



## The Principle of Accountability in the Making of PPAT Deed in Boyolali Regency

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### **Abstract**

*PPAT* (Land deed official) as the public officer shall notice on the principles of accountability to form legal certainty. This legal study analyses the stages done by *PPAT* on Boyolali regency in making the land deed to warrant the formal truth and the material truth. This was normative legal research. The findings of this legal research showed a legal fact which *PPAT* on Boyolali regency has not implemented the principles of accountability in making the deed. *PPAT* in Boyolali regency has not warranted the formal and material truth of the deed since there has not been a regulation that states *PPAT* shall explain the principles of accountability. Consequently, the *PPAT* deed does not possess legal certainty.

**Keywords:** Accountability; PPAT Deed; Legal Certainty;

### **Introduction**

*PPAT* is a function who perform a part of government' authority particularly in making an authentic deed in the scope of land. All authority carried out by *PPAT* as the public officer shall be accounted. Therefore, *PPAT* in carrying out their function shall notice on the principle of accountability to form good governance. The concept of accountability started from thinking that, every action shall be accounted towards the person or the institution who gives authority to perform a program.

The Ministry of Home Affairs of Republic of Indonesia through their experts said during the socialisation of e-KTP (Residential identity card) in the UNS library; they found 480.000 cases of dual KTP. This phenomenon shows that duplicating KTP is still easy to do. Falsifying identity is still very easy to do, so in making *PPAT* deed, the formal truth and the material truth of the deed shall be accountable. The content of the land deed which does not contain the formal and material truth will lead to disputes. For example, there are thirteen land disputes in Boyolali regency which have been decreed in 2017.

The land disputes will be able to be minimised from the level of *PPAT*. *PPAT* whose function is to make land deed shall always enforce the principles of accountability in their duties and authorities. Therefore, *PPAT* shall realise that the land deed they make will not affect them only, but also affect the public needs. In making *PPAT* deed, it shall be done carefully and shall warrant the material truth and

formal truth of the content of the deed so the percentage of potential land disputes in the future can be minimised.

Based on the description above, the researchers are interested in writing legal research entitled “The Principle of Accountability in the Making of *Ppat* Deed in Boyolali Regency”.

### ***Methodology***

This was normative legal research; a study that was done by observing literature or secondary data consisted of primary legal material and secondary legal material. The nature of this legal research was prescriptive and applied.

Approaches employed in the legal research is constitutional approach and conceptual approach. The techniques of legal material collection for this legal writing and description is the literature review. The legal material was analysed deductively with syllogism method.

### ***Findings and Discussion***

#### ***The Principles of Accountability in the Making of PPAT Deed***

##### ***Definition of Accountability***

Haris states that accountability is mandatory for individuals or the government believed to manage public resources or related to it, to be able to answer matters related to fiscal, managerial, and program policies.<sup>1</sup> While according to Djalil, the definition of accountability is more than that.<sup>2</sup>

Accountability is a concept of ethics close to governmental public administration (Governmental Executive institution, parliament legislative institution, and judiciary institution) which is usually interchangeable with the notions of responsibility, answerability, blameworthiness and is expected to be able to account one of the aspects of public/governmental administration.

*PPAT*’ main duty is to perform some activities on the land registration in the form of the making of deed as an evidence of there have been a legal action related to the right of land parcel or the right of ownership of tenement unit, which will be the basis of the registration of data changing of land registration caused by that legal action, as it is meant in article 2 paragraph (1) Government Regulation (PP) no.37 of 1998. The legal actions which *PPAT* makes the deed according to article 2 paragraph (2) PP no.37 of 1998 are sales and purchases, grants, exchanges, *inbrens*, share of joint rights of giving of right of use of structures/ right of use over the right of ownership, grant of mortgage, and grant of the authority to assign the mortgage.

*PPAT* is also mandated to carefully and thoroughly whether or not the tax income and the title transfer fee have been paid by the applicant prior to the making of the deed. Except for inheritance and

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<sup>1</sup> Haris, Syamsuddin., *Desentralisasi dan Otonomi Daerah (Desentralisasi, Demokratisasi & Akuntabilitas Pemerintahan Daerah)*. LIPI, Jakarta., 2007. page 349

<sup>2</sup> Djalil, Rizal., *Akuntabilitas Keuangan Daerah Implementasi Pasca Reformasi*. PT Semesta Rakyat Merdeka, Jakarta. 2014. page 63

auction, all types of transfer of the right of land shall be done before the *PPAT* and are proven by the deed.<sup>3</sup>

The regulation of *PPAT* deed as an authentic can be seen from the formulation of article 3 paragraph (1) of PP. No. 37 of 1998. Article 3 paragraph (1) of the Regulation of Head of National Land Authority no. 1 of 2006 emphasises that deed made by *PPAT* is an authentic deed. Authentic deed under article 1868 BW is a deed which form is regulated by the constitution and made by and before the authorized public officers, where the deed is made.

*PPAT* deed shall also contain the material truth and the formal truth. The formal truth and the material truth can be described as follow:

### 1. Formal Truth

*PPAT* deed shall give assurance on events and facts noted within the deed is made by the *PPAT* or be explained by the parties which appear at the time that noted within the deed under-regulated procedure in the making of the deed. Formally, to prove the truth and the certainty of date, day, month, year, time of appears, and the parties who appear, the signature of the parties or the appearer, witnesses and *PPAT*, and to prove what is seen, witnessed, and heard by *PPAT* (in the official deed), and noted the informations or statements of the appearer (in the parties' deed).

If the formal aspects are questioned by the parties, so it shall be proven from the formality of the deed, they must be able to prove the untruth of day, date, month, year and time of appear, prove the untruth of the appearers, the untruth of what is seen, witnessed, and heard by *PPAT*, they must also able to prove the untruth of the statement or information of the parties stated before *PPAT*, and the untruth of the signatures of parties, action, and *PPAT* or there is a procedure of making the deed which is not done. The parties who question the deed shall do reverse onus to deny the formal aspects of the *PPAT* deed. If they cannot prove the untruth, the deed shall be accepted by anyone.<sup>4</sup>

It is allowed for anyone to make negation or denial upon the formal aspects of *PPAT* deed if the concerned parties feel being aggrieved by the deed made before or by *PPAT*. That negation or denial shall be done in the form of claim to the Court of General Jurisdiction, and the claimer shall be able to prove that there is a formal aspect being violated or does not correspond to what within the deed, for instance, the concerned feel never come before *PPAT* on the day, date, month, year and time mentioned in the deed, or feel that the signature in the deed is not theirs. If the appearer or the concerned accuse *PPAT*, they shall be able to prove the untruth of the formal aspects.<sup>5</sup>

### 2. Material Truth

Material truth is a certainty of the material of a deed because what is mentioned within the deed is a legal proof towards the parties who make the deed or them who get the right and prevails for the public, except there is a proof of otherwise. Information or statements mentioned within the official' deed, or deed of minutes, or the statements of parties given or stated before *PPAT* shall be judged as truth before

<sup>3</sup> Herman Hermit, Cara Memperoleh Sertifikat Tanah Hak Milik, Tanah Negara dan Tanah Pemda Teori dan Praktek Pendaftaran Tanah Di Indonesia, Mandar Maju, Bandung, 221

<sup>4</sup> Christy Sasauw. 2015. Tinjauan Yuridis Tentang Kekuatan Mengikat Suatu Akta *PPAT*, *Lex Privatum*, Vol.Iii/No. 1/Jan-Mar/2015, 100.

<sup>5</sup> Habib Adjie. 2011. Hukum *PPAT* Indonesia. Third edition. Refika Aditama, Surabaya. page 20.

those statements/ information are noted in the deed. If the statements or information of the appearer become not true, it becomes their responsibility. *PPAT* is freed from that thing.

Therefore, the content of *PPAT* deed possess the certainty as of the truth and be legal evidence for or between the parties and the heirs and also the beneficiaries of their right. If a person will prove the material aspect of the deed, he/she must able to prove that *PPAT* does not explain or state the truth within the deed of the official, or parties who have stated the truth before *PPAT* becomes not true and it needs to do reverse onus to deny the material aspect of *PPAT* deed. Those three aspects are the completeness of *PPAT* deed as an authentic deed, and anyone is bound by that deed. If it is proven within the court that one of those aspects is not true, that deed becomes an unnotarized deed.<sup>6</sup>

### ***The Stages Done by PPAT on Boyolali Regency in the Making of the Land Deed to Warrant the Formal Truth and the Material Truth***

*PPAT* deed is used as the basis for the registration of the right of land. Moreover, it is used as the basis of the transfer and encumbrance of the right of land. In this case, *PPAT* shall be responsible during the process of making the deed and after execution of the deed. *PPAT* as the public officer which is as the government organ, in using his/her authority is always bound by the legal norms to come from the act of public administration and unwritten legal norms also the unwritten principle of good governance. The accountability of *PPAT* over the deed he/she has made is the consequence of the function of *PPAT* as the public officer. The public officer shall always enforce the principle of good governance which one of it is the principle of accountability.

The accountability of *PPAT* in the positive law of Indonesia only at the stage of formal truth, however, morally *PPAT* is still responsible for the formal truth and material truth as it is firmly regulated by the Ethics code of *PPAT* article 3 item e about the responsibility of *PPAT* “to work with full of responsibility, independence, fair, and impartial”. *PPAT* shall work with full of responsibility in giving the truth of the contain of the deed.

Following this, the result of the interview with *PPAT* headquartered in Boyolali district state that formal truth and the material truth is pivotal in the making of *PPAT* deed. The formal and material truth became the basis and mentioned in the deed. However, everything stated by the appearers is considered as truth since *PPAT* does not need to prove the material truth by directly comes to the location or by other actions. Basically, *PPAT* is not responsible for the material truth. But if *PPAT* knows that appearers' is not under the material truth, *PPAT* must refuse.

Although according to the positive law *PPAT* is not responsible for the material truth, however, morally *PPAT* probe the material truth. Based on the interviews of 5 *PPAT* in Boyolali Regency which each of them is in Boyolali district, Teras district, Karanggede district, Ampel district, *PPAT* in Boyolali Regency does not think it is necessary to form material truth to be noted in a deed since *PPAT* is not responsible on it. So *PPAT* is passively and made the *PPAT* deed based on the existing formal data.

In the other hands, those 5 *PPAT*s state that they still have their stages for formal truth and material truth of a *PPAT* deed. The stages are done by *PPAT* to form the material truth, and formal truth are as follow:

- a. The parties shall come before *PPAT* by themselves.

<sup>6</sup> Ibid, page 21

- b. *PPAT* only accept the formal data in the form of original document.
- c. *PPAT* conduct a detailed interview towards the appearer to reveal the background of legal action which will be noted in the deed.
- d. *PPAT* synchronise the appearers' statement with the formal data.
- e. *PPAT* use the logic of thinking thoroughly in matching the formal data and the material truth. Data formal can be the basis to find out the material truth such as the compatibility between the photo in the identity cards with the appearer' face and the information of date of birth in the identity cards with the approximated age of appearers.
- f. *PPAT* always firmly refuse the appearers' request which is not under the legislation.
- g. *PPAT* always explain to the appearer how the system of land registration in Indonesia is, by the explanation, it is expected that the appearers will reticent to give false information.
- h. *PPAT* shall also understand more about the client' character and behaviour.

Based on the findings of this legal research, *PPAT* on Boyolali Regency who did the stages as mentioned above, they found some hindrances for *PPAT* in forming the material truth. The obstacles for *PPAT* was the character of clients who tend to do not want to give the fair information. In the making of land deed *PPAT* in Boyolali Regency, it is considered enough to make the *PPAT* deed by receiving the formal data and the statements of the appearer and then synchronise the appearers' statement with the formal data. With many cases of dual KTP and KTP duplication, the material truth of the formal data received by *PPAT* has not warranted the truth. However, for *PPAT* the material truth is not his/her responsibility, so *PPAT* does not need to confirm the formal data he/she receives such as KTP to the related Population and Civil Registration Agency.

Within the positive laws, there has not been a regulation about the responsibility of *PPAT* in discovering the material truth. Still, the material truth is the basis to make land deed as the requirement of the registration of right to the land. The findings of this legal research showed that *PPAT* on Boyolali regency had not implemented the principles of accountability in making the *PPAT* deed. There has not been a sanction for *PPAT* who do not do the stages of forming the material truth. To date, a regulation about the responsibility of *PPAT* on the material truth has not been regulated in the legislation. This is the consequences of negative publication system that is identified cannot give legal certainty to the certificate owner. In the negative publication system, the State does not warrant the truth of information mentioned in the certificate, so the legal certainty becomes not obvious.

However, *PPAT* in Boyolali Regency still conducts stages to form the formal truth and material truth which will be noted in the deed. But it does not correspond to the accountability which is a manifestation of someone' responsibility to account every policy implementation to reach the set goals.

The accountability of *PPAT* in making the land deed can be seen from the formal truth and material truth mentioned within the deed. By the accountability of *PPAT* in making the land deed, it is expected to be able to minimise disputes caused by the *PPAT* land deed. If *PPAT* makes a deed based on the false information, he/she has already known, and some parties are aggrieved by that deed, not only the parties who give false information but also that *PPAT* who makes the deed can be sued by the aggrieved parties. Moreover, the deed that does not contain formal truth and the material truth is not an authentic deed anymore.

## **Conclusion**

*PPAT* in Boyolali Regency has not implemented the principle of accountability. It is because of there is no regulation about *PPAT* to be responsible for the material truth within a *PPAT* deed. Legal fact shows that *PPAT* in Boyolali Regency ignores the material truth since the regulation only regulates the responsibility on formal truth. It showed that *PPAT* in Boyolali Regency as the public officer has not been in accordance with the principle of accountability. The regulation about *PPAT* has not explained about the principles of accountability in every deed he/she made, so the land deed issued have not possessed legal certainty.

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