



Legal Analysis of Fingerprint Formation in the Original Deed of Land Deed Official (PPAT)

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Abstract

This research aims to analyze the formation of fingerprints in the deed of Land Deed official (PPAT). According to Government Regulation of the Republic of Indonesia number 24 of 2016 about the amendment of Government Regulation No. 37 of 1998 about department Regulation (PPAT) Land deed official. In the event that the fingerprint of the the appearers on this PPAT deed there is an empty norm, because in the Government Regulation of the Republic of Indonesia number 24 of 2016 about the amendment of Government Regulation No. 37 of 1998 on department rules Land deed Office (PPAT), not listed in the article on the formation of fingerprints on the original deed of PPAT. Apart from this, it is also questionable about the legal force of the The Appearers fingerprint on the PPAT deed in terms of providing legal protection to PPAT that prints fingerprints on the deed which is made. The problem is how the concept of fingerprint formation in the creation of the original deed of PPAT and what is the juridical implication on the formation of fingerprints in the original deed of PPAT. This research aims to determine the concept of fingerprint formation in the creation of the original deed of PPAT and to know the juridical implications for the formation of fingerprints in the original deed of PPAT. This method of research uses normative legal research methods. The approach used is the of approach, and the conceptual approach. The results of this study are the first the creation of fingerprints is only in accordance with law No. 2 of 2014 on the amendment of law No. 30 of 2004 on the Department of notary, found in article 16 paragraph (1) C which is "to attach letters and documents as well as fingerprint in the deed minuta", so that this rule only applies to notaries instead of PPAT. While in the regulation of the Department of PPAT, there is no rule on the formation of fingerprints in the PPAT deed but in practice many PPAT put fingerprints on the PPAT deed. To attach the appearer to the original deed PPAT aims to anticipate if a time when the complainers deny his or her signature to the original deed of PPAT, then as evidence for additional use of the appearer. So it should be made a provision or regulation of legislation that set it. Second according to the PPAT formation of fingerprints, of course, can be, in addition to no rules advocating, there are no rules that prohibit and there are no sanctions if a fingerprint in the PPAT deed, especially if the complainant does not feel the objection to fingerprint in the deed.

Keywords: *Fingerprint Formation in The Deed, PPAT Deed*

Introduction

Land Deed Official hereinafter referred to as PPAT is a general official authorized to make authentic deeds on certain legal deed regarding land rights or property rights in the units of the house. PPAT is a general officer who is authorized to make a deed on the transfer of land and other deeds in the framework of the right to land, whose form of actors is set, as evidence of certain legal deed concerning the land located in their respective areas of work. In the position as mentioned above, the deeds that are made by PPAT are authentic deeds.¹ Authentic deeds essentially contain formal correctness in accordance with the parties notified to PPAT. PPAT has the obligation to apply what is contained in the PPAT deed is indeed understood and in accordance with the will of the parties. The PPAT deed must be read/explained in its contents to the parties by being attended by at least 2 (*two*) witnesses before being signed immediately by the parties, witnesses and PPAT.² The main task of PPAT is governed in Government Regulation No. 37 of 1998 on department Regulation (PPAT) of land deed official. In that provision, determined that the main task of PPAT, which is carrying out some land registration activities.³ To register the registration, PPAT must make the deed as evidence of certain legal action, concerning land rights and property rights in the unit of the House. The deed is made by PPAT, which will be used as the basis for the change of land registration data resulting from the deed of the law.⁴ Deeds of law in the form of buying and selling, exchange, grant, customs, and income in the company or "*Inbreng*" and will or wills grant or "*Legaat*" performed by the parties before the Land Deed official (PPAT). PPAT Office is a notary PPAT or PPAT only or Subdistrict head because the position (*as PPAT temporary*) throughout the region has not been PPAT. It is governed by the Government Regulation Number 24 of the 1997 on Land registration, government regulation number 37 of 1998 on Regulations of the Department of Land Deed Official (PPAT) and various rules of implementation.⁵

Explanation of Article 22 government Regulation No. 37 of 1998 on regulation of the Department of Land Deed Office (PPAT) which reads "*For the fulfillment of authentic nature of the deed, the reading of the deed was conducted by PPAT, The signing of the Parties, witnesses and by PPAT, carried out immediately after the reading of the deed*", the absence of information or rules regarding the formation of fingerprints in the original deed of PPAT. In practice many PPAT put fingerprints in the original deed which is made. Therefore, according to article 16 paragraph (1) Letter C, Law No. 2 of 2014 in accordance with Law No. 30 of 2004 about the regulation of the notary office that reads "*Mandatory notary Letter and document and fingerprint of the appearer on the deed Minuta*". Where according to the UUJN in terms of the formation of fingerprints only valid to notary only, not PPAT. Based on the authority in the notary public as mentioned in article 15 of UUJN and the evidence of proof of notarial deed, a notary duty and position is formulating the wishes or actions of the parties into the authentic deed, with respect to the prevailing laws and regulations. Notarial deed as an authentic deed has a perfect proof, so no need to be proved or coupled with other evidence tools.⁶ The authentic deed made by PPAT in practice is not infrequently disputed by one of the party or by the other party because it is considered detrimental to its interests, either with the denial of the deed, signature or the presence of the party before PPAT, even a suspected in the deed is found false information. In the creation of authentic deeds, not close the possibility that there are parties who has no good faith, the parties who comes to the PPAT has a bad intent such as using false identities, using documents or false letters. This may result in the involvement of PPAT into legal matters. Whereas PPAT only helps to pour the parties' will into an authentic deed. To overcome this, PPAT is obliged to protect itself. In relation to this, it is only natural that PPAT wants to strengthen its own protection, to apply the appearer fingerprint on the deed of PPAT. In the event that the fingerprint of the the appearers on this PPAT deed there is an empty norm, because in

¹ Salim, HS. *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT)*. 2016. Jakarta: Rajawali Pers. p.86

² Article 22 Government Regulation No. 37 year 1998 on regulation of the Department of Land Deed office.

³ Article 2 paragraph (1) of government Regulation No. 37 year 1998 on regulation of the Department of Land Deed official.

⁴ Salim, HS. Op cit. p.88.

⁵ M. Arba. *Hukum Agraria Indonesia*. 2017. Jakarta: Sinar Grafika. 4th Ed. p.146.

⁶ Hartanti Sulihandari & Nisya Rifiani. *Prinsip-Prinsip Dasar Profesi Notaris*. 2013. Jakarta Timur. Dunia Cerdas. 1st Ed.p.95.

the Government Regulation of the Republic of Indonesia number 24 of 2016 about the amendment of Government Regulation No. 37 of 1998 on department rules (PPAT) Land deed Office, not listed in the article on the formation of fingerprints on the original deed of PPAT. Apart from this, it is also questionable about the legal force of the The Appearers fingerprint on the PPAT deed in terms of providing legal protection to PPAT that prints fingerprints on the deed which is made. Based on the aforementioned reasons, it is very interesting to be further researched in this thesis because there has been no specific provisions concerning the legal protection of PPAT from the information, identity and or documents forged by the parties as the basis for the creation of authentic deeds. So the void of norms which raises legal uncertainty in the process of law enforcement, especially in the process of criminal law enforcement. As a result PPAT is made a defendant even convicted who participates in the inclusion of false information or falsify the deed.

Research Method

The type of research is used in this research is normative legal research that is done by reviewing the various literature which is not limited to, the form of books, legislation, and the source of the internet related to the problems studied. The approach used in this research is the statue approach and conceptual approach. The legal materials used in this research are primary legal materials are binding legal materials, and consist of legislation, secondary legal material i.e. the library material containing information about the primary legal material⁷, tertiary legal material that is a material that provides instruction as well as explanations of primary and secondary legal materials which include a legal dictionary and English Dictionary. The collection and tracing techniques used in this study are literature study techniques on legal materials, either primary legal material, secondary legal material, or tertiary legal materials. Library studies are a single method used in normative legal research.⁸ A library study is conducted by reading, studying, noting making reviews of the libraries that have to do with the issues studied.

Discussion

Fingerprint formation concept in making the original deed PPAT

1. Overview About fingerprints

Human fingerprint is used for identification purposes because no two humans have exactly the same fingerprints. This began in the late 19th century. As the era of the 20th century, fingerprints have been developed in the direction of security system that serves as security data. For example fingerprint attendance machine and door access control. Baby toe prints are also taken in hospitals for infant identification. It aims to prevent the occurrence of babies that often occurs in hospitals. The post-operative UUN No. 2 of 2014 Article 16 paragraph (1) C, fingerprint becomes an obligation to be attached to the deed minuta and no longer merely as a substitute for signatures only. Reviewed in terms of legal certainty, fingerprints are closer to their legal certainty than signatures because each person has a different fingerprint, so that if the day comes the dispute, the party is not able to deny it. That is why a lot of PPAT who concurrently office notary to put fingerprints in deed PPAT, and it is considered necessary, because of caution.

2. Fingerprint formation

The formation of a appearer in the original deed of PPAT is widely used to prove that the question comes to PPAT for its own discretion, such as the word "*facing*" or "*has been facing*" or

⁷ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Cetakan ke-3, Sinar Grafika, Jakarta, 2002, p. 51.

⁸ Bambang Waluyo, *Penelitian Hukum Dalam Praktek*, Jakarta : Sinar Grafika, 4th Ed. 2008. p.50.

"*dealing*". Regarding the evidence of the presence of the appearer in the presence of PPAT, fingerprints are also considered necessary, moreover, the law Department of notary has set up, especially when the only one or all the the appearers can not sign his signature. The proof tool is the fingerprint, even if the authentic deed is already an authentic proof tool. The obligation to apply fingerprints on the minuta deed is governed in the provisions of article 16 paragraph (1) of letter C of Law No. 2 of 2014 concerning the amendment of Law No. 30 of 2004 on Notary Office (UUJN). Only in that rule applies to a notary not for PPAT. A part of PPAT concurrently serving as notary Public says, the inclusion of fingerprints on the original deed of PPAT is not mandatory because no rules have been set, others argue the inclusion of fingerprints because the parties can not be signed or can also because of illiteracy. In addition to the said opinion may include or do not include fingerprints on the original deed. The creation of the deed by PPAT continues to run without waiting for uniformity or similarities concerning the formation of fingerprints. There is no obligation of PPAT to embed fingerprint in the original deed, if it is associated with the theory of the law of positivity to be implemented, because according to this theory, "*law is a law order*," but no provision prohibits a PPAT to implement its opinion or interpretation whether to include or exclude fingerprints, or depending on the situation. The most important thing is that the appearers is willing to put a fingerprint when requested by the PPAT in question. In section 1874 of the Civil Code, the fingerprint is identical to the thumbprint. In fact, the formation of a thumbprint referred to in article 1874 of the Civil Code is intended for an unsigned the appearers. Similarly, the provisions of the Staatsblad number 276, that the thumbprint is used as a replacement for signatures.

3. PPAT Deed

According to article 1 paragraph (4) of the Government Regulation of the Republic of Indonesia number 24 of 2016 concerning amendment to Government Regulation No. 37 of 1998 concerning Department of State Regulation (PPAT) of land deed officer. The PPAT deed is a deed made by PPAT as evidence has been performed by certain legal deed regarding land rights or property rights in units of the house. The Authentic Deed has three powers of proof, namely the strength of the proof of the external, formal and material. Now, the formation of fingerprints as a mandatory element in a deed of PPAT (*outward evidentiary force*) which also gives an assertion that everything that is written in the deed is appropriate and true as is, not engineering and can be the perfect proof tool for the parties.⁹ According to Sudikno Mertokusumo explained there are 2 (*two*) functions of authentic deeds are:¹⁰

- 1) Formil function (*causa formalities*) which means an authentic deed serves to complete or perfect (*not for the rightful*) a legal deed, then the deed of law must be poured out in an authentic deed, so that the deed is the formyl requirement for a legal deed.
- 2) The function of evidence (*Probationis causa*) that an authentic deed is made deliberately to be proven in the days, the written nature of an agreement in the form of authentic deed does not make the agreement, but can only be used as a tool of evidence in the day.

The deed is authentic under the provisions of article 1868 of the Civil Code which says that "*an authentic deed is a deed made in the form of a law prescribed by or in the presence of an authorized general officer for it in the place that the deed was made*".

An authentic deed is made intentionally to be proof of the day, the written nature of a treaty in the form of an authentic deed does not make the agreement, but can only be used as a tool of evidence in the day, it is often referred to as the function as a tool of evidence (*Probationis causa*). It means that the

⁹ <https://bh4kt1.wordpress.com/2014/02/27/sidik-jari-dalam-akta-notaris-aksesori-atau-bukti-sebagai-pihak-penghadap/>

¹⁰ Sjaifurrachman & Habib Adjie, op cit., pp. 114-115.

authentic deed has a perfect proof of proving power can also be determined that anyone is bound by the deed, so long as it can not be proven by the evidence of a court ruling that has a fixed legal force.¹¹

Juridical Implications of Fingerprint Formation in the Original Deed of PPAT

1. Authority and Management of Land Deed Official (PPAT) as General Officer in Creating Authentic Deeds

The authority of PPAT is contained in article 3 paragraph (1) of Government Regulation No. 37 of 1998 on department Regulation (PPAT) of land deed official, stating that PPAT has the authority to create an authentic deed on all legal deed as intended in article 2 paragraph (2) on land and property rights in the unit of the House located within the working area.

In article 4 paragraph (1) that PPAT is only authorized to make a deed concerning the right to land or property rights in the unit of the House located within the working area. Paragraph (2) the exchange deed, the entry deed into the company and the sharing of shared rights, regarding some rights to land and property rights in the unit of the house that is not all located within the working area of a PPAT can be made by PPAT whose working area includes one area of land or unit of House whose right is the object of legal action in deed the authority of the PPAT to be determined then is the authority that will arise and be determined according to the laws and regulations.

PPAT can give advise by staying with the law, and when the advice of PPAT is followed by the parties and poured into the form of PPAT deed, it remains the wishes and demands of the parties, not the will of the Land Deed Official (PPAT).

2. Fingerprint Formation in Land Deed Official Deed (PPAT) is Associated With Notary Authority

There are some authentic deeds which are the authority of PPAT, article 2 paragraph (2) of the regulation of the Department of PPAT, namely:

- 1) Sale and Purchase Deed
- 2) Exchange Deed
- 3) Grant Deed
- 4) Deed of entry into the company (*Inbreng*)
- 5) Joint Rights Sharing Deed
- 6) Granting the right to building rights in the land of proprietary rights
- 7) Granting Deed of liability
- 8) Grant of authorization to impose on liabilities

In connection with such authority, if the PPAT takes action outside the stipulated authority, the PPAT is not legally binding or non-executable. PPAT in performing its duties is entitled to legal protection from various legal threats from the parties who want to dispute the deed made by PPAT. Such protections are provided on the basis of the PPAT department and the authority granted to PPAT under the PPAT Department of Regulation. Reviewing Government Regulation of the Republic of Indonesia number 24 of 2016 about changes to Government Regulation No. 37 of 1998 concerning Department of Office (PPAT) of land deed official is related to the formation of fingerprints in the deed made by PPAT, as previously described the formation of fingerprints is placed at the end of the original deed of PPAT i.e The rules on the formation of fingerprints are not regulated in the Government Regulation of the Republic of Indonesia number 24 of 2016 about changes to Government Regulation No. 37 of 1998 about

¹¹ Habib Adjie (II), *Kebatalan dan Pembatalan Akta Notaris*, PT Refika Aditama, Cetakan Kesatu, Bandung, 2011, p. 6

department Regulation (PPAT). Meanwhile, reviewing the authority of PPAT to apply fingerprints in the deed or the rules that are reviewing the formation of fingerprints in the deed is regulated in the notary law. In practice, there is PPAT who concurrently becomes a notary public that affixed the fingerprints in deed of PPAT which is made. The formation of this fingerprint guarantees the correctness of the identity of the complainers, the truth that it is true that facing the PPAT is correct the parties who conduct the agreement, information submitted by the complainers as well as documents or letters that are shown the the appearers to the PPAT is correct. According to the PPAT formation of fingerprints, of course, can be, in addition to no rules advocating, there are no rules that prohibit and there is no sanctions if a fingerprint in the PPAT deed, especially if the complainant does not feel the objection to put fingerprints in the deed.

3. Fingerprint Formation in the Original Deed of PPAT Associated with Legal Protection to PPAT

In practice, it is often found the fact that PPAT is disputed by the parties or others who are then ensnaring the PPAT as a party participating in, or assisting in committing a criminal offence. PPAT is not infrequently sued by the parties or its clients for being dissatisfied or feeling harmed as a result of the authentic deed made by PPAT. PPAT only makes deeds based on data/documents provided by the complainers. The untruth of the data/documents (*filed in PPAT*) is the responsibility of the full appearer.¹²

Thus, the usefulness of the fingerprint sheet in the original deed of PPAT is not a legal action in determining the validity or authenticity of the deed but only serves to guarantee and strengthen the correctness of the identity of the complainers. The purpose of PPAT to attach fingerprints to the original deed is to provide legal certainty for the the appearers in the PPAT deed, where with the formation of fingerprints in the appendix of the original Deed PPAT is intended as a sign of recognition that the the appearers is actually faced with the notary at the time of making authentic deed, so it is hoped that there is no denial of each party in the PPAT deed relating to the state of dealing with PPAT in the authentic deed. Meanwhile, for PPAT itself, with the fingerprints, it can provide legal protection in the event of a dispute arising out of the state of dealing in the PPAT deed, where the fingerprint has an important meaning as a fortress stating that the PPAT has exercised its office function in accordance with the provisions of the prevailing legislation.

Regarding the legal protection theory, every citizen is entitled to legal protection, no exception to PPAT. Regarding the attachment of fingerprint formation, it would be better to be made regulations regarding the attachment of fingerprint formation into the regulation of the Department of PPAT, so that the PPAT can refer to the regulation. The rules which govern the formation in its own appendix are the creation of fingerprints, and then the attachment is attached to the original deed of PPAT. With the regulation on the matter, in addition to the clarity of the provision of fingerprint formation in the PPAT deed, the use of fingerprint formation of the pengap will also be more effective and legal force in providing protection/protection against PPAT.

4. Responsibilities of the Land Deed Official (PPAT)

There are three kinds of responsibilities, namely:

1) Civilly

PPAT's responsibility as a profession is born from the obligation and authority given to it, the obligation and authority is legally and bound to be effective since PPAT swearing his post as PPAT. The oath that has been spoken is supposed to control all the actions of PPAT in carrying

¹² Habib Adjie: Rosidah Sudah Menjalankan Jabatan Sesuai Undang-Undang Jabatan Notaris, Accessed http://medianotaris.com/habib_adjie_rosidah_sudah_menjalankan_jabatan_sesuai_uu_jabatan_notaris_berita592.html accessed 18th July 2018, at 20.20 WIB.

out his position. When associated with the theory of responsibility, that the accountability made by PPAT is a result of the execution of duties and positions. Therefore, the deeds committed by PPAT may be held liable for the infringement committed by deliberately committing the deed and inflicting harm to the parties.

2) Criminally

The legal responsibility of PPAT criminal is the responsibility to be implemented by PPAT when the PPAT is legally and correctly proven that it satisfies the elements of criminal action. Criminal sanctions against PPAT are not regulated in the PPAT regulation, because the duties and functions of the PPAT department are essentially in the realm of administrative and civil law. Based on the duties and functions of the PPAT, then the minister only gives sanctions in the form of administrative sanctions and civil sanctions against notary. PPAT in carrying out his office duties does not cover the possibility to be subject to criminal liability. A PPAT commits an aberration of a deed be made, giving rise to a criminal case, which has to commit the criminal response to what has been done.

3) Administratively

The legal responsibilities of PPAT are administratively visible from the form of sanctions given for violations of the obligations imposed on PPAT. Article 10 of the PPAT department which reads:¹³

Article 10 (1) of PPAT terminated by the Minister as intended in article 8 paragraph

(1) C, consisting of:

- a. Terminated respectfully;
- b. Dismissed with disrespect; and
- c. Suspended.

(2) PPAT is terminated with respect as intended in paragraph (1) A, because:

- a. Own request;
- b. No longer able to carry out its duties due to the state of health of the body or health of his soul, after being declared by the Health Examiner team at the request of the Minister/Head or appointed official;
- c. Concurrently serving as referred to in article 7 paragraph (2);
- d. Is declared bankrupt based on a court ruling that has acquired a fixed legal force; and/or
- e. To be under the remission continuously more than 3 (*three*) years.

(3) PPAT shall not be disrespectful as intended in paragraph (1) letter B, as:

- a. Commit a severe breach of the prohibition or obligation as PPAT; and/or
- b. Sentenced to imprisonment based on a court ruling that has acquired a permanent legal force due to a criminal offence threatened with imprisonment of 5 (*five*) years or more.

(4) PPAT is suspended as intended in paragraph (1) letter C, because:

- a. Is in court examination as a defendant to a criminal deed which is threatened with a penalty of confinement or imprisonment of 5 (*five*) years or heavier;
- b. Not to carry out the position of PPAT in real time for a period of 60 (*sixty*) days from the date of the oath of appointment;
- c. Conduct minor violations of the prohibition or liability as PPAT;
- d. Appointed and raised oath of office or carrying out duties as a notary public with a place in another district/city than the seat as PPAT;
- e. In the process of bankruptcy or delays in debt repayment obligations;
- f. Under the remission; and/or
- g. Commit Unblemish act.

(5) A suspended PPAT as intended in paragraph (4) A, shall apply until a court ruling has obtained a permanent legal force.

¹³ Government regulation of the Republic of Indonesia number 24 of 2016 concerning amendment to government Regulation No. 37 of 1998 about department Regulation (PPAT).

- (6) The termination of PPAT for reasons referred to in paragraph (2), paragraph (3) and paragraph (4) shall be conducted after the corresponding PPAT is given the opportunity to submit self defense to the minister.
- (7) The PPAT which ceases upon its own request can be reinstated into PPAT.
- (8) Further provisions on the procedure of termination of PPAT shall be governed by ministerial regulation. "

Conclusion

That the background is attached to the the original fingerprint of the PPAT deed is to identify the presence of the appearer. The proof of attendance that comes to the PPAT is the person who wants to make the PPAT deed, not the other person. To attach the appearer to the original deed PPAT aims to anticipate if a time when the complainers deny his or her signature to the original deed of PPAT, then as evidence for additional use of the appearer.

Juridical implications of fingerprint formation in the original deed of PPAT is according to PPAT formation of fingerprints, of course, can be in addition to no rules advocating, there are no rules that prohibit and there is no sanction if you apply fingerprints in the PPAT deed, especially if the complainant does not feel the objection to fingerprint in the deed.

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The Law

Law No. 2 of 2014 on amendments to law No. 30 of 2004 concerning notary Department

Law Number 30 of 2004 concerning notary department, Article 1 digit (1). Article 22 government Regulation No. 37 of 1998 on regulation of the Office of Land deed.

Article 2 paragraph (1) of government Regulation No. 37 of 1998 on regulation of the Department of Land Deed official.

Article 10 of government regulation of the Republic of Indonesia number 24 of 2016 about amendment to government Regulation number 37 of 1998 about department Regulation (PPAT).

Government regulation of the Republic of Indonesia number 24 of 2016 about amendment to government Regulation number 37 of 1998 about department Regulation (PPAT) Land deed official.

Republic of Indonesia, Law number 30 of 2004 concerning notary Office, article 1 Figure 7.

General explanation of UUJN Number 2 of 2014.

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