deed Drafting Officer (PPAT) without the knowledge of the land owner. The Land Deed Making Official (PPAT), a public official, is given the authority to make authentic deeds regarding certain legal acts regarding land rights, primarily buying and selling [7].

The transfer of land rights in the form of sale and purchase must fulfil several conditions determined by the applicable laws and regulations. If you don't meet the specified conditions, it will affect the legality of buying and selling rights to the land. Additionally, if buying and selling land rights does not meet the requirements, it could prevent the transfer of land rights through the sale and purchase from being registered. The conditions for buying and selling land rights include material and formal requirements [2].

However, in practice, quite a few land buying and selling processes that have received approval from PPAT through its legal product called the Deed of Sale and Purchase, turn out to be full of legal problems (it contains indications of congenital or man-made defects) both because the documents are manipulative, the data is invalid /inaccurate, or because the legal subject of the sale is incomplete or not entitled and so on.

In the case of East Jakarta District Court decision No 47/Pdt.G/2017/PN.Jkt.Tim., the object of land rights belonging to the Plaintiff, located at Jalan Tugu RT004/RW004, Cipayung, East Jakarta, was used as the object of transfer of land rights. This transfer occurred due to the act of sale and purchase by the Defendants as outlined in the Deed of Sale and Purchase No 6657/2004 prepared by

Defendant I as PPAT. The Deed of Sale and Purchase listed Plaintiff as the Seller, while it listed Defendant I and Defendant II as Buyers. Additionally, the Certificate of Ownership No 1110/Cipayung stated the ownership of the land rights. Defendant I and Defendant II did this act of buying and selling without Plaintiff's knowledge and consent as the object's owner.

As an authentic deed, the PPAT deed, as evidence that it has perfect evidentiary power, can be degraded in its evidentiary power to become a fraudulent deed. Degradation of authentic deed evidence to the strength of underhanded evidence and juridical defects in authentic deeds results in authentic deeds being cancelled, null, void, or non-existent.

Article 1320 of the Civil Code specifies that for an agreement to be valid, it must meet four conditions, namely:

- 1) They agreed to bind themselves.
- 2) The ability to create an engagement.
- 3) A sure thing.
- 4) A legitimate cause.

The discussion in East Jakarta District Court Decision No 347/Pdt.G/2017/PN.Jkt. Suggests that there is no agreement from the actual owner of the object, as the author discusses in detail. Plaintiff is the owner of the object, which in the Sale and Purchase Deed No 6657/2004 is written as the Seller, even though Plaintiff never appeared before Defendant I as the PPAT from the beginning of its creation until the signing of the Sale and Purchase Deed. The Plaintiff has no desire or agreement to buy and sell the land, and the Plaintiff does not know the Defendants. The object of his land rights, as stated in Certificate of Ownership No 1110/Cipayung, was sold without his knowledge and consent as the owner of the object or land in question, where, of course, this sale and purchase did not meet the subjective requirements, namely agreement or consent of both parties. The author thinks that in this case, a fake figure claimed to be the Plaintiff appeared before PPAT Defendant I, carrying a fake identity and signing the Sale and Purchase Deed. No 6657/2004 to expedite the sale and purchase deed preparation. However, because of decision No 347/Pdt.G/2017/PN.Jkt.Tim does not discuss whether Defendant I, Defendant II, and/or Defendant III acted in bad faith as buyers or whether the Defendants are working together. It may be unclear to the reader. This fake figure's existence constitutes a false reason or violates statu-

tory regulations, rendering Sale and Purchase Deed No 6657/2004 legally invalid.

In this case, the Seller who sells the land object lacks the right to sell because he does not legally hold the rights to the land, and his name is not listed on the Certificate as the right holder. Therefore, the Seller is not the legal representative of the actual owner of the object. In this case, the Seller is not the legal representative of the actual owner of the object. The Deed of Sale and Purchase No 6657/2004 drawn up by Defendant I as PPAT was legally flawed due to the failure to fulfil one of the material conditions of the sale and purchase, namely that the Seller had the right to sell the land in question.

Due to the failure to fulfil the subjective and objective requirements, as well as not fulfilling the material requirements of a sale and purchase, the result is that the Sale and Purchase Deed No 6657/2004, which Defendant made I as PPAT, can be cancelled by the party who feels aggrieved, namely the owner of the land rights object, by filing a lawsuit with the Court.

The legal consequence of the cancellation of the Deed of Sale and Purchase of land objects by the East Jakarta District Court regarding the Deed of Sale and Purchase is that the Court accepted the Plaintiff's petition and declared the Deed of Sale and Purchase No 6657/2004 on 700 m² of land which was made/published by Notary/PPAT H. Harjono Moekiran, namely Defendant I, is invalid or legally defective and does not have binding legal force. According to Kelsen, implementing rules creates legal certainty if related to the theory of legal certainty. In the case of the verdicts, the Jakarta District Court decision No 347/Pdt.G/2017/PN.Jkt.Tim. As the legal owner of the land object, Plaintiff never sold/transferred his land to Defendant II and Defendant III as stated in the Deed of Sale and Purchase No 6657/2004, which was created/published by Defendant I, namely as PPAT.

Responsibility of Land Deed Drafting Officials (PPAT) for Sale and Purchase Deeds Made Without the Land Owner's Knowledge

1. Administrative Responsibilities. In exercising its authority, we expect the PPAT to exercise carefulness and thoroughness to ensure that it produces a PPAT deed that provides legal certainty for the parties. However, the PPAT, in exercising its authority, will not always behave as above.

Therefore, the PPAT deed he made caused problems, not only administrative problems but also criminal problems. PPATs who ignore the requirements for creating a PPAT deed will be subject to administrative sanctions authors [8].

PPAT or Temporary PPAT may face administrative sanctions for the following actions they carry out [8].

- a) Making a PPAT deed without the presence of the parties;
- b) The original Certificate was not submitted for the PPAT deed;
- c) The preparation of a PPAT deed regarding an unregistered plot of land does not provide a letter of evidence or a statement from the village/sub-district head;
- d) The parties and witnesses are not authorized to act legally.

Regarding the Fautes Personelles Theory, PPAT is individually or individually responsible for implementing his duties and positions in every deed. If linked to Article 55 of the Head of BPN Regulation No 1 of 2006, which regulates the overall responsibility of PPAT for all its actions based on its position in the process of making deeds, the article states that PPAT is personally responsible.

Suppose it relates to the case in decision No 347/Pdt.G/2017/PN.Jkt.Tim. In this case, PPAT was involved in making the Sale and Purchase Deed without the knowledge of the land owner. Even though normatively, the conditions for making a PPAT deed have been determined, in practice, doing the deed by the PPAT does not pay attention to these requirements. Defendant I, namely as PPAT, made a Deed of Sale and Purchase without the knowledge of the owner of the land object, namely Plaintiff. Authorities can impose dis-honourable dismissal sanctions on the PPAT for violating the provisions of Article 38 § 1 of Government Regulation No 24 of 1997 concerning Land Registration, which requires the parties carrying out the legal action to attend the making of the deed, witnessed by at least two witnesses.

2. Civil Liability. Authorities impose civil sanctions on PPAT for unlawful acts, namely acts that cause harm, and normatively, these acts are subject to the provisions of Article 1365 of the Civil Code, which states:

"Every act that violates the law and harms other people obligates the person who caused the harm because of his negligence or carelessness."

Somebody can use four conditions to determine whether an action violates the law [9].

- a) Elements of unlawful acts;
- b) The element of loss;
- c) Element of error;
- d) There is a causal relationship between actions and losses.

As for the case raised by the author, the PPAT's actions, which have caused the Deed of Sale and Purchase to become legally defective, can be considered an unlawful act. Defendant I, as PPAT, was careless in making the Deed of Sale and Purchase No 6657/2004, which contained the sale and purchase of land belonging to Plaintiff. Defendant II and Defendant III were made without the knowledge and consent based on Plaintiff's legal rights, contrary to the principles of decency, accuracy, and prudence. Suppose PPAT violates one of the elements of an unlawful act. In that case, someone can say that PPAT has already committed an illegal act, so the prohibited act must not fulfil these four elements cumulatively. So, the PPAT concerned must be responsible for compensating for the losses suffered by the parties in the form of reimbursement of costs, compensation, and interest, determining that the deed only has legal force under the hand or is declared void and/or null and void by law, and becomes an offence that violates the law which causes losses.

3. Criminal Responsibility. Authorities can impose criminal sanctions on PPAT based on the limitations of the violation committed, meaning that apart from fulfilling the formulation of a breach in the position of PPAT, they must also fulfil the formulation in the Criminal Code. Criminal sanctions are the strongest for violations in carrying out PPAT's office, and sanctions contain the principle of request remedial, namely the final sanction if civil and administrative sanctions or code of ethics sanctions cannot deter PPAT [10].

Authorities can impose criminal sanctions against PPAT if they make a fake letter or falsify a deed that qualifies as a criminal act. The material and formal requirements of the procedure for making a PPAT deed are the formal aspects that the PPAT must consider when creating a land sale and purchase deed related to their duties. The author opines that [someone] must assess

deviations from the material and formal requirements of the procedure for making a PPAT deed based on the limitations of the formal aspects, as determined by laws and regulations related to PPAT.

According to Habib Adjie, criminal cases related to the formal aspects of Notarial/PPAT deeds in making authentic deeds are as follows [11]:

- a) Making fake/forged letters and using fake/forged letters (Article 263 § 1-2 of the Criminal Code);
- b) Forgery of authentic deeds (Article 264 of the Criminal Code);
- c) Ordering to include false information in an authentic deed (Article 266 of the Criminal Code);
- d) Doing, ordering to do something, participating in doing something (Article 55 in conjunction with Article 263 § 1-2 of the Criminal Code or Article 266 of the Criminal Code);
- e) Helping to make fake/or forged letters and using fake/forged letters (Article 56 § 1-2 in conjunction with Article 263 § 1-2 of the Criminal Code or Article 266 of the Criminal Code).

Regarding the case in the decision No 347/Pdt.G/2017/PN.Jkt.Tim does not detail whether PPAT, as Defendant I, was involved in a conspiracy to make the Deed of Sale and Purchase. However, if it is proven Defendant I committed a malicious conspiracy in making the Deed of Sale and Purchase, in this case, aiding the parties to enter false information as if Plaintiff had sold the land to Defendant II and Defendant III. Authorities cannot deny that criminal sanctions could result from unlawful acts by the PPAT; they can hold the PPAT criminally respon-

sible if they prove negligence in checking the identity of the person present and attending to other formal matters. Authorities can charge the PPAT under Article 266 of the Criminal Code.

CONCLUSIONS

The legal consequences of making a Deed of Sale and Purchase without the owner's knowledge are significant. Such deeds can be filed for cancellation due to the non-fulfilment of subjective and objective conditions of the agreement, as regulated in Article 1320 of the Civil Code. Therefore, the Deed of Sale and Purchase No 6657/2004 dated 1 November 2004, made/issued by Defendant I, is invalid or legally flawed and does not have binding legal force PPAT, as Defendant I violated the provisions of Article 38 § 1 of Government Regulation No 24 of 1997 by making the Deed of Sale and Purchase without the owner's knowledge, which constitutes an administrative responsibility. Therefore, Defendant I, as PPAT, can be dishonourably dismissed. In civil terms, Defendant I was proven to have committed an unlawful act and violated the provisions of Article 1365 of the Civil Code. Defendant I, as PPAT, was not careful and thorough in making the Deed of Sale and Purchase, which caused losses to Plaintiff. So, the PPAT concerned must be responsible for compensating for losses suffered by the parties. Criminally, PPAT can face criminal accountability if it is proven negligent in checking the identity of the person present and attending to other formal matters. Authorities can charge PPAT under Article 266 of the Criminal Code.

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