

# Violation of Legal Certainty in the Sale and Purchase Deed made by the Land Deed Officer (PPAT)

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## Article Info

### Article history:

Received October 2023

Revised October 2023

Accepted October 2023

### Keywords:

Legal Certainty

Sale and Purchase Deed

Authentic Deeds

documentary evidence

## ABSTRACT

The regional revenue Office (Bapenda) and the Land Office apply the inclusion of Bapenda's appraisal price in the Sale and Purchase Deed made by the Land Deed Making Officer (PPAT). If this happens, then there will be no legal certainty for the parties. This happens mainly because the PPAT Sale and Purchase Deed is an authentic deed and has an important role in proving civil cases, especially if there is a dispute in court. Authentic Deeds have the highest position as documentary evidence in civil cases, below which are private deeds and unilateral deeds or unilateral confessions. The evidentiary value of an authentic deed based on Article 1870 of the Civil Code is perfect (*volledig bewijskracht*) and binding (*bindende bewijskracht*). This has consequences, whatever is stated in the authentic deed must be considered true and valid. Apart from that, the contents and statements contained therein are true.

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## 1. INTRODUCTION

The issuance of Government Regulation Number 24 of 1997 concerning Land Registration means that the obligation to register the transfer of land rights must be carried out before the Land Deed Making Officer (PPAT) and registered at the local Land Office. In addition, in order for a sale or purchase to be considered lawful, the PPAT must draft and sign a Deed of Sale and Purchase. Next, the Deed of Sale and Purchase is recorded at the Land Office as evidence that a lawful act has been completed.

The form of the Deed of Sale and Purchase is specifically regulated through the Regulation of the Head of the National Land Agency (Perkaban) Number 8 of 2012 concerning Land Registration. The PPAT Sale

and Purchase Deed's format, language, and content are governed by Perkaban. The amount of the sale and buy that the parties have completed is one of the fields that has to be mentioned in the Deed of Sale and buy. The problem arises when the Regional Revenue Agency (Bapenda) and the Land Office agree that the sale and purchase price stated in the Terms of Sale and Purchase is the transaction price estimated by Bapenda. The Regional Revenue Agency (Bapenda) and the Land Office reasoned that this was done because many people were dishonest in conveying the purchase and sale price of land to reduce the tax value of Land Acquisition Tax (BPHTB).

The basis for imposition of BPHTB on land sale and purchase transactions is the transaction price as regulated in Law 28 of

2009 concerning Regional Taxes and Regional Retributions (Regional Tax Law, Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, and Regulations Government Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Levies so that the policies of Bapenda and the Land Office clearly violate applicable laws and regulations.

A rule of law is a state that runs its government based on legal authority (rule of law) and aims to maintain legal order. This provides an understanding that the State, including the government and other institutions, in carrying out any actions must be based on legal certainty. Whereas, an authentic deed essentially contains formal truth in accordance with what the parties have notified to the PPAT. Transfer of land rights arises from the seller to the land buyer as stipulated in Article 37 paragraph (1) PP No. 24 of 1997 which states that "Transfers of land rights and ownership rights to apartment units through buying and selling, swaps, grants, income within the company and other legal actions for transferring rights, except for transferring rights through auctions, can only be registered if proven by a deed [1].

Nonetheless, PPAT is required to make sure that the terms of the PPAT Deed are accurately understood and in line with the desires of the parties. To this end, PPAT must read the deed so that its contents are clear and grant access to information pertaining to the parties who signed it, including relevant laws and regulations [2]. Things that must also be considered are those related to requirements, both about the object of buying and selling and the subject of the sale and purchase. In the event that these conditions have not been met, then at the time of signing the deed against the sale and purchase of land rights cannot be done before the PPAT [3].

This systematic act of arbitrariness brings back the essence of the rule of law itself. Without a Regional Regulation or other clear rules, the government arbitrarily applies tax collection. Furthermore, this arbitrariness interferes with the private rights of its citizens.

The Deed does not meet the requirements of good faith and consensus. In addition, PPAT is compelled by local authorities and governments to record prices that differ from those specified in the deed by the buyer and seller.

This paper seeks to determine and evaluate the legal ramifications of Bapenda's estimated price being stated in the PPAT Sale and Purchase Deed. In order to ascertain the legal ramifications of including Bapenda's projected price in the Deed of Sale and Purchase executed by PPAT, the author carried out study.

## 2. METHODS

This research was conducted to identify and analyze violations of legal certainty in the Deed of Sale and Purchase made by PPAT. A juridical approach related to the issues studied is carried out in this study, hence this research is classified as a normative juridical research. Normative juridical research is a qualitative type of research method that takes an approach to legal norms contained in laws and regulations, results of court decisions, and laws that live in society. The approach in this study formulates the concept of legal norms which will be used as a benchmark for human behavior in relation to the problems studied. Secondary data related to the problems studied are used in research that uses a normative juridical approach. Secondary data is used to formulate theoretical and scientific legal doctrines. The legal doctrine that has been formulated will then be used to analyze the issues discussed. Secondary data used in legal research is library material which is generally in the form of primary, secondary, and tertiary legal materials. This study makes use of main legal resources, which are laws and regulations, as well as secondary legal materials, which are law books, interpretations of primary legal materials, and research findings about real deeds, civil law, and administrative law.

### 3. LITERATURE REVIEW

#### *Land Deed Making Officer*

Convey The definition of Land Deed Making Offic (PPAT) is contained in several statutory regulations, namely based on Article 1 Number 4 of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land (UUHT), stating that "Official "Land Deed Maker, hereinafter referred to as PPAT, is a public official who is authorized to make deeds of transfer of land rights, deeds of imposition of mortgage rights, and deeds granting authority to impose mortgage rights according to the applicable laws and regulations." Article 1 number 5 of Government Regulation Number 40 of 1996 concerning Business Use Rights, Building Use Rights, and Land Use Rights states that "Land Deed Making Officer, hereinafter referred to as PPAT, are public officials who are given the authority to make land deeds". violation of legal certainty in the sale and purchase deed made by the land deed official.

Furthermore, based on Article 1 point 24 of Government Regulation Number 24 of 1997 concerning Land Registration, "Land Deed Making Officials, hereinafter referred to as PPATs, are general officials who are given the authority to make certain land deeds. The purpose of land registration, or Cadastral Recht, is to guarantee land rights' clarity and the efficiency of the legal system. According to earlier research, land prices in Indonesia are regulated by law, and this includes land tax from every land sale and purchase transaction. However, because taxes can be excessive and do not correspond with the predetermined land price, actors occasionally disregard the regulations [4].

Meanwhile, in Article 1 paragraph 1 of Government Regulation Number 37 of 1998 concerning Position Regulations for Officials Making Land Deeds as amended by

Government Regulation Number 24 of 2016, PPAT is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding rights to land or ownership rights to apartment units.

The laws and regulations indicate that the position of the Land Deed Drafting Officer (PPAT) is that of a public official. A public official is a person appointed by an authorized agency with the task of serving the general public in a particular field or activity. Apart from the above definition, the Land Deed Drafting Officer (PPAT) also has duties and authority. In Article 2 of Government Regulation Number 37 of 1998, it is stated that "PPAT has the main task of carrying out some land registration activities by making deeds as proof that certain legal acts have been carried out regarding land rights or ownership rights to apartment units, which will be used as the basis for registering changes to registration data. land resulting from that legal action."

The legal acts as intended in paragraph (1) are Buying and selling, Exchange, Grant, Entry into the company (inbreng), Sharing of shared rights, Granting Building Use Rights/Use Rights on Freehold Land, Granting Mortgage Rights, Granting power of attorney to impose mortgage right.

Generally speaking, PPAT's primary responsibility is to handle a portion of property registration tasks. This includes creating deeds to serve as documentation of the legal processes taken to establish land ownership rights. Therefore, this PPAT deed can be used as a basis for registering data changes or for land registration resulting from legal actions.

### 4. RESULTS AND DISCUSSION

The Regional taxes are regulated in Law Number 28 of 2009 concerning Regional Taxes and Regional Retributions (PDRD),

which has been amended by Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments (HKP3D). The government issued Government Regulation Number 35 of 2023 concerning General Provisions for Regional Taxes and Regional Retributions (PP PDRD). This government regulation technically regulates provisions regarding regional taxes and regional levies, including fees for the acquisition of land and building rights.

One of the taxes regulated in regional taxes is the land and/or building rights acquisition fee (BPHTB). Article 1 number 27 PP PDRD defines the Land and/or Building Rights Acquisition Fee as a tax imposed on the acquisition of land and/or building rights. The Land and/or Building Rights Acquisition Fee (BPHTB) is a regional tax, the proceeds of which are collected by the regional tax authority and allocated to the regional treasury. Purchasing and selling is one of the acquisitions of rights to land and/or buildings that is covered by the building and/or Land Rights Acquisition Fee (BPHTB).

The transaction price that is carried out by the seller and buyer in accordance with the applicable rules and regulations serves as the foundation for the imposition of BPHTB in the case of buying and selling. Nonetheless, a lot many areas (cities and districts) use the projected price in line with the market price as the foundation for enforcing BPHTB on purchases and sales. The issue that develops is that, notwithstanding the Regional Regulation (as also regulated in Laws and Government Regulations) has mandated that the transaction price serve as the foundation for purchases and sales, and the Regency Regional Revenue Agency (Bapenda) implements this by conducting its own evaluation of the purchase and sale price as well as the price. The estimate has to be regarded as the purchase and selling price that both parties have decided upon.

The value of the Bapenda assessment results must be included in the sale and purchase deed and used as the selling price for the sale and purchase object by the Land

Deed Making authority (PPAT), a public authority. The local land office also concurred that Bapenda's price is the one that has to be mentioned in the PPAT deed.

The primary issue is that the sale and buy price shown in the PPAT Sale and buy document, a genuine document, is not the real amount—rather, it is an estimate of the cost of Bapenda. The price listed on the sale and purchase deed is thus not the real price. As a matter of fact, the PPAT Sale and Purchase Deed is a legitimate document, and as such, its accuracy and substance must be accepted.

Legal certainty, according to Radbruch, includes page 46.

1. That law is positive, meaning that it is a statutory regulation (gesetzliches Recht).
2. That the law is based on facts (tatsachen), not a judgement about judgements that will later be made by judges, such as “good will” and decency.
3. That the law must be formulated clearly so as to avoid errors in meaning as well as being easy to implement.
4. Positive laws must not be changed frequently.

The idea of a rule of law has been developing since 1800 BC. The next development of the idea of a legal state was the idea of a legal state, according to Aristotle (384–322 BC), one of Plato's students. The aim of the state, according to Aristotle, is to provide the highest good for citizens.

To realise the goal of an ideal state, Aristotle then put forward various forms of an ideal state. The ideal form of state, according to Aristotle, is determined based on two criteria: (1) the number of people who hold power, and (2) the government's objectives for public or personal interests [5]. Besides that, Aristotle's opinion, quoted by Jazim Hamidi, stated that a good country is a country that is governed by a constitution and has legal sovereignty. There are three elements of constitutional government, namely a government that is implemented [6]:

1. For the public interest;

2. According to law based on general provisions, not law made arbitrarily, which overrides conversion and the constitution;
3. Based on the will of the people, not in the form of coercion or pressure carried out by a despotic government.

The state is actually a construction created by humans (Human Creation) regarding patterns of relationships between humans in social life, which are then organised with the aim of fulfilling interests and achieving common goals. Human associations were organised to achieve a goal when the state was formed. According to Gustav Radbruch, as quoted by Satjipto Rahardjo, legal certainty is one of the basic values of the law. Legal certainty is a general legal principle which underlies the rule of law. The main thing for legal certainty is the existence of regulations (rules) of the law itself [7].

These provisions are not only aimed at the government but also at land rights holders. The realisation of legal certainty and protection for land right holders will be achieved if the land right holder has registered his land rights, so that the land right holder can prove himself as the land right holder and the land right holder is given a certificate of proof of rights as a tool. strong evidence, which is often known as a land certificate [8].

The view of the modern legal state, according to Jimly Asshiddiqie, contains twelve basic principles of the legal state (rechstaat) that apply today. These twelve basic principles are the main pillars that support the standing of a modern state, so that it can be called a rule of law or rechstaat in the true sense. The supremacy of law, equality

before the law, the legality principle (due process of law), power restriction, independent executive institutions, and a free and unbiased judiciary are among the twelve fundamental tenets of the contemporary legal state. picking sides, constitutional justice, state administrative justice, human rights protection, democracy (demokratische rechstaat), serving as a vehicle for achieving state objectives (welfare rechstaat), openness, and social control [9].

Additionally, it can be argued that every legal state must have certain elements or qualities, such as the recognition and defense of human rights; the presence of an impartial, independent, and free judiciary; the existence of a power structure within the state's power management system; and the application of the legality principle in all of its manifestations, which entails that the law has been made democratically before, that the law is supreme or above all, and that everyone is treated equally before the law [10].

## 5. CONCLUSION

Forcing Bapenda's appraisal price into the PPAT Sale and Purchase Deed causes legal uncertainty, especially in terms of proving civil cases in court. The Authentic Deed which is supposed to be perfect and binding documentary evidence cannot be used as a reference because there is a falsity regarding the sale and purchase price. Imposing an estimated price also violates legal certainty for the parties and therefore does not really reflect the upholding of the rule of law.

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