



Legal Protection Against Land Deed Official in Indonesia Based on the Principle of Justice

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Abstract

The existence of Land Deed Making Officials (PPAT) in Indonesia is essential because it is related to evidence of the transfer of land rights and ownership rights to flat units that provide legal certainty. At this time, the regulations governing PPAT positions in Indonesia still do not offer a form of legal protection for PPATs in carrying out their duties, so they are prone to criminalization. This study analyzes the concept of legal protection for Land Deed Maker Officials in realizing justice. This research is normative legal research using a philosophical, statutory, and conceptual approach. The results of the study indicate that the concept of legal protection against PPAT in Indonesia in realizing justice is to regulate the position of PPAT at the level of legislation so that the authority possessed by PPAT is attributive. Furthermore, in the Law on PPAT Positions, an institution that provides legal protection for PPAT positions is also established, which is given the authority to approve or reject applications for permission from law enforcement officers who will present PPAT in the judicial process.

Keywords: *Land Deed Official; Deed; Legal Protection*

Introduction

Normatively, the validity of each acquisition and/or transfer of land rights must be accompanied by legal evidence, namely the deed of transfer and/or acquisition of land rights, drawn up by PPAT. Therefore, the position of PPAT is crucial in helping to create legal certainty, legal order, and legal protection for the community, especially those who have a direct relationship with the land. PPAT is usually considered an official where one can obtain legal advice related to land issues, which can be legally accounted for. Everything written and stipulated is correct, PPAT is a substantial document maker in a legal process.

Sociologically, the presence of PPAT is very much needed by the community because PPAT can assist the community in obtaining legal certainty over the land rights they own and/or control. Even today, the PPAT profession is already familiar in people's lives in Indonesia, especially those who require services for making land deeds. PPAT is expected to be present in every community activity related to the acquisition and or transfer of land rights or other legal actions related to land as stipulated in Government Regulation Number 37 of 1998 concerning the Position of Land Deed Maker Official, and its

implementing regulations. PPAT is a public official who is given the authority to do authentic deeds regarding specific legal actions regarding land rights or property rights to flat units (Santoso 2010).

The laws and regulations related to the duties and authorities of the PPAT position have not been able to provide legal protection guarantees for PPAT, in carrying out their authority in making land deeds. This can be seen from the frequent PPAT, which deals with legal cases related to his land deeds. These legal problems are caused, among others, by incorrect document data and/or fake or falsified document data originating from parties facing PPAT for a land deed to be made. In addition, juridical data and physical data from the kelurahan or village cannot be legally accounted for due to the lack of order in land administration at the town level.

In legal cases related to the lack of guarantee of land ownership by the community due to a defect in the deed made by the PPAT, to clarify the truth of the deed, the police almost certainly always present PPAT as a witness for questioning in the judicial process. However, in practice, it is not uncommon for PPAT to be accused of providing false information, falsifying document data, or suspected of committing fraud on charges of lying related to document data originating from parties who want a deed to be made.

The accusations (criminalization) in the legal process against PPAT are certainly very detrimental because they can interfere with PPAT's performance in carrying out its authority in doing deeds. In this case, PPAT does not receive adequate legal protection. In addition, it can also bring down PPAT's reputation in the public eye because the allegations of fraud and/or lies will have an impact on the public's trust in PPAT will decrease. Although theoretically, PPAT does not have to be responsible for the contents of the deed or the substance of the deed because PPAT only checks the wishes of the parties based on document data and/or information submitted by the parties appearing.

Unlike the case with Notaries, which since Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Notary Positions, have obtained relatively adequate legal protection compared to PPAT. This legal protection calms the Notary in carrying out his duties and authorities, especially in making land deeds and other actions specified in the legislation. It can even be said that notaries are not easily criminalized by law enforcement officials, especially to be presented in the trial process related to the deed they have issued. Meanwhile, PPAT is often and easily suspected of providing false or falsified information without adequate legal protection (Hatta Isnaini Wahyu Utomo 2019).

The treatment of a Notary that is different from that of a PPAT concerning legal protection is considered unfair to PPAT. The reason is that the two officials have in common as officials authorized to make authentic deeds and other legal actions needed by the community. The difference is also related to the legal basis of the regulation, the Notary in carrying out his authority is regulated by law (UUJN), while PPAT is only regulated by Government Regulation, which hierarchically the position of Government Regulation is under the law.

The difference in such arrangements certainly psychologically impacts PPAT because the law has a stronger position than the Government Regulation. Laws are legal products whose formation involves the people through their representatives sitting in parliament. Meanwhile, Government Regulations are only formed by the President with the involvement of the relevant ministries, so the binding force is more vital by law than Government Regulations.

In addition, in the Law on Notary Positions, there is also a Notary Honorary Council, which can preventively protect Notaries who are suspected of making mistakes in issuing the deed. Therefore, it is very reasonable if PPAT demands equal treatment about legal protection in carrying out its duties and authorities, as well as the legal basis used in carrying out its responsibilities and functions. Considering that a Notary and PPAT, are both state officials who represent the state in doing authentic deeds that are needed by the community.

The conditions mentioned above gave birth to a legal vacuum (*rechtsvacuum*) which, even though there were regulations governing the position of PPAT, namely PP No. 37 Th. 1998 jo. PP No. 24 Th. 2016 but the law has not accommodated any form of legal protection for implementing PPAT's duties. Based on these conditions, it is necessary to formulate a concept of legal protection for Land Deed Making Officials in realizing justice.

Methods

The present study uses a normative legal research method that is conducted in finding solutions for legal matters (Isnaini and Utomo 2019). The research approach used is the statute approach, conceptual approaches, historical approach and philosophical approach.

Discussion

Historically, PPAT involvement has existed since the enactment of Government Regulation Number 10 of 1961 concerning Land Registration, which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration. To guarantee legal certainty over a legal act, namely the acquisition and/or transfer of land rights, it must be completed with perfect evidence, namely an authentic deed made by and before an official appointed by the Minister of Agrarian Affairs. This is intended to guarantee the rights and obligations and the legal consequences of legal actions on land by the parties (Harsono 2005).

PPAT, in carrying out its functions and duties, is guided by ethical and legal norms, which serve as guidelines for ethical behavior and legal behavior in carrying out their daily authorities, functions, and duties. The ethical guidelines are intended as ethical rules sourced from the agreement of PPAT colleagues, and the legal guidelines are Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Authors as amended by Government Regulation Number 24 of 2016, Regulation of the State Minister of Agrarian Affairs/Head of the Land Agency National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, Regulation of the Head of the National Land Agency Number 1 of 2006, as amended by Regulation of the Head of the National Land Agency Number 23 of 2009 concerning Amendments to Regulation of the Head of the National Land Agency Number 1 of 2006 regarding provisions of the Implementation of the National Land Agency Number 37 of 1998 concerning the Position of Officials for Making Land Deeds and other laws and regulations relating to the duties and authorities of PPAT (Utomo 2020).

The background of the establishment or holding of the PPAT position is intended to assist the community in fulfilling the need for authentic deeds on the transfer and transfer of land rights and to provide legal guarantees for legal actions related to the transfer of land rights. The presence of this PPAT position is more of a government effort to provide legal certainty over the transfer of land rights by the community because the deed made by PPAT related to land rights is an authentic deed that is used as perfect evidence if one day there is a dispute due to the transfer of land rights.

The authenticity of the land deed made by PPAT is based on the reason that the deed of transfer of land rights is created by and before an official appointed by the Minister. This is intended to guarantee the rights and obligations and the legal consequences of legal actions on land by the parties. The presence of this PPAT is an effort to fill the limited number of Notary positions to meet the needs of land deed services needed by the community (Adjie 2012).

The role of PPAT in land registration is to make a land deed as legal evidence of the acquisition and/or transfer of land rights as the basis for land registration. As is known, according to Article 1 point 1

of Government Regulation Number 24 of 1997 concerning Land Registration, it is a series of activities carried out by the Government continuously, continuously, and regularly, including collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists of land parcels and apartment units, including the provision of proof of title for parcels of land that already have rights and ownership rights to flat units and certain rights that burden them (Hatta 2020).

Indeed, authentic deeds are required by laws and regulations to create certainty, order, and legal protection for interested parties and the community as a whole. The PPAT's authority, theoretically public legal power, is to make the deed of agreements that intend to transfer land rights, grant new land rights, pawn land, or lend money with land rights as collateral.

In its task of serving the community in making land deeds, PPAT receives an honorarium as compensation for the issuance of land deeds. The amount of honorarium that PPAT can collect against people who ask for a deed to be made is determined based on statutory regulations. Thus, PPAT cannot determine the honorarium amount according to his wishes.

In general, every country that adheres to the rule of law is always bound to three basic principles, namely the supremacy of law (supremacy of law), equality before the law (equality before the law), and law enforcement in a way that does not conflict with the law (due process of law). These three principles are the foundation of law enforcement. In addition, another important principle in a state of the law is equal protection (equal protection) as part of equality in law (equality before the law) (Suhartono and Huda 2019).

The principle of equality before the law is the main pillar of building the rule of law, which prioritizes the law above all else (supreme of law). Recognition of the position of each individual before the law is placed in the same position regardless of social status. The application of the principle of equality before the law in the practice of law enforcement based on sovereignty sometimes experiences "refining" or "exception" (exceptions) (Priyadi and others 2019).

This difference in legal treatment or exception only applies if there are special reasons. For example, exceptions apply to certain people/groups of people, namely those who, for carrying out an act assigned by law, cannot be punished/punished. There is no impunity for these people because if they are proven to have committed a crime by using their power and authority, the punishment against them is heavier than that ordinary people should receive.

Against these people, if they commit an act to implement the provisions of the law, they cannot be punished (not immune to the law). On the other hand, if the person concerned commits an act that violates the law by using his power and/or authority, the punishment will be increased. To become a person excluded from the principle of equality before the law, one must meet specific requirements that are made according to the standards of fulfilling the values of being a noble person and an honorable position (nobile officium).

A PPAT who is at once involved in a legal problem related to the deed he made, for example containing a legal defect, is not infrequently the PPAT is summoned by law enforcement officials in the context of law enforcement processes, whether it is a witness, suspect, or defendant. In the process of law enforcement by law enforcement officers, there are special procedures that are not regulated normatively in the PPAT position regulations, unlike the case with the treatment given to the position of a Notary, where the provisions regarding the summons and taking the minutes of deed there are special procedures in the law enforcement process.

Provisions regarding the legal protection of PPAT are not regulated normatively in PJPPAT, besides that a PPAT in carrying out the functions of his position should not be subject to the principle of

equality before the law, as long as in carrying out his position, he has followed the procedures determined by the laws and regulations. However, with the approval of PPAT being examined by investigators, public prosecutors, and/or judges, then there is already an element of conditioning for the PPAT to be placed in a position, not in the "nobile person" or "nobile officium" class, but as a person who is subject to the principle of equality before the law as happens to people in general. Furthermore, the fundamental question is whether PPAT, a certain position that carries out part of the government's duties, especially in the land sector in the Indonesian legal system, has received proper legal protection.

The concept of legal protection against PPAT is intended as a concept or model of legal protection against PPAT, which is expected to provide a sense of justice for PPAT. So far, PPAT as a land deed official and a Notary does not or does not have adequate legal protection as does a Notary. The demand for fair equality between the PPAT and the Notary must be seen as a natural thing because the two have something in common, namely as land deed officials. The equality of authority was not followed by equal treatment in legal protection between the Notary and the PPAT. Because when a Notary issues a land deed containing legal defects, the Notary preventively obtains legal protection through Law Number 30 of 2004 as amended by Law Number 2 of 2014 concerning Notary Positions (Adjie 2009).

Legal protection is a place or shelter for the community to guarantee their rights and equal opportunity and treatment without discrimination to realize prosperity so that peace can be achieved in society. According to Muchsin, this legal protection can be divided into two, namely:

- a. Preventive Legal Protection. The government protects with the aim of preventing violations before they occur. This is contained in laws and regulations to prevent a violation and provide signs or limitations in carrying out an obligation.
- b. Repressive Legal Protection. Repressive legal protection is absolute protection in the form of sanctions such as fines, imprisonment, and additional penalties if a dispute has occurred or a violation has been committed (Muchsin 2007).

Legal protection is protection given to legal subjects through a set of preventive and repressive norms, both oral and written. Legal protection for PPATs in carrying out their authority duties is conceptualized through the functioning of the legal norms, which legally provide a sense of justice, order, certainty, benefit, and peace. This means that PPAT, in carrying out their duties, has a sense of security, comfort, and peace and does not have fear and worry from the possible threat of legal sanctions for their mistakes.

Fitzgerald quotes Salmond's opinion, stating that the law aims to integrate and coordinate various interests in society because, in the traffic of interests, protection of certain interests can be done by limiting various interests on the other hand. The interest of the law is to take care of human rights and interests so that the law has the highest authority to determine human interests that need to be regulated and protected. (Rahardjo 2000b)

Meanwhile, regarding legal protection, Satijipto Raharjo stated that: Legal protection is to protect human rights that others have harmed and that protection is given to the community so that they can enjoy all the rights granted by law. Law can be functioned to realize protection that is adaptive, flexible, predictive, and anticipatory. Law is needed for those who are weak and not yet strong socially, economically, and politically to obtain social justice (Rahardjo 2000).

The essence of Satijipto Raharjo's opinion above, it can be assumed that legal protection aims to "protect human rights that others have harmed, and this protection is given to the community so that they can enjoy all the rights granted by law." Meanwhile, Kansil CST focuses more on legal efforts that law

enforcement officers must provide to provide a sense of security, both mentally and physically, from disturbances and various threats from any party” (Kansil 2000).

This legal protection against Notaries can be seen by the inclusion of Article 66 paragraph (1) of Law Number 30 of 2004, which is then rewritten in Article 66 paragraph (1) of Law Number 2 of 2014 concerning Notary Positions. The provisions of Article 66 paragraph (1) of the Law on Notary Positions stipulate that if the police apparatus presents a Notary in the judicial process, they must obtain the approval of the Regional Supervisory Council (Law Number 30 of 2004) or the Notary Honorary Council (Law No. 30 of 2004). Number 2 of 2014). This approval then becomes a place for the protection of the Notary who is suspected of having made a mistake in doing the deed.

This preventive legal protection concept is not owned by PPAT, as with Notaries. The difference in the guarantee of legal protection between PPAT and Notary shows that there is injustice. Justice and law can be seen as pieces of a coin, can be seen from different sides, but the two cannot be separated. The injustice between the PPAT and the Notary in obtaining legal protection is not in accordance with Aristotle's theory of justice, especially comitative justice.

Aristotle's view of justice can be found in his work *nichomachean ethics*, politics, and rhetoric. Aristotle, was the first philosopher to formulate the meaning of justice, that "justice is to give everyone what is their due, fiat iustitia berat mundus (Rato 2010). Commutative justice gives an equal amount to everyone without discriminating against their achievements in this regard. Related to the role of exchanging goods and services (Apeldoorn 1996).

Referring to the theory of commutative justice, PPAT should also obtain preventive legal protection and notaries. As is known, notaries, through Article 66 paragraph (1) UUJN, have guaranteed protection for notaries involved in criminal cases related to their deeds. In this case, if the Notary is involved in a criminal case, the investigator who wants to present a Notary must first obtain approval from the Notary Honorary Council.

Consent can be interpreted as permission or permission, meaning that if someone gives consent to another person, the agreement means giving permission or permission for the person concerned to do or not do certain actions. The term permit or permit is often heard concerning prohibited acts, in this case, by-laws and regulations. Permits are often used as an instrument of government to influence and control citizens. N. M. Spelt and ten Berge said: “The government uses permits as a juridical means to control the behavior of citizens. The use of permission aims to direct his behavior in accordance with the wishes that have been determined in the applicable rules (Isnaini and Wanda 2017).

Based on this understanding, if the Notary Honorary Council does not give approval to the police to present a Notary who will be presented in the trial process, the Notary Honorary Council shall prevent the Notary from protecting. This concept of legal protection should also be applied to PPAT because PPAT has the same authority as Notaries, one of which is the authority to make land deeds.

The same treatment should also be applied to PPAT, with reference to the notion of licensing as an agreement, PPAT also has the same right to obtain preventive legal protection through the PPAT Honorary Council. Juridically, PPAT also has an Honorary Council owned by a Notary. This assembly is regulated in the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number: 112/KEP-4.1/IV/2017. In Article 1, point 8 is formulated: The Honorary Council is an independent body or institution free from partiality in the IPPAT association, which has the task and/or obligation to carry out guidance, supervision, and control as well as improvement and has the authority to summon, examine and impose decisions, sanctions or penalties for members of the IPPAT association who violate the Code of Ethics.

Furthermore, Article 1 point 9 of the PPAT Code of Ethics has formulated: "The Central Honorary Council is the Honorary Council at the national level of the IPPAT association which has the authority to carry out guidance, supervision, control, and improvement, as well as to examine, decide and impose sanctions or penalties on IPPAT association members at the appeal and final level and are final. Article 1 point 10 of the PPAT Code of Ethics has formulated: "The Regional Honorary Assembly is the Honorary Council at the Regional level of the IPPAT association which has the authority to carry out guidance, supervision, control, and improvement, as well as to examine, decide and impose sanctions or penalties on members of the association. IPPAT at the first level".

The Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number: 112/KEP-4.1/IV/2017 does not at all regulate the authority of the Honorary Majelis except jointly with the Regional Honorary Council, imposing sanctions on PPAT who violate criminal law regulations. The Honorary Council does not have the authority to refuse or approve related PPATs involved in criminal cases and presented in the trial process.

The PPAT Position Regulation should also be equipped with an Honorary Council with the same authority as that of a Notary as regulated in Article 66 paragraph (1) of the UUJN. Thus, PPAT has a form of preventive legal protection through the PPAT Honorary Council, which has the authority to refuse or approve requests from the police and other law enforcers to present PPAT in the trial process related to the PPAT deed it made.

In addition to obtaining justice in preventive legal protection, PPAT arrangements should be equated with Notary arrangements. This means that everything related to PPAT, both the authority, duties, and responsibilities of PPAT, are also regulated by law, so they obtain/have a strong legal basis. So far, the duties, authorities, and responsibilities of PPAT are only regulated through Government Regulations, which are legal under the law. In the perspective of commutative justice, Government Regulation Number 37 of 1998 concerning the Position of the Official Making Land Deeds should be increased to become law so that it has more definite legal force than Government Regulations.

Conclusion

The concept of legal protection for Land Deed Making Officials in realizing justice is to regulate the position of PPAT in regulations at the level of the Law so that the authority possessed by PPAT is attributive. Furthermore, in the Law on the Position of PPAT, there is also an institution that provides legal protection for the position of PPAT, as in the Law on the Position of Notary, which includes the Notary Honorary Council, which is given the authority to approve or reject applications for permission from law enforcement officers who will summon PPAT.

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