

The authority of PPAT in preventing land mafia in relation to the transfer of land rights

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Abstract

The authority of PPAT is governed by Government Regulation No. 24 of 2016 and Government Regulation No. 24 of 1997; however, these regulations do not provide specific details regarding PPAT's authority. Additionally, the reliance of PPAT on instructions from the National Land Agency (BPN) limits their ability to act independently, hindering efforts to prevent land mafia practices. A significant challenge arises from the absence of specific legislation that regulates the authority and responsibilities of PPAT, which can lead to potential abuse of power and errors in task execution.

The purpose of this study is to analyse the authority of PPAT in preventing land mafia practices according to existing laws, to examine the principles that can serve as a basis for optimising PPAT's responsibilities in preventing land mafia, and to analyse the consequences of abuse of power by PPAT.

The research employs a normative juridical method using legislative, case, concept, and historical approaches. This study also utilises primary, secondary, and tertiary data to address the research problems, with data analysed qualitatively.

The findings indicate that Government Regulation No. 24 of 2016 and Government Regulation No. 24 of 1997 do not provide specific details regarding PPAT's authority, potentially leading to abuse of power and errors in task execution. Applying the principles of legality, caution, and good faith in PPAT's duties can serve as guidelines to optimize their responsibilities in preventing land mafia practices. Consequences of power abuse result in not fulfilling the formal and material requirements of the deeds issued by PPAT, rendering these deeds void or invalid by law. Depending on the error committed, PPAT may face legal consequences, whether administrative, civil, or criminal.

It is recommended that the government promptly formulate specific legislation that clearly and comprehensively regulates the authority and responsibilities of PPAT. Continuous training and education programs for PPAT should be implemented, and PPAT's supervision should be strengthened.

Keywords: PPAT authority, land mafia, transfer of land rights

Introduction

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) states that: "The land, water, and natural resources contained therein shall be controlled by the State and utilized for the greatest prosperity of the people", because land is a resource that should bring prosperity and welfare to the people of Indonesia. This provision is the central legal umbrella in resource management in Indonesia, including land management. (Pramesti, 2024)^[5]

Land Law in Indonesia is regulated in Law Number 5 of 1960 concerning Basic Agrarian Regulations, or the Basic Agrarian Law, abbreviated as UUPA. This law contains a commonly heard term, namely the principle of nationality, which is also explained based on Article 1 number (1) of the Basic Agrarian Law which states that: "The entire territory of Indonesia is the Unitary State of the Fatherland and all Indonesian people who are united as the Indonesian nation and all the earth, water, and space including the natural resources contained therein, in the territory of the Republic of Indonesia as a gift from the Almighty and is a national wealth". Thus, it can be understood that the main objective in utilizing natural resources, both in space, water, and earth, is to ensure the welfare of humanity.

In the Agrarian Context, the term transfer of land rights is a legal act aiming to transfer rights from one party to another. After someone legally transfers their land rights to another person, that person no longer has rights to the land that has been transferred, starting from when the transfer is made. In

general, the transfer of land rights can occur due to various legal actions, including: buying and selling, exchanging, granting, participation in a company, sharing joint rights, granting building use rights or use rights over land ownership rights, granting mortgage rights, and granting power of attorney to impose mortgage rights. The transfer of land rights is based on the provisions of the Basic Agrarian Law and its Implementing Regulations. (Abon, 2022)^[1]

The community requires legal certainty in the service related to land registration. Laws and regulations in Indonesia regulate matters related to public service or positions related to land interests through the Land Deed Officials (PPAT). PPAT is appointed by the government, in this case the National Land Agency (BPN), with specific duties and authorities to fulfil the needs of the community related to land transfer deeds, land encumbrance deeds, and mortgage encumbrance power of attorney deeds, by applicable laws and regulations.

The provisions of Article 1 paragraph (3) of Law Number 30 of 2014 concerning Government Administration state that "Government Agencies and/or Officials are elements that carry out Government Functions, both within the government and other state administrators.". About PPAT, this provision then synergizes with Article 1 number 1 of Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials, which states that: "Land Deed Making Officials, hereinafter

referred to as PPAT, are general officials who are authorized to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to apartment units."

Based on Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, it is emphasized that: The transfer of land rights and Ownership Rights to Apartment Units through sale and purchase, exchange, grant, income in a company and other legal acts of transfer of rights except for transfer of rights through auction can only be registered if proven by a deed made by an authorized Land Deed Making Officer (PPAT) according to the provisions of applicable laws and regulations.

Every legal act in making a deed of transfer of land rights is the PPAT. Without a deed of transfer from the PPAT, the BPN cannot work to register the land. In this case, the relationship between the Land Deed Making Officer (PPAT) and the National Land Agency (BPN) is related. (Flora, 2008)^[3]

This relationship has the potential to give rise to acts that are not by laws and regulations, this inconsistency has the impact of causing unlawful acts that can be called land mafia, which in this case can be in the form of abuse of authority, corruption, and collusion between the two, minimal supervision, and lack of firm legal action creates loopholes for data manipulation and the issuance of fictitious land certificates. In addition, the lack of transparency in the land management process makes the community vulnerable to fraud, thus strengthening the existence of land mafia. (Kusumojati, 2023)^[4]

In its development, legal recognition of land ownership has not been able to guarantee the resolution of various land conflict issues in society. One of the factors contributing to this problem is the existence of land mafia. The modes used by the land mafia to achieve their goals include:

1. Control of Empty Land: Land mafia takes over empty land by working with individuals at the National Land Agency (BPN) to change data at the Agrarian Data and Information Centre (Pusdatin ATR/BPN) and issue invalid land certificates.
2. Data Manipulation: Other modes involve physically and linguistically changing data by deleting and replacing the owner's name and changing the registered land area.
3. Illegal Access to Pusdatin: Several land mafia individuals gain illegal access to Pusdatin ATR/BPN will directly change the electronic land certificate data.

These modes show how complex and organized the land mafia practices are, worsening the land conflict situation.



Source: Agrarian renewal consortium; processed compass R & D / L09

Concerns about land issues are increasing, and the complexity of land issues is rising due to land competition.

News about land conflicts continues, with the emergence of various new modes along with population growth. Many people experience losses or fraud in land disputes due to shady practices carried out by the land mafia, which continues to be rampant. (Zulfikar, 2019)^[6]

Land mafia cases in Indonesia are increasingly in the spotlight, especially with the revelation of various incidents involving public figures. One striking case is artist Nirina Zubir, who suffered losses estimated at Rp17 billion. In this case, there was an illegal transfer of ownership rights to 1,499 m² of land from Nirina Zubir's family to her household assistant (RK) and her husband (E).

This rights transfer was carried out based on a deed of sale and purchase agreement and a deed of power of attorney to sell made and signed by a notary/PPAT (F). The transfer of ownership involved the signature of Cut Indria Martini, Nirina Zubir's mother, which was allegedly forged, as well as a deed of sale and purchase typed by (F), but legalized by notaries/PPAT (IR) and (ER). In addition, some of the land certificates have even been sold, while the other two certificates were used as collateral for loans at the bank. RK admitted using the money from selling the land certificates to open a business.

Consideration of the Panel of Judges in the Decision of the West Jakarta District Court Number 248/Pid.B/2022/PN Jkt. Brt, Regarding the forgery of letters, it states that the defendants RK and E have each been proven legally and convincingly guilty of committing a crime using forged letters as if they were original, which caused losses and money laundering. The transfer of land rights in bad faith, in this case, falsification of ownership, violates Article 1320 of the Civil Code, paragraph (4) and Article 264, paragraph (2) of the Criminal Code. Hence, the deed of transfer is null and void. In the decision, the defendants RK and E were sentenced to 13 (thirteen) years in prison each, a fine of Rp. 1,000,000,000 (one billion rupiah) each, but if the fine is not paid, it will be replaced with imprisonment for 6 (six) months each.

Seeing the problems faced by Nirina Zubir, the land mafia does not operate alone in carrying out its actions. They also get support from individuals who have related interests. The land mafia moves carefully and is organized in its plans. This process begins with the involvement of irresponsible PPATs, who help the land mafia perpetrators make the necessary deeds and validate the documents used to process land certificates at the Land Office.



Source: Agrarian renewal consortium; processed compass R & D / L09

The many cases of land mafia that occur are a matter of concern, considering the significant losses incurred. Therefore, serious attention is needed from all parties to eradicate land mafia practices and protect legitimate land ownership rights. Based on land mafia cases, the authority of PPAT has a great potential to cause land mafia, so it is

necessary to conduct legal research on the Authority of PPAT in efforts to prevent land mafia against land rights transfer acts, with the hope of providing a real contribution to strengthening regulations and better legal practices. Through in-depth analysis, it is hoped that this research can offer an effective concept for preventing land mafia in Indonesia through the authority of PPAT. (Cahyaningrum, 2021)^[2]

Materials and Methods

Based on this research, the method of normative legal research is a library legal research conducted by analyzing theories, concepts, and studies of relevant laws and regulations. Normative legal research positions law as a system of norms. This system of norms includes the principles, standards, and rules of laws and regulations, agreements, and legal doctrines. This type of research was chosen because it aimed to analyze everything related to the Authority of PPAT in Preventing Land Mafia through the Land Rights Transfer Acts. The research approach used in this study includes several methods. First is the statute approach, which examines laws and regulations related to legal issues. Second, a conceptual approach provides a perspective on analyzing the resolution of legal problems based on the concepts and values underlying them.

Furthermore, the case approach examines legal problems as a reference in resolving legal cases. Finally, the historical approach is based on historical research to understand current laws. This study uses a qualitative analysis method, involving data processing through several stages, including data collection, classification, and connecting with existing theories and problems. After that, the researcher concludes by answering existing issues.

Results and Discussion

The conventional Notarial deed must follow Article 16 paragraph (1) letter m UUJN, which reads: Land conflicts in Indonesia are increasing, due to the limited amount of land available amidst rapid population growth. This triggers various problems, including land mafia practices that are difficult to contain. Concerns are increasing because land disputes are increasingly diverse and complex, which can disrupt land use development. News about land mafia is also increasingly widespread, along with the emergence of various problems and new *modus operandi* related to land. Many people have become victims of fraud and losses due to the actions of the land mafia, which continues to expand. The results of monitoring carried out by the KPA throughout 2024 showed a significant increase in the eruption of agrarian conflicts, accompanied by increasing acts of violence and criminalization in the conflict areas. Throughout 2024, the KPA recorded at least 295 incidents of agricultural conflicts in various sectors. This conflict occurred in a 1.1 million hectares, precisely 1,113,577.47 hectares, and affected 67,436 families in 349 villages. There was a 21% increase in the eruptions of agrarian conflicts in 2024 compared to 2023, which recorded 241 incidents.

Based on Article 1 number 1 of the Government Regulation of the Republic of Indonesia Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officials, it is determined that the Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is authorized to make authentic deeds regarding

certain legal acts regarding land rights or Ownership Rights of Apartment Units. PPAT is a public official, so his position is a public office. (Sari, 2018)

As a public official, the deed made by the PPAT has the position of an authentic deed; the authority of the PPAT in issuing authentic deeds is significant and demands legal accountability for the deed made. Therefore, the PPAT must comply with the procedures stipulated by law and various government regulations relating to the transfer of land ownership and land registration. All of these procedures must be followed so that the deed of transfer of rights prepared by the PPAT is legally valid. Making a deed that does not comply with the established procedures can pose a risk to the certainty of land rights that arise or are recorded based on the deed.

The authority of PPAT is crucial in carrying out the supervisory function and maintaining the integrity of the land system. The authority of PPAT is not only limited to making deeds, but also includes the responsibility to ensure that every deed issued meets applicable legal standards. However, in carrying out its authority, PPAT has so far been regulated by policies issued by the BPN, where the position of PPAT is only as an assistant to the BPN in land registration. PPAT does not have a specific law, so instructions and policies set by BPN bind them.

The case of Mrs. Sri Suharnani shows how vital the authority of PPAT is in preventing the misuse of land rights. The problem arose related to irregularities in issuing a certificate of ownership for a plot of land previously owned by Mrs. Sri Suharnani. The land was transferred to Tirta Tjakradi based on AJB Number 156/8/Sawangan/1997 made by PPAT XXX, S.H. in Sawangan District, Bogor Regency. When Sri Suharnani tried to re-create her lost ownership certificate at the Land Office, she found that the land had changed the owner's name. Sri Suharnani blocked the land four times on April 17, 1998, February 14, 2002, April 19, 2002, and May 15, 2004. The forensic laboratory results showed that Sri Suharnani's signature on the AJB was fake. The plaintiff filed a lawsuit through her attorney at the Depok District Court on October 5, 2018.

The decision of the panel of judges of the Pati District Court in case Number 226/Pdt.G/2018/PN. Dpk stated that the Defendant and co-defendant had been summoned but did not attend. The Plaintiff's lawsuit was partially granted by default, considering the Deed of Sale and Purchase Number 156/8/Sawangan/1997 null and void and without force. Co-defendant II was sentenced to unblock the certificate and reissue the Certificate of Ownership No. 519 in the name of the Plaintiff, Mrs. Sri Suharnani. In addition, the co-defendant was ordered to comply with this decision, while the Plaintiff's other lawsuits were rejected. The Defendant was also sentenced to pay court costs of Rp3,741,000.00. The problems raised in this study conclude that the AJB made by PPAT XXX, S.H., M.Kn. contains legal defects, so that the deed does not fulfill the material aspects of an authentic deed and can be cancelled by a court decision.

In the context of preventing land mafia practices in Indonesia, the authority of the Land Deed Making Officer (PPAT) is very crucial. PPAT is responsible for making deeds and has the authority to ensure that every deed issued meets applicable legal standards. The position of the Land Deed Making Officer (PPAT), which is currently only authorized as an assistant to the National Land Agency (BPN), greatly affects their effectiveness in preventing land

mafia practices. By relying on BPN instructions and policies, PPATs are often trapped in a framework that limits their ability to act independently. This is evidenced by the increasing number of agrarian conflicts that have caused many victims. As officials responsible for land registration, PPATs should have broader authority to detect potential abuse and illegal practices. If PPATs can operate independently, they will be better able to perform their supervisory and integrity functions in every transaction involving land deeds.

The importance of implementing the principle of caution and thoroughness in the duties of PPAT cannot be ignored. Although they are not required to investigate information in depth, moral responsibility and professionalism should encourage PPAT to go further in ensuring the legitimacy of every transaction they facilitate. By implementing the suggested preventive measures, such as checking and matching documents carefully, PPAT can help reduce the risk of land mafia practices. This will not only strengthen their position in the land system but also protect the community from detrimental fraud.

PPAT in carrying out its functions/authorities cannot be independent and free, because PPAT policies are still regulated by policies issued by the BPN, namely Government Regulation (PP) Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Making Officials, this can hinder the independence of PPAT as well as the limited policies containing provisions related to PPAT.

In carrying out their duties and functions as public officials, PPATs must be independent and impartial, in accordance with Article 3 of the Code of Ethics of the Association of Land Deed Officials which states that "in carrying out their duties, PPATs work with a full sense of responsibility, independently, honestly, and impartially." This impartial attitude shows that PPATs are responsible for the formalities of authentic deeds, not for the substance of the material of the deed. PPATs are expected to make deeds properly and correctly, meaning that the resulting deed must meet legal provisions and the requests of interested parties in accordance with their position.

In addition, PPAT also needs to produce quality deeds that are in accordance with legal regulations and the wishes of the parties concerned. PPAT must explain to the interested parties the truth of the contents and procedures of the deed made. In addition, the deed produced by PPAT must have a positive impact, so that every party who acknowledges the deed has perfect evidence.

However, in carrying out its functions and authorities, PPAT cannot act independently and freely because its regulations still depend on policies issued by the National Land Agency (BPN), as stipulated in Government Regulation (PP) Number 24 of 2016 which amends PP Number 37 of 1998 concerning the Position of Land Deed Making Officials. This hinders the independence of PPAT and limits policies that cover various important aspects, so that content is needed, such as the definition of PPAT as a public official, authority, PPAT organization, appointment and dismissal, protocol, code of ethics, and sanctions that can be imposed on PPAT. In addition, regulations regarding PPAT deeds as authentic deeds and obligations and prohibitions for PPAT are also very crucial for PPAT in

carrying out their authority independently and not only regulated by BPN.

The application of the principle of legality, the principle of prudence, and the principle of good faith in the duties of the Land Deed Making Officer (PPAT) is very important to optimize the responsibility of PPAT in preventing land mafia. Clear laws and provisions regarding the authority of PPAT allow them to operate transparently and accountably. Strengthening regulations is needed so that PPAT can act independently without ignoring the principle of prudence and the principle of good faith. By acting carefully, PPAT is expected to be able to verify facts and documents before drawing up a deed, and ensure that all parties understand the contents of the deed, so as to maintain the integrity of the legal process and prevent future disputes.

Every act has consequences, including in the making of a PPAT deed that is not in accordance with applicable provisions, which can result in the cancellation of the deed. Void here means void by law or can be cancelled, and this is a sanction for the violators. If it is proven that the PPAT has made a mistake, then the PPAT can be subject to sanctions, both criminal, administrative and civil. However, if the error comes from the client, the PPAT cannot be held legally responsible because they only record or pour out the legal acts carried out by the parties into the deed. The responsibility of the PPAT as a public official is related to the deed, including:

a. Administrative Responsibility

Administrative errors, known as maladministration, committed by PPAT in the land registration process can result in legal consequences. PPAT can be asked to be responsible for deeds that have legal defects, which are considered an abuse of authority. In accordance with Article 2 of the Regulation of the Land Deed Making Official (PJPPAT), if the authority given is not used properly, then this constitutes abuse of authority. As a result, the PPAT's actions are no longer in line with the purpose of granting the authority. PPAT's liability related to intent, negligence, or errors in making a sale and purchase deed that does not meet formal and material requirements can result in the PPAT being subject to administrative sanctions.

b. Civil Liability

PPAT's civil liability related to negligence, negligence, and/or intent in making a sale and purchase deed that does not meet formal and material requirements can result in not only administrative sanctions, but also the possibility of claims for compensation from parties who feel aggrieved. Regarding the error (beroeepsfout) made by the PPAT, it is important to consider the form of the error, whether it is a breach of contract or an unlawful act (onrechtmatige daad). Generally, a breach of contract occurs if there is an underlying agreement, whereas if there is no agreement, the violation is categorized as an unlawful act.

c. Criminal Responsibility

Criminal sanctions can be imposed on PPAT if a PPAT is involved in making a fake letter or falsifying a deed that meets the qualifications as a criminal act. The material and formal requirements in the procedure for making a PPAT deed are formal aspects that must be met in making a land sale and purchase deed related to the duties of the PPAT. The researcher argues that deviations from the material and

formal requirements must be evaluated based on the limitations set by laws and regulations related to PPAT. Thus, if a PPAT violates these formal aspects, the sanctions that can be imposed are civil and administrative sanctions, depending on the type of violation, or sanctions according to the IPPAT code of ethics. Therefore, qualifying violations of formal aspects as a criminal act is an act that has no legal basis and cannot be accounted for.

The formal aspects of a PPAT deed can be used as a basis or limitation for criminalizing a PPAT if:

1. The formal aspects are proven to be done intentionally, namely with full awareness and realization and planned by the PPAT concerned, so that the deed he made was used as a tool to commit a crime.
2. The PPAT consciously and intentionally collaborated with the parties involved to carry out legal actions that were known to be unlawful.

PPAT has the authority to issue authentic deeds with perfect evidentiary power, but is also vulnerable to abuse of authority. Such abuse results in the deed issued by PPAT not meeting formal and material requirements, so that the deed can be cancelled or declared null and void by law. In addition, for the abuse of authority, PPAT can be subject to legal consequences, whether administrative, civil, or criminal, depending on the error committed.

The importance of PPAT's supervision cannot be ignored, considering that they have crucial authority in land transactions that have legal implications. Great authority must be balanced with clear responsibilities, both administratively and legally. Strict enforcement of sanctions against violations, especially those involving forgery, is key to maintaining public trust and the integrity of the legal system. If PPAT does not act in accordance with the provisions, then not only is the deed at issue, but also the legitimacy of the institution they represent.

Conclusion

The existence of PPAT is important to maintain the integrity of the land system in Indonesia, but their capabilities are limited due to the absence of specific laws governing their authority and responsibilities. Existing government regulations only clarify the position and land registration without detailing the authority of PPAT to assist the Head of the Land Office. Reliance on BPN instructions also limits the independence of PPAT, which has the potential to increase land mafia practices.

The application of the principles of legality, prudence, and good faith is important for PPAT to prevent land mafia practices. Clear regulations and giving autonomy to PPAT will increase transparency and accountability, allow for careful verification of documents, and ensure understanding by all parties, thereby maintaining the integrity of the process and preventing future disputes.

The authority of the Land Deed Making Officer (PPAT) to issue authentic deeds with perfect evidentiary power carries significant implications related to the risk of abuse of authority. Such abuse can result in the issued deed not meeting formal and material requirements, so that it can be cancelled or considered null and void by law. The legal consequences faced by PPATs vary, from administrative sanctions to civil sanctions, depending on the type of error committed, as regulated in various laws and regulations.

Suggestion

It is recommended that the government immediately create a special law or include provisions on the authority of PPAT in the Land Bill, including the merger of the position of Notary. This regulation must reduce ambiguity, strengthen the autonomy of PPAT, and allow them to act independently to prevent land mafia practices and increase public trust in the land system. It is recommended that the government and related institutions develop ongoing training for PPAT, covering aspects of legality, prudence, good faith, the latest regulations, document verification, and communication. This training is expected to improve the professionalism and integrity of PPAT. It is recommended that PPAT supervision be strengthened through the establishment of an independent institution, transparent reporting mechanisms, periodic audits, and cooperation with the BPN for early detection of abuse of authority so that supervision becomes more effective.

References

1. Abon MA. Akibat Hukum Peralihan Hak Atas Tanah Waris Berdasarkan Pasal 20 Ayat (1) Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria. *e-Journal Komunikasi Yustisia Universitas Pendidikan Ganesha Program Studi Ilmu Hukum*, 2022, 68.
2. Cahyaningrum D. Pemberantasan Mafia Tanah. *Jurnal Info Singkat: Kajian Singkat Terhadap Isu Aktual Dan Strategis*, 2021, 2.
3. Flora HS. Hubungan Antara Badan Pertanahan Nasional (BPN) dengan Pejabat Pembuat Akta Tanah dalam Proses Pendaftaran Tanah. *Jurnal Hukum Pro Justitia*, 2008, 317.
4. Kusumojati MP. Pertanggungjawaban Hukum Pidana Terhadap Notaris Sebagai Oknum Mafia Tanah. *Jurnal Education and Development*, 2023, 44-52.
5. Pramesti GS. Pengaturan Kepemilikan Tanah Berdasarkan Hukum Pertanahan dan Implementasinya. *Indonesian Journal of Natural Resources and Environmental Law*, 2024, 39-52.
6. Zulfikar R. Analisis Yuridis Mengenai Peran PPAT Dalam Pendaftaran Tanah. Bandung: Universitas Langlangbuana, 2019.