



## Legal Responsibility of Land Maker Offices (PPAT) for Loss of First Sheet of Act

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### Abstract

*Land Deed Official (PPAT) is a public official who is given the authority to make an authentic deed for certain legal actions in the form of land rights or property rights over flat units. A PPAT is obliged to properly keep the first sheet of the deed be made. However, there is no rule regarding how the PPAT is responsible for the loss of the first sheet of the deed, because the storage of the first sheet is part of the PPAT protocol. The type of research is empirical legal research, the research location is in Makassar City. Data collection techniques are interviews and literature studies. Analyzed qualitatively and presented descriptively. The results of the study indicate that (1) PPAT's responsibility for the loss of the first sheet of the deed due to his mistake is to make a statement that it is true that there has been a transfer of rights from the seller to the client before the PPAT. Then the register book is photocopied and legalized, and so on. (2) Legal remedies by clients who are harmed due to the loss of the first sheet of deed due to PPAT's mistake are to file a complaint of violation by PPAT, the complaint is submitted in writing to the Ministry or through the complaint website, report application or other complaint facilities provided by the Ministry. The client can also submit a report to the MPPD by including the identity of the complainant and the reported party and attaching evidence*

**Keywords:** Deed; PPAT; Responsibility

### A. Introduction

Article 19(1) of Law No. 5 of 1960, on the Agrarian Tree Act (hereinafter referred to as UUPA), stipulates that “to ensure legal certainty, land registration by the government is regulated by government regulations.”<sup>1</sup> The government regulation referred to in paragraph (1) of Article 19 of UUPAs is Government Regulation No. 10 of 1961 on Land Registration, as amended by Government Ordinance No. 24 of 1997 on Land Registry. At that time, the duty of land registration was entrusted to the Land Registration Directorate of the Directorate-General Agraria of the Department of Home Affairs, with the offices of the Agraria Section of the Land Registry in the areas of Level II.<sup>2</sup>

The Office of the Land Act Maker (hereinafter referred to as the PPAT) was conceived as “a public officer authorized to make authentic acts concerning certain legal acts relating to the right to land or the ownership of an arranged house unit.”<sup>3</sup> The position of PPAT based on the definition above is as an official general.<sup>4</sup>

In order to carry out its duties and authority, a PPAT is authorized to make acts whose form has been determined by the Regulations of the National Farming Agency No. 8 of 2012

<sup>1</sup> Undang-Undang Nomor 5 Tahun 1960, tentang Undang-Undang Pokok Agraria

<sup>2</sup> diakses dari <http://prodi1.stpn.ac.id/Modul-Pendaftaran-Tanah.pdf>, pada tanggal 7 April 2021

<sup>3</sup> 3 Pasal 1 angka 1 Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.

<sup>4</sup> Boedi Harsono, dalam Salim HS, 2019, Peraturan Jabatan dan Kode Etik Pejabat Pembuat Akta Tanah (PPAT), Depok: Rajawali Pers, h. 4



on Amendments to the Regulation of the Minister of State of Agriculture No. 3 of 1997 on the Provisions for Implementation of Government Regulations No. 24 of 1997 concerning the Registration of Land. Such acts are, among other things, acts of sale, grant, exchange, entry into the company, joint share of rights, grant of the right of possession, granting the right to use of the building or right of use on the land of ownership, and authorization to charge the right. The PPAT Act is made in four cases, namely for PPAT, BPN, sellers, and buyers.

After the act is made, in accordance with Article 21, paragraph (3) of Government Regulation No. 37 of 1998 on the Regulations of the Department of Land Act Makers, in conjunction with Government Regulations No. 24 of 2016 on the Amendment of Government Ordinance No.37 of 1998 concerning the Regulation of the Office of Land Makers' Office, it is stipulated that: 'The DPAT Act was made in its original form 2 (two) sheets namely: (a) the first sheet of 1 (one) sheet deposited by the relevant PPAT; and (b) the second sheet with 1 (One) of the right to land or ownership rights and household units that were the object of a legal act in the act, which was submitted to the Attorney's Office for registration purposes, or in the case of such an act on the authorization to charge the Right of Refusal, handed over to the authority holding the basis for the establishment of the Act, to the parties concerned and to whom the right may be granted.

According to the article, a PPAT is obliged to keep properly the first sheet of the act that he has made. However, until now, there has been no regulation as to how PPAT is liable for the loss of the first leaf of the Act, how storage is required, or how long a PSAT is required to keep such first sheets as part of the protocol of the PPAT.

Data from one of the PPAT offices in Makassar City shows that a client made an act of sale (hereinafter referred to as AJB) against a piece of kavling land in front of a PPAT in Makassar City in 1998. In 2019, the client intended to undertake management for the issuance of a certificate of ownership of his kavling ground. Since the client lost his AJB, he faced the PPAT, who made the AJB, to request a copy (the first sheet of AJB) to complete the requirements for the issuance of the certificate. According to the rules, it is known that PPAT is supposed to keep the client's first AJB sheet, but in fact, the first sheet of AJB that PPAT made has not been found to date. This is obviously contrary to Article 21 paragraph (3) letter a PP No. 37 of 1998 above, concerning the storage of PPAT acts, and Article 1 number 5 of Government Regulations No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Regulations of the Department of the Office of the



Land Act Maker. Due to the PPAT error, the client cannot proceed with the process of submitting the certificate issuance to the Farm Office of the City of Makassar. Until now, there has been no clarification given by the PPAT to the client regarding the existence of the first sheet of AJB. This causes losses on the part of the client because the process of filing and issuing certificates of its own cannot be continued.

## **B. Research Method**

This type of research is empirical law research, that is, a method of legal research that uses empiric facts taken from human behavior, both verbal behaviors obtained from interviews and real behaviors carried out through direct observation.<sup>5</sup> A structural approach is a method or approach to the functioning of the law in a society based on the structure that exists in the society. This functional structure theory sees society as a whole system that works to create order and social stability.

## **C. Results and Discussion**

### **1. The Theory**

#### 1.1 Theory of Responsibility

According to Hans Kelsen,<sup>6</sup> in his theory of responsibility, which states that a person is legally responsible for a certain act or that such a person bears legal responsibilities, the subject means that he is liable for a sanction in the case of a contrary act. According to Hans Kelsen in his book, liability is divided into four categories: (1) individual liability, i.e., an individual is responsible for a violation committed by himself; (2) collective liability, which means that an individual has responsibility for a breach committed by another; (3) liability based on error, which means that a person is liable for a crime committed intentionally and presumably with the purpose of causing damage; and (4) absolute responsibility, meaning that an individual is accountable for an accidental and unexpected violation.

#### 1.2 Theory of Law Protection

According to Locke, the laws made in a state are intended to protect the fundamental rights commonly referred to as human rights, without distinction between one and the other. Through such rights, man can develop himself personally, his role, and his

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<sup>5</sup> Mukti Fajar dan Yulianto Achmad, 2010, *Dualisme Penelitian Hukum Empiris & Normatif*, Yogyakarta: Pustaka Pelajar, h..280

<sup>6</sup> Hans Kelsen, 2006, *Teori Hukum Murni*, Bandung: Nuansa dan Nusamedia, h. 140



contribution to the well-being of human life.<sup>7</sup> Soetjipto Rahardjo argues that the protection of the law is an attempt to protect the interests of a person by allocating power to him to act in his interest. It is also stated that one of the natures and purposes of the law is to provide protection to the people. Therefore, the legal protection of such a society must be realized in the form of legal certainty.<sup>8</sup>

## **2. PPAT's Responsibility For The Loss Of The First Sheet Act**

PPAT Act has a very important position and role in the circulation of law, both in private and public law. With such an act, it will be the basis for the National Farming Agency to carry out the transfer and charge of land rights from the first party to the second party.

The creation of the AJB must be attended by several people, including the seller, the buyer, and two witnesses. If the buyer is married, his wife shall be present; and if he or she is not able to be present, he may be represented by a person who has authority in writing. PPAT will create two original AJB sheets. One sheet will be stored by the PPAT, while the other one will be handed over to the Commercial Office to carry out the renaming process. Once done, a copy of the AJB will be given to the seller and buyer.

But in fact, in the field, as the author has described in the background, there is a PPAT in the city of Makassar who, by his mistake, has removed the first sheet of the sale act that was supposed to be kept by him. Because of the PPAT error, the parties who need the act feel damaged because they cannot continue the process of issuing the certificate of ownership of their land.

The client filed an AJB against a piece of land in front of a PPAT in Makassar City in 1998. In 2019, the client intended to undertake management for the issuance of a certificate of ownership of the land. Since the client lost his AJB, he faced the PPAT, which made the AJB request a copy (the first sheet of AJB) to complete the requirements for the issuance of the certificate.

However, when faced with the PPAT, the PPAT said that the first sheet of AJB had been lost and there were no other copies at all. As has been mentioned above, the first sheet of a PPAT act of 1 (one) trap is stored by the relevant PPAT. According to the rules, it is known that the PPAT should be storing the client's first AJB sheet, but in fact, the first leaf of the AJB made by PPAT has not been found to date. This is obviously contrary to Article 21

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<sup>7</sup> Bernard L.Tanya, Yoan N. Simanjuntak, Markus Y. Hage, 2010, *Teori Hukum*, Yogyakarta: Genta Publishing, h. 72

<sup>8</sup> Soetjipto Rahardjo, 1983, *Permasalahan Hukum di Indonesia*, Bandung: Alumni, h. 121



paragraph (3) letter a PP No. 37 of 1998 above, concerning the storage of PPAT acts, and Article 1 number 5 of Government Regulations No. 24 of 2016 concerning Amendments to Government Regulation No. 37 of 1998 concerning Regulations of the Department of the Office of the Land Act Maker.

Currently, the buyer who lost the AJB has made a missing statement to the police, but so far, the PPAT has not given a solution or instructions about the next steps to be taken by the client. The PPAT party should cooperate in providing a solution to the client so that the client can quickly obtain certainty about the right to his land to issue his certificate.

Regarding PPAT's liability for removing the first sheet of the act because of its fault, according to Mrs. Sri Hartini, the PPAT cannot be sued for damages in civil terms because the buyer has also committed a mistake by deleting a copy of AJB, so the client cannot demand PPAT for compensation, but PPAT is obliged to immediately provide a solution on such matters.<sup>9</sup>

The PPAT's liability for the deliberate or negligent loss of a sale and sale act, which is one of the protocols of the PPAT and belongs to the national archive, not only can be subject to administrative sanctions but also does not exclude the possibility of claiming damages by the parties who feel injured. In the case of a misdemeanor, it is necessary to examine the form of the misdeed, namely whether it is misconduct or a violation of the law. (*onrechtmatige daad*).

In determining an act that can be qualified as a violation of the law, four conditions are required:<sup>10</sup>

- a. contrary to the legal obligations of the perpetrator;
- b. contrary to other people's subjective rights;
- c. contrary to slander;
- d. against consistency, rigor, and caution.

In addition to the legal obligations of PPAT as set out in Article 21 paragraph (3) of Government Regulations No. 37 of 1998 concerning the Regulations of the Department of Land Act Makers, the Government Regulation No. 24 of 2016 concerning Amendments to the Government Ordinance No.37 of 1998 on the Regulation of the Office of the Act Maker of the Land and Article 1 paragraph 5 of the Government Order No.24 of 2016 on the

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<sup>9</sup> Ibid

<sup>10</sup> Rosa Agustina, 2003, *Perbuatan Melawan Hukum*, Jakarta: Pasca Sarjana FH Universitas Indonesia, h. 117



Amendment to the Administrative Regulations Number 37 of the Year 1998 regarding the Rules of the Ministry of the Officer of the Property Act Making the Land stated that “The PPAT Protocol is a set of documents to be kept and used by the PPAT consisting of lists of acts, original acts and supporting documents, archives of reports, agendas and other letters.” According to Article 37 of this Regulation, it is known that a PPAT is obliged to keep a document, which is a protocol of the IPAT, in which one of the documents is intended to be the original act. In addition to breaking the obligation, it is also due to violating the subjective rights of others.

According to Meyers, as quoted by Rachmat Letiwan, “subjective right refers to a right granted by law to a person specifically to protect his or her interests.”<sup>11</sup>

Compensation for an offense is a form of compensation imposed on a person who has done wrong to the injured party. There are two forms of compensation known in civil law, namely:<sup>12</sup>

- a. General compensation, that is, compensation applicable to all cases of unlawful acts, such as costs, losses, and interests. The compensation is generally regulated in Articles 1243 to 1252 BW.
- b. Special compensation that can arise only from certain bonds. In addition to civilian responsibility, the PPAT can also be administratively responsible. Administrative errors, commonly referred to as maladministration, committed by PPAT in carrying out some of the activities of land registration will cause legal consequences, i.e., PPAT can be held accountable.

On the question of the responsibility of officials, according to Kranenburg and Vegtig, there are two theories that support it:<sup>13</sup> Theory *fautes personnelles*, which states that losses to third parties are charged to officials who have caused losses because of their actions, *Theorie fautes de services* is the theory that claims that the loss to a third party is charged at the instance of the official concerned.

According to Article 12(2) of the Regulations of the Minister of Agriculture and Space Administration/Head of the National Farming Agency of the Republic of Indonesia No. 2 of 2018 on the Construction and Oversight of the Land Act Maker Officer, The

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<sup>11</sup> Rachmat Setiawan, 1991, *Tinjauan Elementer Perbuatan Melanggar Hukum, Cet-1*, Bandung: Binacipta, h. 70.

<sup>12</sup> Munir Fuady, 2001, *Perbuatan Melawan Hukum Pendekatan Kontemporer*, Bandung: Citra Aditya Bakti, h.134.

<sup>13</sup> Ridwan H.R., 2006, *Hukum Administrasi Negara*, Jakarta: Raja Grafindo Persada, h.35-37



imposition of sanctions against PPAT that commits a violation as referred to in Article 12, paragraph (2), may be in the form of a written warrant, a temporary suspension, a dismissal with respect, or an interruption with disrespect.

The creation of statements based on the PPAT registry book is a concrete solution to this problem. PPAT makes a letter of evidence of the fact that the sale has taken place, containing the details of the object of the sale and accompanied by a witness who is genuinely confident about the purchase, for example, the neighbors of the client and the PPAT officer, who must sign the letter of testimony. The PPAT registry book is in photocopies, legalized by a notary, and attached along with a missing statement from the police. However, the authors disagree about making collationee copies because collationee copies are the process of matching photocopying documents with the original documents. The notary will give a stamp and a paraf on each page of the photocopy, and on the back of the page, the notary shall give a signature and an indication that the photographic document is the same as the original document presented before the notary, whereas in this case the original AJB document and the AJB copy have been lost so that the collationee copy cannot be made.

### **3. Legal Action That May Be Made By A Client Who Is Injured As A Result Of The Loss Of The First Sheet Of The Act As A Consequence Of A PPAT Error**

If a client feels injured, he may report to the Supervisory Board of the PPAT (MPPD) in connection with a violation committed by the CPAT, in which due to his fault and inaccuracies in keeping the CPat act, the PPat caused losses to the other party. As the executor of the duty of the State authorized to make the AJB, the CCAT shall be liable by providing a statement that the sale has actually taken place, the sanction for the CPT is a warning from the supervisory board. In order to prevent acts from being lost or scattered, once the acts have been completed and signed, the PPAT must immediately make them merge into a bundle of acts.<sup>14</sup>

An effort that can be made by a client who feels injured is by making a complaint/report to the MPPD, it is based on Article 12 of the Regulations of the Minister of Agriculture and Space Administration / Head of the National Farming Agency of the Republic of Indonesia No. 2 Year 2018 On Construction and Oversight of the Land Maker's Office, which stipulates that:

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<sup>14</sup> Berdasarkan hasil wawancara dengan Ibu Nur Jabal Rahmah, Koordinator Kelompok Substansi Tanah Komunal, Hubungan Kelembagaan dan PPAT Kanwil BPN Provinsi Sulawesi Selatan, pada tanggal 7 Januari 2022.



- a. Supervision of the enforcement of the rule of law in accordance with the provisions of the regulations of the legislation in the field of PPAT as referred to in Article 8 letter b is carried out on the findings of the Ministry of the violation of the performance of the PPAT office or there is a complaint on the alleged violation committed by PPAT.
- b. The offence committed by PPAT as referred to in paragraph (1) is:
  - 1) violation of the duties of the PPAT;
  - 2) failure to fulfil the obligations laid down in the provisions of the law;
  - 3) violate prohibition provisions set forth in the regulations of the law; and/or
  - 4) violate the Code of Ethics.
- c. A complaint as referred to in paragraph (1) may originate from: a. the community, or individuals/legal bodies; and/or b. IPPAT.
- d. Complaints against alleged violations by PPAT may be submitted in writing to the Ministry or through the complaints website, the Report application or other means of complaint provided by the Department.
- e. In case of a complaint from the public received by the Ministry, BPN Regional Office, Agriculture Office, Building and Supervisory Assembly of PPAT or IPPAT then the complaints are forwarded to the MPPD.
- f. A complaint submitted in writing by the complainant shall have the following characteristics: a. must clearly indicate the identity of the rapporteur and; and b. shall accompany evidence relating to the complaints.
- g. MPPD follow up the report of alleged violations committed by PPAT as referred to in paragraph (2) by conducting an inspection of the PPAT.

The violation committed by PPAT is not keeping the first sheet of the act properly belongs to the failure to perform the obligations stipulated in the legislative regulations, as mentioned above Article 21 paragraph (3) of Government Regulations No. 37 of 1998 on the Regulations of the Department of Officers of the Land Act Maker, in conjunction with Government Regulation No. 24 of 2016 on Amendments to the Regulation of the Government No.37 of 1998 concerning the regulations of Department of the Office of Land Actmakers stipulates that the PPAT act is made in the original form of 2 (two) sheets i.e. first sheets of 1 (one) traps kept by the relevant PPAT.<sup>15</sup>

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<sup>15</sup> H. Salim, HS., 2016, Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah, Jakarta, Raja Grafindo Persada, h. 102



Monitoring of the performance of the office is carried out by inspection to the PPAT office, conducted on a regular basis, and the Head of the land office, performed at least 1 (one) times in 1 (a) year. In conducting such inspections, the head of the BPN regional office and/or the chief of the land office or the appointed official may be assisted by the Building and Supervisory Assembly of the PPAT in accordance with its duties and authority. When the inspection is conducted by the Head of the Regional Office of the BNP and / or the Head Of the Land Office with the assistance of the Building Council and the Supervisor of the CPAT, it is carried out under the terms of the appointment of the Chairman of the building and supervisory assembly, and performed by at least two persons. The inspection results are made in the form of a letter. When there is a finding of violation by the PPat, followed by inspection by the Builder and Supervisor of the CCAT. The results of inspection of the office are periodically to the Minister.<sup>16</sup>

Since the PPAT in the City of Makassar who committed the violation by removing the AJB has repeatedly done the same thing, then the Builder's Assembly and the supervisor of PPAT should immediately take decisive action to give tribute to that PPAT.

A written warrant contains the type of violation and follow-up to be fulfilled by the PPAT. The writing warrant is valid for a period of one month. If PPAT has obtained two times the penalty and PPAT continues to commit a violation, the head of the land office shall report to the chief of the BPN regional office to be given the sanction in the form of a temporary suspension. However, when the infringement committed by PPAT has been clearly proven and evident, PPAT cannot lodge an objection.<sup>17</sup>

There is a mandate from Article 32 (2) PP No. 24 Year 2016 to regulate the construction and supervision of PPAT in the Ministerial Regulations followed by the Minister of Agriculture and Space Administration/Head of National Farming Agency No. 2 Year 2018 on the Construction and Supervision of Land Act Maker Officers (hereinafter written Permen ATR/Ka. BPN No.2 Year 2018), which was negotiated on March 20, 2018. The birth of Permanent ATR /Ka.BPN No.2 Year 2018 is intended as guidelines for the implementation of construction and surveillance as well as enforcement of the rule of law through sanctioning PPAT by the Ministry.

#### **D. Conclusion**

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<sup>16</sup> Ibid.

<sup>17</sup> Berdasarkan hasil wawancara dengan Ibu Nur Jabal Rahmah, Koordinator Kelompok Substansi Tanah Komunal, Hubungan Kelembagaan dan PPAT Kanwil BPN Provinsi Sulawesi Selatan, pada tanggal 7 Januari 2022.



The form of PPAT's responsibility for the loss of the first sheet of the act as a result of its mistake is by making a PPAT certificate that there has been a transaction of transfer of rights from the seller to the client in the presence of the PPAT. Then the register book in photocopies and legalized, besides that also required photocopy of the neighbor's AJB, the declaration true of the sale. The client must also make a statement stating that the copy of the AJB is missing and declaring responsibility for everything, explaining that the client knows his AJB number from the neighbors of the client who bought the kavling land jointly. In the letter of testimony of the PPAT should also be explained in detail about the boundaries of the land. The legal effort that can be made by a client who is injured as a result of the loss of the first sheet of the act due to PPAT error is to make a complaint against the violation committed by the PPAT, complaints can be submitted in writing to the Ministry or through the complaining website, the Report application or other means of complains provided by the ministry. The client can also submit a report to the MPPD stating the identity of the rapporteur and and attaching evidence related to the complaint.



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### **Peraturan Perundang-Undangan :**

- Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.
- Undang-Undang Nomor 5 Tahun 1960, tentang Undang-Undang Pokok Agraria

### **Website:**

<http://prodi1.stpn.ac.id/Modul-Pendaftaran-Tanah.pdf>, accessed on 7 April 2021