



The Role of PPAT in Giving Legal Condition to the Issuance of Land and Building Assets in a Limited Company

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Abstract

This type of research used in this research is normative legal research. Notary status, that in making each deed must be clear, correct, complete, and in accordance with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (Law No.2-2014). In making the deed of establishment of the foundation and its amendments, the notary must also be responsible for the deed he makes because there must be sanctions that will be imposed if the deed isn't in accordance with the applicable regulations, however in practice, there are also Notaries whose deeds aren't in accordance with Law No. 2-2014 and also the Notary Code of Ethics (KEN) without feeling afraid of the sanctions it will receive because it causes one of the parties to feel aggrieved. The Deed of Sale and Purchase of Land and Building is the most important factor in the assets of a Limited Liability Company. The role of PPAT in providing legal certainty to issue AJB for Land and Buildings must go through various approaches, including applying the principle of prudence to carry out its duties as per the PPAT Position regulations.

Keywords: *PPAT; Limited Company*

Introduction

Notary status, that in making each deed must be clear, correct, complete, and in accordance with Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning Notary Position (Law No.2-2014).(1) In making the deed of establishment of the foundation and its amendments, the notary must also be responsible for the deed he makes because there must be sanctions that will be imposed if the deed isn't in accordance with the applicable regulations, however in practice, there are also Notaries whose deeds aren't in accordance with Law No. 2-2014 and also the Notary Code of Ethics (KEN) without feeling afraid of the sanctions it will receive because it causes one of the parties to feel aggrieved.(2)

The Sale and Purchase Deed (AJB) is a document proving the transfer of land rights from the owner as the seller to the buyer as the new owner. In principle, the sale and purchase of land is straightforward and in cash, that is, it's carried out in the presence of the Official for Making Land Deeds

(PPAT) and the price has been paid in full. If the sale and purchase price of the land has not been paid in full, the AJB cannot be made.(3)

According to Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, the Sale and Purchase Deed (AJB) is legal evidence (other than minutes of auction, if the transfer of rights is through an auction) that the rights to land and buildings have been transferred to other parties. AJB is made in the presence of PPAT or the Camat for certain areas where PPAT is still rare. By law, the transfer of rights to land and buildings cannot be done under hand.(4)

Thus, the first step before you buy or sell land and buildings is to visit the PPAT. By law, the transfer of land rights must be carried out through the PPAT and cannot be done under hand. Before the sale and purchase transaction is carried out, PPAT will provide an explanation of the procedures and conditions that need to be completed by both the seller and the buyer.(5)

The problem that often occurs is the loss due to the seller's mistake, namely after making a sale and purchase agreement, the Seller cancels the sale and purchase and sells the land back to another person because he received a higher bid. Then losses can also be caused by the Buyer because the Buyer is unable to pay off but the certificate has been reversed or due to the negligence of the PPAT who isn't careful in making the deed. If the loss is caused by an error by the deed-making official, he can be held accountable for civil, criminal and administrative matters.(6)

The making of these important documents is an activity that requires a high degree of knowledge and accuracy so that the deed made by the state official can assist the parties in making transactions or carrying out certain activities. Because if the deeds aren't drawn up carefully and are in accordance with statutory regulations and the code of ethics, it can cause problems in the future. It's this accuracy that as Limited Liability Company, of course, has experts in the land sector in terms of accountability for making the Deed of Sale and Purchase of Land and Buildings which will later be obtained and can be accounted for as written evidence for each shareholder of the Limited Liability Company.(7) This problem is often encountered so it's interesting to be appointed as research on aspects of the role of PPAT in providing legal certainty for the issuance of the Deed of Sale and Purchase of Land and Buildings in Limited Liability Companies.

Research Method

This type of research used in this research is normative legal research.(8)

Discussion

The Principle of Prudence and Legal Certainty for PPAT in the Issuance of Deeds of Sale and Purchase of Land and Buildings

As an official whose signature is capable of causing a transfer of rights, it's only natural for PPAT to act prudently in carrying out its duties. PPAT as the official authorized to make deeds in the land sector must carry out his / her job duties in accordance with the PPAT Position Regulations. When viewed from the overall provisions in the PPAT Position Regulation both in Government Regulation Number 37 of 1998 PPAT Position Regulations and in Government Regulation Number 24 of 2016 concerning Amendments to Government Amendments to Government Regulation Number 37 of 1998 concerning PPAT Position Regulations, there is indeed only one article which shows the precautionary

principle for PPAT in carrying out its duties, however from that one article it must be understood the norms contained in there.(9)

PPAT Position Regulations have provisions that instruct PPAT to apply the principle of prudence in the implementation of their duties, namely in Article 22 the PPAT Position Regulation states that “the PPAT Deed must be read and its contents explained to the parties in the presence of at least 2 witnesses before being signed immediately also by the parties, witnesses and PPAT.”(10) The provisions in Article 22 of the PPAT Positions Regulation, if described, will find the formulation that the PPAT deed must a) Read or explain it’s contents; b) 2 witnesses must be present in it’s making; c) Signed by the parties, witnesses and PPAT.

When there is no care in the elements of the Sale and Purchase Agreement, there is often abuse of notarial legal instruments by way of buying and selling tied to PPJB even though it has been declared paid off, but the buyer has also not made a submission to reverse the name of the title to the land. At the level of the Deed of the Land and Building Sale and Purchase Agreement, even though the buyer has a power of attorney to complete the transfer of rights. This often occurs in Limited Liability Company assets, where placing a PPJB as a form of sale and purchase agreement, but on the other hand there is an AJB which provides legal certainty in a Limited Liability Company to be upgraded as a Land and Building Certificate given authority by a Notary and PPAT.(11)

Legal Implications of Uncertainty of Deed of Sale and Purchase of Land and Buildings on Limited Liability Company Assets

The land sale and purchase deed made by PPAT is an authentic deed (Article 3 of the Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning the Position of the Official for Making Land Deeds in conjunction with the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 Regarding the Regulations on the Position of Land Deed Making Official), so that the provisions regarding the authentic deed apply to the PPAT deed. To be able to be called an authentic deed, a deed must meet certain requirements stipulated by law or other regulations.(12)

The legal consequence of a land sale and purchase deed that is not in accordance with the procedure for making a PPAT deed must be distinguished between the PPAT deed itself and the sale and purchase agreement that is written into the deed by the parties. Even though the certificate is degraded in its evidentiary power, the sale and purchase agreement between the parties is still valid as long as the terms of the sale and purchase agreement are fulfilled. The factors that lead to the making of sale and purchase deeds of land and buildings that aren’t in accordance with the procedures for making PPAT deeds are First, there is a situation that requires PPAT to make sale and purchase deeds that aren’t in accordance with the procedures for making PPAT deeds, which are needed to save a sale and purchase transaction. Second, the factor of the large value of the sale and purchase transactions carried out by the parties so that PPAT is willing to follow the wishes of the parties.(13)

Conclusion

The Deed of Sale and Purchase of Land and Building is the most important factor in the assets of a Limited Liability Company. The role of PPAT in providing legal certainty to issue AJB for Land and Buildings must go through various approaches, including applying the principle of prudence to carry out its duties as per the PPAT Position regulations. On the other hand, it must provide legal certainty in

making deeds in accordance with the procedures and mechanisms that occur. On another aspect, when there is uncertainty, it will have a legal effect on the assets of the Limited Liability Company, resulting in First, there is a situation that requires PPAT to make a sale and purchase deed that is not in accordance with the procedure for making a PPAT deed, which is needed to save a sale and purchase transaction. Second, the factor of the large value of the sale and purchase transactions carried out by the parties so that PPAT is willing to follow the wishes of the parties.

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