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The Liability of The Land Deed Official (PPAT) in Terms of The Reading of The Grant Deed when Carried Out by Its Employees and The Lack of Witnesses in The Deed (Case Study of Verdict Number 3/PDT. G/2020/PN BLA)

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Abstract

Conveyancer (PPAT) has the authority to make an authentic deed regarding the transfer of land rights, one of them is the Grant Deed. In making the deed, Conveyancer must be responsible for what they made because Conveyancer has been appointed directly by the Minister of Agrarian and Land Affairs. The article discusses the legal issues in the Blora District Court Decision Number 3/Pdt.G/2020/PN Bla, namely regarding Conveyancer's responsibilities based on the Grant of a Deed read by his employees and the lack of witnesses in making the Grant Deed. This study uses a normative juridical method by using secondary data sourced from primary, secondary, and tertiary legal materials. The Deed of Grant is an authentic deed that can be used as a perfect evidence. Due to its irrevocable nature and can't be erased, except for certain reasons, it requires accuracy and prudence in the preparation of the deed. Conveyancer is obliged to read out the Deed of Grant before it is signed by the parties and there must be at least 2 (two) witnesses in making the Deed of Grant in accordance with the provisions of Article 22 of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of the Official Making the Land Deed which is currently updated with Government Regulation Number 24 of 2016.

Keywords: *Conveyancer; Grant Deed; Responsibility.*

A. Introduction

Land Deed Making Officers (PPAT) in Indonesia has existed since the enactment of Government Regulation No. 10 of 1961 concerning Land Registration; the government regulation is an implementing provision of Law No. 5 of 1960 concerning the Basic Rules Agrarian Principles (UUPA). Land registration is currently regulated in Government Regulation No. 24 of 1997. PPAT is authorised to do authentic deeds regarding certain legal actions related to land rights or Property Rights to Flats Units (HMSRS).¹ This authority is in line with the authority of PPAT regulated in Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Regulation of the Position of Land Deed Making Officials.

The deed made by PPAT is proof that legal action has been carried out regarding land rights or HMSRS.² PPAT has the authority to make authentic deeds regarding all legal acts, consisting by:

1. Deed of Sale and Purchase;
2. Exchange Act;

¹ Tim Pengkajian Di Bawah Pimpinan Ady Kusnadi, *Masalah Hukum Jabatan Notaris Dalam Kegiatan Pertanahan* (Jakarta: Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, 2010).

² *Peraturan Pemerintah Tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah*, n.d., Pasal 1 angka 4.

3. Grant Deed;
4. Deed of Entry into the Company;
5. Deed of Division of Joint Rights;
6. Deed of Granting Dependent Rights;
7. Deed of Granting Building Rights / Right to Use on Land Property Rights;
8. Power of Attorney Charges Dependents.

PPAT has the authority to do authentic deeds above, but PPAT must only have the authority to make the deed limited to its work area only. However, there are exceptions to the Exchange Act, the Entry Into The Company Act and the Joint Rights Sharing Act regarding some land rights and HMSRS which are not all located within the PPAT work area. It is permissible for PPAT to do the deed with a record covering one of the plots of land or units of flats whose rights become the object of legal action in the deed.³ So that outside of the above authority, PPAT is not authorized to make deed other than those related to land rights or HMSRS.

After the deed is made and signed by the parties, witnesses, and PPAT, then no later than 7 (seven) working days since the signing of the deed, PPAT has an obligation to submit the deed made along with the necessary documents to the Land Office to be listed. These documents, among others, consist of:

1. Application letter for transfer of rights signed by the recipient of the right or power of attorney;
2. Written power of attorney from the right recipient if the person applying for registration for transfer of rights is not the right recipient;
3. Deed of legal action of transfer of the rights concerned made by PPAT who at the time of making the deed is still in office and whose work area includes the location of the land concerned;
4. Proof of identity of the party transferring rights;
5. Proof of identity of the recipient;
6. A transferred land rights certificate or HMSRS;
7. Permission to transfer rights as intended in Article 98 paragraph (2);
8. Proof of payment of Land and Building Rights Acquisition Duty as intended in Law No. 21 of 1997, in the event that the duty is owed; and
9. Proof of payment of income tax as intended in Government Regulation No. 48 of 1994 and Government Regulation No. 27 of 1996, in the event that the tax is owed.⁴

In carrying out its position, PPAT has a specific work area that is used as a territory to show the authority of a PPAT to do a deed regarding land rights and HMSRS that are in it. The working area of a PPAT covers one provincial area. PPAT has a position in districts/cities in provinces that are part of its work area.⁵ The existence of PPAT can be classified into 3 (three) types, consisting by:

1. PPAT Is a general official who is given the authority to make authentic deeds regarding legal acts regarding land rights or HMSRS;⁶

³ Peraturan Pemerintah Tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah., Pasal 3 ayat (1) dan (2).

⁴ Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah, n.d., Pasal 103 ayat (2).

⁵ Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah., Pasal 12 A.

⁶ Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah., Pasal 1 angka 1.

2. PPAT While Is a government official appointed because of his position to carry out PPAT duties by making PPAT deed in certain areas where there is not enough PPAT;⁷
3. Special PPAT Is an official of the National Land Agency appointed because of his position to carry out PPAT duties by making a special PPAT deed in the framework of the implementation of certain government programs or duties.⁸

In carrying out its position, PPAT is also guided by a code of ethics made by the PPAT organization called the Association of Land Deed Making Officials. Currently, code of ethics number 112/KEP-4.1/IV/2017 applies dated April 27, 2017. In practice, PPAT is supervised by the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency, so that PPAT cannot be arbitrary in carrying out their positions.⁹ This code of ethics is helpful as a moral rule made by the association based on congressional decisions as stipulated by the laws and regulations where the rules are obliged to be obeyed by the association members from I-PPAT and all persons. They carry out the authority and duties of the office as PPAT.

This paper focuses on the Grant Deed made by PPAT, which is discussed in a court decision. The Grant Deed is regulated in Article 1314 of the Civil Code (KUHP), known as a free agreement that has the meaning of consent where the party gives benefits to the other party without receiving benefits for himself; more clearly, the Grant Deed contains an agreement that benefits one party only.¹⁰ The Grant Act is a gift from a person during his or her life to others for free and irrevocably. Grants are one of the few ways to transfer land rights stipulated in Articles 1666 – 1693 of the law code. This land grant agreement must be written in the form of an authentic deed made by the authorized official, namely PPAT, which will later be issued by PPAT. The transfer of land rights through grants can only be registered if proven by a deed made by the authorized PPAT in accordance with the provisions of applicable laws and regulations.

But in certain circumstances, the Head of the Land Office can register the transfer or transfer of property rights, which is carried out by individual Indonesian citizens. The Head of the Land Office can prove without a deed that is not made by PPAT but according to the Head of the Land Office, the level of truth is considered sufficient to register the transfer of the rights concerned. The exception is determined by the Minister. The Grant Deed is an agreement. According to Article 1320 of the law code, the agreement is said to be valid in the event of an agreement for the parties, the ability of the parties to ally, a certain thing and a lawful cause. The existence of agreement and proficiency is a legitimate subjective condition for an agreement to be considered valid by law, namely that the parties must have a harmonious understanding of what is stipulated in the agreement. Grant agreements must be outlined in the deed, which is written deliberately to be used as evidence of an event (deeds, agreements or provisions) and signed. Therefore there are 2 (two) important elements that a writer is a deed, which consists of:

- a. Deliberately made to be used as evidence; and
- b. Signed.

⁷ Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah., Pasal 1 angka 2.

⁸ Peraturan Menteri Negara Agraria/Kepala Badan Pertanahan Nasional Tentang Ketentuan Pelaksanaan Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah., Pasal 1 angka 3.

⁹ Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Republik Indonesia Nomor 2 Tahun 2018 Tentang Pembinaan Dan Pengawasan Pejabat Pembuat Akta Tanah, n.d., Pasal 1 angka 2, 3 dan 5.

¹⁰ Rudy Haposan Siahaan, *Hukum Perikatan Indonesia Teori Dan Perkembangannya* (Malang: Inteligencia Media, 2017).

The deed can be done by deed underhand or by authentic deed. The difference between the deed under the hand and the authentic deed is related to the proof. An authentic deed has perfect evidentiary power compared to the agreement made under the needle as stipulated in Article 1870 law code.¹¹ An authentic deed is a deed made in a form determined by law, made by or before an authorised public official where the deed is made, such as a Notary or PPAT. A deed that can be said to be authentic must meet the requirements as specified in the Article¹² 1868 Law code by:

1. The deed must be made "by" (door) or "in front" (*ten overstaan*) of a public official;
2. The deed must be made in the form prescribed by law;
3. The public office by-or in front of whom the deed is made, must have the authority to make the deed.

If one of these conditions is not fulfilled, it can result in the deed in question only have the power of proof such as the deed under the hand, if signed by the parties.¹³ In making a deed, a deed witness is needed because of his role knowing all aspects of formalities in making the deed carried out in front of PPAT.¹⁴ The role of the deed witness is to bear witness to the truth on the authentic deed made by PPAT and affix its signature to the authentic deed. Deed witnesses are usually employees of PPAT.¹⁵

This paper examines the case that began in 2014, SBR went to PPAT EE to request a Grant Deed from R (SBR parents) for SBR, who at that time was in a state of illness. The contents of Grant Deed No. 1553/TJN/2014 dated November 7, 2014 explained that R gave a grant to SBR for a land area of 2,680 m² (two thousand six hundred and eighty square meters) located in Sukorejo Village, Tunjungan District, Blora Regency, Central Java Province. With the issuance of the Grant Deed, the land reversed into the name of SBR which was previously in the name of R by the National Land Agency of Blora Regency (BPN Blora) with Sertipikat Hak Milik (SHM) Number 480.

In the manufacture or design of the deed PPAT EE is not qualified and violates the provisions in making authentic deeds. Grant Deed Number 1553 / TJN / 2014 was not read by PPAT EE but read by SHBS witnesses who are employees of PPAT EE. In addition, in the creation of the Grant Deed which is only attended by 1 (one) witness. Meanwhile, according to Article 22 of Government Regulation No. 37 of 1998 concerning The Regulation of the Department of Land Deed Making Office, PPAT must read or explain the deed by attending at least 2 (two) witnesses before the deed is signed. However, BPN Blora can make the transition of land SHM from R to SBR.¹⁶ Even though the Grant Deed is made not in accordance with the provisions of the laws and regulations.

From the problems that the author took, the author wanted to analyse the responsibility of PPAT EE for his actions that did not read the Grant Deed to the face, namely R as the grant giver and SBR as the grantee, as well as the non-fulfilment of the minimum requirements of witnesses in making the Grant Deed made by PPAT EE. In addition, the author will also review

¹¹ Alwesius, *Dasar-Dasar Teknik Pembuatan Akta Notaris, Cet. 1* (Depok: Badan Penerbit Fakultas Hukum Universitas Indonesia, 2019).

¹² Alwesius, *Dasar-Dasar Teknik Pembuatan Akta Notaris, Cet. 1.*, h. 10.

¹³ Alwesius, *Dasar-Dasar Teknik Pembuatan Akta Notaris, Cet. 1.*, h. 11.

¹⁴ Ruslan Alamsyah, *Kajian Yuridis Terhadap PP No. 37 Tahun 1998 Tentang Peraturan Jabatan PPAT* (Jakarta: Erlangga, 2011).

¹⁵ H.M. Kamaluddin Lubis, *Hukum Pembuktian Pidana Dan Perdata Dalam Teori Dan Praktek* (Medan: FH UISU, 1992).

¹⁶ *Putusan Pengadilan Negeri Blora Nomor 3/Pdt.G/2020/Pn Bla*, 2020.

the validity of the Grant Act. From the background that the author has outlined, here is a formulation of the problem that the author wants to review further, consisting of How is the responsibility of PPAT in terms of reading the Grant Deed carried out by PPAT employees and the lack of witnesses in the creation of the Grant Deed? Then, What is the validity of the Grant Deed that is not read directly by PPAT and the lack of witnesses in the creation of the Grant Deed?

B. Literature review

Primary legal material is legal material that is primary or authoritative, which means having authority.¹⁷ Then, laws and regulations related to the problems presented, namely:

1. Government Regulation No. 24 of 1997 concerning Land Registration;
2. Government Regulation No. 37 of 1998 concerning PPAT Department Regulation;
3. Regulation of the Head of the National Land Agency Number 23 of 2009 concerning Amendments to 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 No. 37 of 1998 concerning PPAT Department Regulation.

Secondary legal materials in the form of all publications on the law that are not official documents that include textbooks, legal dictionaries, legal journals, and comments on court decisions.¹⁸ relating to PPAT's responsibilities based on the Grant Deed read by PPAT employees as well as the lack of witnesses in the making of the Grant Deed.

C. Research Methods

The research uses a form of normative juridical research that is an approach carried out based on the main legal materials by studying the theories, laws and regulations related to this research.¹⁹ This research will be prepared using textual research typology, namely literature tracing by conducting literature research and document studies. This research will be compiled using secondary types of data in the form of legal materials or data obtained by researchers from existing sources.

This research will be structured using primary, secondary and tertiary legal materials. Data collection methods are carried out by conducting literature research activities²⁰ and study secondary data²¹ Which consists by:

1. Primary legal materials, in the form of Laws and Regulations, namely Government Regulation No. 24 of 1997 concerning Land Registration, Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Regulation of the Department of Land Deed Making Officers, Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian State / Head of national land agency Number 3 of 1997 concerning Provisions Implementation of Government Regulation Number 24 of 1007 concerning Land Registration, Regulation of the Minister of Agrarian Affairs and Spatial Planning / Head of the National Land Agency of the Republic

¹⁷ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Pertama, Cetakan Ke-3* (Jakarta: Kencana Prenada Media Group, 2007).

¹⁸ Peter Mahmud Marzuki, *Penelitian Hukum, Edisi Pertama, Cetakan Ke-3*.

¹⁹ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Bayumedia Publishing, 2006).

²⁰ Soekanto Soerjono, *Pengantar Penelitian Hukum* (Jakarta: UI Press, 1989).

²¹ Soerjono Soekanto, *Pengantar Penelitian Hukum* (Jakarta: Penerbit Universitas Indonesia, 2019).

of Indonesia Number 2 of 2018 concerning the Development and Supervision of Land Deed Making Officials, Civil Code, and other regulations.

2. Secondary legal materials in the form of books and scientific writings in the field of law; and
3. Tertiary legal materials, in the form of materials that provide instructions and explanations of primary and secondary legal materials, such as dictionaries.

Based on the purpose of knowing and understanding the symptoms studied by conducting primary, secondary and tertiary data searches in the writing of this thesis used a qualitative approach.²² This research will use data analysis methods qualitatively.

D. Results and Discussion

1. Responsibility of The Land Deed Making Officer (PPAT) In Terms of Grant Deed Read By PPAT Employees And Lack of Witnesses In The Process of Signature Of Grant Deed

Based on Government Regulation No. 24 of 1997 concerning Land Registration, PPAT has a role to assist the Head of Land Office related to the implementation of land registration, even though its authority is obtained from the government. PPAT is authorized as "a general official based on the laws and regulations to have the authority of the government through the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency to make a deed of transfer of rights and imposition of dependent rights to land which is an authentic proof tool."²³ Not all people living in Indonesia can become PPAT, special requirements are needed so that a person can become a PPAT, which consists of:

- a. Have Indonesian citizenship;
- b. Have a minimum age of 22 (twenty-two) years;
- c. Have a good luck by including a certificate made by the Police Agency;
- d. Never sentenced to imprisonment based on a court decision that inkraht (permanent legal force) for having committed a criminal offense that is threatened with a criminal offense of 5 (five) years or more;
- e. Have physical and spiritual health;
- f. Have a law degree and pass the second level of secretarial or graduate of the PPAT special education program organized by the ministry that organizes government affairs in the agrarian / land field;
- g. Pass the exam organized by the ministry that organizes government affairs in the field of agrarian / land; and
- h. Have taken an internship or have worked as an employee in the PPAT office for at least 1 (one) year, after graduating from secretarial education.

With these strict conditions, of course, it is expected that those who serve as PPAT are people who have advantages compared to other communities. This is because PPAT is considered to have a capable absorption related to land. PPAT is a general official who is authorized to make authentic deeds related to land, one of which is the Grant Deed. The PPAT Deed is proof of the implementation of certain legal actions related to land.²⁴ With the creation of the PPAT deed, the parties facing certainly hope that there is legal certainty from the deed. Therefore, caution and accuracy are needed by PPAT in making deeds. One form of rigor and

²² Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif*, h. 32.

²³ Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah Di Indonesia* (Surabaya: Arloka, 2003).

²⁴ *Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah*, Pasal 1 angka 4.

also the obligation of PPAT is to read the deed it makes to the parties. The benefits of reading the deed by PPAT, consisting of:

- a. At the last moment in the process of formalizing the deed, the official authorized to make the deed is still given the opportunity to correct or revise the errors in the writing that were not previously seen;
- b. The complainants were given the opportunity to ask about what was unclear to them before the deed was signed; and
- c. Giving authorized officials and the front-runners a chance at the last moment to rethink, ask questions and if needed change the sound of the deed.²⁵

G.H.S. Lumban Tobing, argued that reading the deed was part of the so-called "verlidjen" or reading and signing of the deed. Reading and explaining the contents of the deed to the defendants aims to provide convenience for the defendants to understand the contents of the deed and provide a sense of justice to the rights and obligations of the faceholders contained in the deed made, but it can also provide an opportunity for the faceers before signing the deed to make changes if there is an error, because indeed the deed is made in accordance with the will of the parties.

Carrying out obligations is a form of responsibility. The obligation of a PPAT in making authentic deeds related to land consists of:

- a. Before making a deed related to the transfer or imposition of land rights or HMSRS, PPAT first conducts an examination to the District or city Land Office related to land rights certificates with lists in the local Land Office by showing the original certificate;
- b. Signing by PPAT can only be done at the time of the Deed of transfer of land rights or HMSRS when the taxpayer has submitted evidence in the form of a Deposit Letter for Land and Building Rights Acquisition.
- c. PPAT shall explain to the recipient the right in the transfer of land rights or Property Rights to Flats Units regarding a Statement Letter stating that:
 - 1) those with an interest in the transfer of such rights do not become holders of land rights that exceed the maximum provisions of land tenure in accordance with the provisions of applicable laws and regulations;
 - 2) those with an interest in the transfer of such rights do not become holders of *absentee land rights* (guntai) according to the statements of applicable laws and regulations;
 - 3) the interested realize that if the statements referred to in numbers 1 and 2 are not true, then the excess land or absentee land becomes a landreform object;
 - 4) interested persons are willing to bear any legal consequences if the statements referred to in numbers 1 and 2 are not true.²⁶
 - 5) PPAT must read the deed to the parties concerned and explain the contents and purposes of making the deed, as well as the registration procedures that must be carried out further in accordance with the applicable provisions.
 - 6) PPAT shall submit the PPAT deed and other documents necessary for the purposes of registration of transfer and imposition of Dependent Rights and land rights or Property Rights of the Relevant Flats Unit to the local District/City Land Office no later than 7 (seven) working days since the signing of the deed.²⁷

²⁵ Tan Thong Kie, *Studi Notariat: Serba-Serbi Praktek Notaris* (Jakarta: Ichtsar Baru Van Hoeve, 2007).

²⁶ Putri, "Akibat Hukum Akta Jual Beli Yang Dibacakan Oleh Pegawai Kantor Notaris/PPAT."

²⁷ Santoso Urip, *Pendaftaran Dan Peralihan Hak Atas Tanah* (Jakarta: Prenanda Media, 2019).

If it is associated with the problems that the author reviewed in this writing, it is clear that reading the Grant Deed Number 1553 / TJN / 2014 by PPAT EE is an obligation that must be done. Later, PPAT itself will explain to the reporters about the content and intent of making the Grant Act at the request of the deniers. If the reading is carried out by PPAT employees, namely SHBS witnesses, of course, the act is contrary to the regulations because those who have a thorough knowledge of land law, especially the Grant Deed, are PPAT EE not employees, namely SHBS witnesses.

Furthermore, witnesses in the signing of Grant Deed Number 1553 / TJN / 2014, which is only attended and signed by 1 (one) person who is an employee of PPAT EE, namely SHBS, are also not allowed. In the making of the Grant Act, there were at least 2 (two) witnesses before the Grant Act was signed immediately by the parties, witnesses and PPAT. This is also confirmed in Article 38 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, so it is clear that reading the deed is an obligation of PPAT to fulfil the authentic nature of the Grant Deed and in the signing of the act must be attended by at least 2 (two) witnesses.

The actions of PPAT in the problems that the author reviewed, including violations that are classified as severe, including serious violations consisting of:

- a. help to make malicious agreements that result in land disputes or conflicts;
- b. making deeds as malicious agreements that result in land disputes or conflicts;
- c. making deed outside its working area except because of the expansion of districts / cities, provincial expansion, or making exchange deeds, deed of entry into the company, or deed of joint division of some land rights / Property Rights to Flats Units that are not all located within their working area;
- d. provide incorrect information in the deed resulting in land disputes or conflicts;
- e. open a branch office or representative or other form within and/or outside its work area;
- f. violating the oath of office as a PPAT;
- g. make a PPAT deed without being attended by the parties;"
- h. make a deed regarding land rights / Property Rights for Flats Units whose objects are still disputed;
- i. PPAT does not read the deed it makes in front of the parties;
- j. PPAT makes a deed before the authorities to perform legal acts in accordance with the deed it makes; and/or
- k. PPAT makes a deed within the period of being subject to a sanction of dismissal with respect, temporary dismissal, or in a state of leave.²⁸

With violations committed by PPAT EE in point 9 above, PPAT EE may be dismissed disrespectfully by the Minister for not reading the Grant Deed to the parties,²⁹ Grant Deed Number 1553 /TJN/2014 is read by its employees, namely SHBS witnesses.

The responsibility of PPAT is regulated in "Article 55 of the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning the Provisions for the Implementation of Government Regulation No. 37 of 1998 concerning PPAT Department Regulation. Currently, the regulation has been changed to the Regulation of the Head of the National Land Agency Number 23 of 2009 concerning Amendments to the Regulation of the Head of the National Land Agency

²⁸ Peraturan Pemerintah Tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah., Pasal 10 ayat (3) huruf a.

²⁹ Peraturan Pemerintah Tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 Tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.

of the Republic of Indonesia Number 1 of 2006 concerning the Provisions for the Implementation of Government Regulation No. 37 of 1998 concerning PPAT Department Regulation. In Article 55 it is explained that PPAT has personal responsibility for the implementation of its duties and positions in each deed making." So from the explanation of Article 55, PPAT EE should be responsible for the grant deed it makes including the reading of the deed that must be done by him and the fulfillment of the minimum requirements of witnesses making and signing the deed, namely 2 (two) witnesses.

In Article 3 letter f of the Code of Ethics of the Association of Land Deed Making Officials, it is also explained that PPAT is required to work fully with a sense of responsibility, independent, honest and impartial. If it is associated with the case that the author reviewed, PPAT EE is not responsible and dishonest in carrying out its jabatan, because the grant deed is read by its employees and the lack of complete witnesses in the creation and signing of the grant deed. Therefore, PPAT can be sanctioned for violating the code of ethics. sanctions that can be imposed on members of the Association of Land Deed Making Officials (IPPAT) consist of:

- a. Reprimand;
- b. Warning;
- c. Temporary dismissal from IPPAT membership;
- d. Dismissal from IPPAT membership; or
- e. Disrespectful dismissal of IPPAT membership.³⁰

The imposition of these sanctions is adjusted to the frequency and quality of violations committed by members of the IPPAT association. The imposition of these sanctions will be carried out by the PPAT coach. So that the obligation of PPAT to read the deed is regulated in the provisions of Article 22 of Government Regulation No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning PPAT Department Regulation which states that the PPAT deed must be read or explained its contents to the parties by being attended by at least 2 (two) witnesses before being signed immediately by the parties, witnesses and PPAT.

Based on Article 22 of Government Regulation No. 24 of 2016, what PPAT EE has done is not appropriate or violates the Article. The first violation that PPAT EE has committed is that PPAT EE does not read the grant deed to the deniers. The one who reads the grant deed is his employee who also doubles as a witness, namely SHBS. The second violation committed by PPAT EE is that the grant deed is only attended by 1 (one) witness, namely SHBS who are employees of PPAT EE. For the actions of PPAT EE which has violated Article 22 of Government Regulation No. 24 of 2016, PPAT EE includes committing violations that are quite severe as stipulated in the explanation of Article 10 paragraph (3) a of Government Regulation No. 24 of 2016 and Article 28 paragraph (4) i, which formulates that PPAT who does not read the deed made before the parties is included in the grave violation. The sanctions for PPAT who commit serious violations can be dismissed with respect in accordance with Article 10 paragraph (3) a of Government Regulation No. 24 of 2016 for not carrying out its obligations as a good and correct PPAT.

2. Validity of Grant Deed Not Read by PPAT And Lack of Witnesses On Grant Deed

Authentic deed has the power of proof in it, which consists of external proof, formil proof, and material proof. The following is a further explanation of the strength of the authentic deed proof:

³⁰ *Keputusan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 112/KEP-4.1/IV/2017 Tentang Pengesahan Kode Etik Ikatan Pejabat Pembuat Akta Tanah., Pasal 6 ayat (1).*

a. Outward Proof.

Outwardly the signature of the official authorized to make an authentic deed must be considered genuine until it can be proven otherwise. If the authentic deed of authenticity is doubtful of the authenticity of the signature of the official who made the deed, then the doubting party must prove it. This means that anyone who has a problem with the authentic deed made by the authorized answerer, then the person must prove his or her suspicions against the authentic deed.³¹

b. Proof of Formil.

Proof of formil is that the deed proves the truth of the deeds and actions of officials who make authentic deeds. Proof of this formil is about the correctness of the date, where the deed was made, and the authenticity of the signature of the deed-making official. On the deed of the party, what is guaranteed is legal certainty regarding the information submitted by the parties facing the official which is then by the information official is set out in the deed.

c. Material Proof.

In material proof, judging from the truth of the contents of the deed. The information of the office is guaranteed about the certainty of its truth on the deed as long as what it sees and does.³² If there is a falsehood from the information contained in the official deed, then the falsehood is the responsibility of the parties who have provided information.

The Grant Deed is one of the authentic deeds whose manufacture must be made by the authorized public official in this case is PPAT. Authentic deed is a deed whose form or framework has been determined by law, made by or in front of public servants who are authorized for it in the place where the deed is made.³³ The deed, which is due to the inability of the employee or because of a defect in its form, cannot be treated as an authentic deed. However, the deed has the power of writing under the hand if it is signed by the parties.

In connection with the procedures and procedures for making PPAT deed, in making a grant deed, PPAT must first read the contents of the deed before it is signed immediately by the parties, witnesses and PPAT, and in the creation and signing of the grant deed must be attended by at least 2 (persons) witnesses as stipulated in Article 22 PP No. 24 of 2016 concerning Changes to Government Regulation No. 37 of 1998 concerning PPAT Department Regulation states that "fulfillment of authenticity" from the deed, the reading of the deed is carried out by PPAT itself. The signing carried out by the parties, witnesses and PPAT, is carried out immediately after the reading of the deed. Before being signed, each PPAT deed must be read in its entirety to the defendants and witnesses."

The grant deed is required to be made in a form of Notary deed, in which case these conditions are not fulfilled then the grant becomes void or invalid.³⁴ However, because this grant deed is used as the basis for the transfer of land rights to BPN, the grant deed is required to be made by PPAT because only PPAT is authorized to make deed for the purposes of registering land rights transfer. The procedure for making the Grant Deed is contrary to the

³¹ Husni Thamrin; M. Khoidin, *Hukum Notariat Dan Pertanahan Kewenangan Notaris Dan PPAT Membuat Akta Pertanahan* (Yogyakarta: LaksBang Justitia, 2021).

³² Husni Thamrin; M. Khoidin, *Hukum Notariat Dan Pertanahan Kewenangan Notaris Dan PPAT Membuat Akta Pertanahan*.

³³ *Kitab Undang-Undang Hukum Perdata*, n.d., Pasal 1868.

³⁴ *Kitab Undang-Undang Hukum Perdata*., Pasal 1682.

applicable provisions due to the non-fulfillment of the authenticity of a PPAT deed so that it is contrary to the provisions of Article 1682 kuhper.

Loss of authenticity of a deed can cause varying consequences to the parties in it, namely:

- a. The loss of the authenticity of the deed (deed is void), and the legal action contained in it is void, this occurs in legal actions that by law are required to be outlined in an authentic deed;"
- b. The loss of the authenticity of the deed (the deed is not void), and the legal acts contained in it are not void. This occurs in legal acts that are not required by law to be stated in an authentic deed, but the parties want their legal actions to be proven by an authentic deed, in order to obtain a strong proof;
- c. The deed still has authenticity (deed void) and the legal action contained in it is void. This occurs if the terms of the agreement are not met or the occurrence of a basic defect of rights that are the object of the agreement.³⁵

The Panel of Judges ruled that the grant from R to SBR based on Grant Deed No. 1553/TJN/2014 dated November 7, 2014 was declared null and void because of the non-fulfillment of the authentic nature of a deed, because it had violated Article 22 PP No. 24 of 2016, namely the grant deed read by PPAT EE employees who should be the responsibility of PPAT EE and there were only 1 (one) witness in the making and signing of the grant deed which was required. There are at least 2 (two) witnesses. So that SHM Number 480 which had been reversed to belong to SBR issued by BPN Blora was invalid and canceled.

The author in this case agrees with the consideration and decision of the judge who declared Grant Deed No. 1553/TJN/2014 dated November 7, 2014 null and void. This is because the grant deed is not made in accordance with the laws and regulations and the grant deed has violated Article 22 PP No. 24 of 2016 and Article 3 letter f of the IPPAT Code of Ethics. Therefore, the loss of authenticity of the grant deed and resulted in the grant deed being null and void. SHM Number 480 on behalf of SBR is also automatically canceled because the basis for the transition of the issuance of the SHM is the grant deed that has been canceled by the Panel of Judges.

The creation of the PPAT deed must be attended and witnessed by at least 2 (two) witnesses who under the laws and regulations are qualified to be able to act as witnesses in a legal act. The presence of witnesses in the making and signing of this deed is to testify about the presence of the parties or their proxies (if authorized), the authenticity of the documents of the parties given to the PPAT in making the deed and see the implementation of legal actions carried out by the parties. PPAT also has an obligation to read the deed to the parties and provide an explanation of the contents of the deed, the purpose of making the deed to the registration procedure or the next stage in accordance with the applicable provisions.

E. Conclusion

From the description that the author has explained to the subject matter, then hereby the author can conclude as follows:

1. PPAT has an obligation to read the deed with at least 2 (two) witnesses in the creation and signing of the deed made by it based on Article 22 PP No. 24 of 2016 and Article 3 letter f of the IPPAT Code of Ethics. Grant Deed Number 1553 / TJN / 2014 dated November 7, 2014 was read by PPAT EE employees, namely SHBS not by PPAT EE and there were only

³⁵ Putri, "Akibat Hukum Akta Jual Beli Yang Dibacakan Oleh Pegawai Kantor Notaris/PPAT."

- 1 (one) witness in the creation and signing of the grant deed, namely SHBS witnesses who read the deed. The deed must be read by PPAT because he is responsible for the deed he made as stipulated in Article 55 of the National Land Agency Head Regulation No. 23 of 2009 concerning Amendments to 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 No. 37 of 1998 concerning PPAT Department Regulation. Violations that have been committed by PPAT EE are classified as serious violations, for which PPAT EE can be sanctioned with disrespectful dismissal by the Minister of Agrarian affairs and Spatial Planning / Head of the National Land Agency as stipulated in Article 10 paragraph (3) letter a PP No. 24 of 2016 concerning The Regulation of the Office of the Land Deed Making Officer.
2. The validity of the transfer of land rights from R to SBR based on Grant Deed No. 1553/TJN/2014 dated November 7, 2014 is invalid. Because the grant deed has been canceled by the Panel of Judges because in the making and signing of the deed, PPAT EE has violated Article 22 PP No. 24 of 2016. In addition, PPAT EE has also violated Article 3 letter f of the IPPAT Code of Ethics. Based on the provisions of Article 37 paragraph (1) of Government Regulation No. 24 of 1997, transactions with land objects can only be registered if proven by a deed made by PPAT. However, the deed has lost its authenticity and by the Panel of Judges the deed is invalid so it is canceled. Therefore, the grant deed cannot be used as a basis for changes and land registration until the issuance of Property Rights Certificate (SHM) Number 480 on behalf on the name of SBR. Against the registration of land rights transfer that has been done and later it is known that the PPAT deed that is the basis for the change in land registration data has actually lost its authenticity. So that Sertipikat Hak Properti (SHM) Number 480 on behalf of SBR that has been issued by BPN Blora is invalid and canceled because the basis for the transition to be able to issue the SHM was made unlawfully by PPAT EE.

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