



Legal Status of Land Deed Officers in Land Registration for Preventing Land Disputes in Indonesia

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Land registration involves several different institutions, among others, land deed officers (PPATs), Kelurahan/Desa (Village) Office, and Agrarian Office, each holding different roles in accordance with their own duties and functions. Based on statistical data, land disputes have been consistently increasing year by year, both in number and in quality, with the issue becoming more and more complex. According to earlier research results, there were a number of causes for land disputes, one of which is inaccuracy of PPATs in conducting their duties. Thus, the root of the problems and their solution have to be sought in order for PPATs to contribute to land registration processes from initial stage to final stage and the issuance of a land certificate, which gives a legal certainty to the objects, subject, and status of land titles, as well as protection to land owners. Ultimately, it would bring about conformity, peace, and welfare to Indonesia's people, the majority of whom own only tiny lands. To investigate the research problem, an analysis widely used in law science was carried out, supported by relevant references, doctrines, and documents. From the research result it can be concluded that the legal status of PPAT was born from the development of state concept, mainly welfare state, where the duty of government, besides maintaining state security, is to actively support societal development process and social economy in a bid to achieve welfare. PPAT agency, being a part of the welfare state, has to play an active role in driving the accomplishment of the main national goal, i.e., welfare in a broad sense. As a measure of enhancing PPAT role in preventing land disputes, its products should be of good quality and defensible, judicially and morally.

This study found that some measures are required given the heavy responsibility imposed on PPAT and the agrarian office and that legislation is needed to strengthen PPAT and land registration agencies thus securing legal certainty. In performing their duties and functions, PPATs have to firmly uphold good governance principles; the position of PPAT agency should be consistently outside government control so that it can be neutral in performing its profession, given that PPAT products are at the initial stage of a land registration process. It is time for the government to implement a positive publication system in land registration. PPATs should successfully improve their quality, dedication, and loyalty in performing their functions and duties and be consistently neutral, proportional, and professional, and keep up with developments in science and technology to fulfil their professional duty. As a response to the implementation of the positive publication system that grants an absolute certificate force, an insurance facility for PPAT products and government product land certificate, in this case the national agrarian office, has to be provided.

Key words: *Legal status of PPAT, land registration, land disputes.*

Introduction

From a viewpoint of the implementation of land agrarian politics, the development of national land law has contributed significantly to Indonesia's people welfare, though it is still suboptimal because most natural resources, including land, are still under the control of big capital owners. In law development, however, there often occurs theoretical barriers, especially to non-neutral laws and land law falls into non-neutral law, being greatly influenced by customary and political elements.

As a consequence, this has some impacts on national development and its derivatives. One of the impacts is the emergence of land disputes. During the 70-year independence of Indonesia, land disputes have been continually growing in volume, as well as in quality, which is increasingly more complex. There are some cases of land disputes, such as predominance of unregistered lands, particularly *adat* (customary) lands, inaccuracy of PPAT in performing its duties, whereas the agency holds an authority and duty of processing transitions and protection of land titles. PPAT-issued deeds are at the upstream end in land maintenance and registration. The officers aid the government, mainly Agrarian and Layout Office/National Land Agency (hereinafter called BPN), especially in the follow-up processes of land

registration. If land disputes cannot be prevented early, they may disturb public order, do harm to the government, and discourage investors.

Based on the description above, this research investigated the legal status of PPAT in land registration for preventing land disputes in Indonesia.

Problems

Based on the background above, the legal issues identified are as follows:

1. What is the legal status of PPAT in land registration in Indonesia?
2. What solutions should PPAT take in preventing land disputes in Indonesia?

Purposes

The purposes to accomplish are as follows:

1. To search for and elucidate the legal norms on the legal status of PPAT in land registration.
2. To find parameters and solutions to the measures that PPAT has to take in preventing the occurrence of land disputes.

Benefits

The benefits expected are:

1. Scientific contribution.
 - a. Development of legal science, particularly land laws, especially in land registration area.
 - b. Development of legislations on the legal status of PPAT and land registration on a continuous basis.
2. Practical benefit
 - a. Stimulation of reform in land registration and drafting of an Agrarian Bill.
 - b. Useful as a material socialization to Indonesia's people, particularly in preventing or at least minimizing the occurrence of land disputes.

Framework of Thinking

A theoretical study of the development of land law, particularly concerning PPAT agency to support the prevention of land disputes would use a "welfare state theory", with an emphasis



on legal certainty. The classic goals of law are to maintain order, legal certainty and justice. More recently there has been a significant development by following a state concept, beginning from a city state concept to a modern law-based state. Thus, the goal of law in the 21st century has extended to include peace, happiness, and welfare. However, the main goal of statehood is still legal certainty, and thus in state theory it should be recognized that law without power is just an illusion, and power without law is tyrant¹. In a welfare state, in the author's opinion, legal certainty is of highest importance. Therefore, the conduct of administrators in performing their authority can be better directed in realizing public welfare as the constitution mandates. Another function of legal certainty is to resolve disputes². According to Hart³, a positivist, a real legal system is a product of a combination of two rule types, namely, primary and secondary rules. The two rules are complementary so as to successfully create order and legal certainty (Azis, 2018).

It can be said in brief that used as a theoretical justification this poses a rationale for analysis, in order to answer the problems stated in the identification of problems. In essence, material law-based state is a welfare state context. The state concept by this definition includes the elements of⁴: protection of human rights; government's role is superior to legislature's; public laws restrict private ones, and prioritize public welfare.

From the description above, it can be seen that a government's duties have extended, particularly in the implementation or realization of public services, including the policies and implementation of the use, utilization, and arrangement of agrarian administration, as well as the registration aspect and its implementation. PPAT agency was born in a context of filling a welfare state concept, and thus its presence should contribute services to Indonesia's people in accordance with its major duty of preparing unreal land deeds which is at the initial stage of a land registration process, and hence is very strategic. That is, its existence in the future ought to meet some dimensions. For example, from an institutional aspect, it should be ruled by law; the educational level of the officers should be equivalent to magister stratum; in doing their job, they should be neutral, careful and accurate, working with integrity and honesty. If the product of the initial/upstream stage is wrong, the goal of continuous maintenance and registration can not be sustained. As a consequence, the goal of achieving

¹ Sjachran Basah, Legal Protection on Public Administration Conducts, Padjadjaran University, Bandung, 1986, p.4. (A Scientific Oration in *Dies Natalis XXIX* of Padjadjaran University)

² Lawrence M. Friedman, Legal System, Nusamedia, Bandung, 2001, p.20

³ H. L. A. Hart, The Concept of Law, Clarendon Press—Oxford, 1994, p.81

⁴ Mustamin, Dengan. Matutu, A Brief of The Tyoes of Modern State, Makassar, Scientific Oration in Faculty of Law, Unhas, 1992, produk.16-20



legal certainty could not be achieved either, and land registration programs would be disturbed, or not proceed as expected.

The implementation of land registration is political in nature and the regulation is a mandate of the 1945 Constitution Preamble as contained in Article 19 of UUPA (Indonesian Agrarian Law), ruled furthermore in its derivative legislations of Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998 *jo* Government Regulation No. 24 of 2016. In terms of the judicial aspect, measurement, and mapping, these regulations are very detailed and complete⁵, in order to support creating title subjects and object certainty. It also emphasizes that sustainable development has to be supportive in creating legal certainty in the agrarian area, and also emphasizes the major duties of PPAT. The legal certainty in the agrarian area can be achieved by land registration that involves several different agencies, among them Agrarian Office, *Kelurahan/Village Office*, and PPAT. Therefore, the three agencies should be synergized in the implementation. PPAT-issued deeds are unreal agreements, meaning that such agreements have to be followed up by the Agrarian Office. Therefore, to maximize the measures of preventing land disputes, the three agencies have to be synergized from the initial, through middle, to end processes in a consistent and sustainable way.

Alternately, to realize public welfare particularly in agrarian area, it is stated in Jokowi administration's "*Nawacita*"⁶ that to improve the life quality of Indonesia's people there is a need to encourage the implementation of land reform and a land ownership program of 9 (nine) million hectares, a so called agrarian reform, within which a land registration program is included. The emergence of the policy is closely related to the government's measures of protecting individual rights, particularly for those who are economically disadvantaged in gaining access to land asset. These crucial issues may have wider impact on preventing land disputes nationally. Fundamental thinking for preventing land disputes in relation to public welfare is highly relevant because a majority of the people only a tiny amount of land, or still cultivate their former lands which are now owned by others. Thus, there should be protection of legal certainty by a certification-issuing process.

⁵ Rizal Anshari, A Study of Positive Land Registration System Crisis between Opportunities and Challenges (Issued in Agrariaan Journal), Center for Research and Development of Republic of Indonesia National Agrarian Agency, Jakarta, 2014, p.51

⁶ President Staff Office, National Priorities of Agrarian Reformation in the 2017 Government Working Plan (Implementation of Agrarian Reformation), Jakarta 2016, p.42



A measure of explaining the legal status of PPAT in a context of land registration is of high importance for the author. It not only prevents land disputes in the interest of state but also contributes much to the welfare of the community and public welfare in a broad meaning.

Method

To investigate the legal status of PPATs as strategic officers in supporting the accomplishment of land registration capable of preventing land disputes, a judicial analysis was conducted. Then, to examine the variable above, a judicial-normative research was conducted. The legal issue emerging in land registration was the high volume of land disputes across the nation, both on those lands that had been registered and unregistered ones. The government's urgent homework is to make sure that PPATs perform their duties professionally by consistently honouring their official oath, code of conduct, and standard procedure. This could result in good performance, thus minimizing land disputes. This research began by verifying the relevant legal norms with legal theories on land registration so as to reach a solution on the accurate, careful, professional implementation of PPAT duties, hence contributing to legal certainty for those people with tiny lands. The steps taken in the present research were among others⁷: 1. To identify existing legal facts; 2. To collect legal materials considered as relevant to a good land registration process; 3. To carry out legal study of legal issues based on legal theories and land registration theories; and 4. To draw the conclusion and recommendation based on the result of the prescriptive analysis.

Conducted in the present study was an in-depth inquiry of judicial and legal history aspects, legislation and regulation related to the job of PPATs and land registration together with its derivatives. From the legal materials and approach pursued, a judicial analysis and a legal interpretation were conducted, in addition to presentation of a prescription on what the essences of land registration should be, so as to minimize disputes.

PPAT and Land Registration

PPAT Authority in Land Registration

The authority contains rights and duties assigned by public administration law. According to Nicolai, an authority provides a right to conduct certain legal actions or a duty to conduct something that brings about a legal consequence.⁸ In line with this, Bagir Manan⁹ does not equate authority and power (*macht*) where power is seen to grant a right either to do or not to

⁷ Peter Mahmud Marzuki, *Legal Research*, Kencana Pradana Medi Group, Indonesia, 2012, p.213.

⁸ P. Nicolai, *Bistuurrech*, Amsterdam, 1994, p.136

⁹ Bagir Manaan, *The Authorities of Province, Regency, and Municipality in a Framework of Regional Autonomy*, a Paper for National Seminar of Faculty of Law, Padjadjaran University, Bandung, 2000, p.2



do. The regulation of land registration rules that PPATs have a full authority to issue authentic deeds for all transfer agreements and assurance of land titles. That is, the power of producing an agreement is a duty of PPATs by taking into account all supporting documents to meet formal requirements.

In a framework of land registration, the authority is received by PPATs from the government, in this case represented by National Agrarian Office, as provided for in the regulation above. PPAT agency was born as a part of the implementation of the development of welfare state concept, so that its existence should be regulated by law. Being a part of the state concept, its mission is to accelerate the realization of public welfare by the transfers and assurance of land titles. The deeds concluded before a PPAT are a real agreement, thus have to be followed up by bringing all documents required in the legal action. In the author's opinion, PPATs are indeed required only to examine formal requirements, but morally should also examine material truth. Here the accuracy, carefulness, honesty, and competence of PPATs are an expectation in keeping with the development and challenges in conducting their business.

Theoretically and practically, land registration is intended to get legal certainty, land administration order, and protection of land owners¹⁰. Registration then, is a sequence of initial processes involving maintenance, so that data is kept at an agrarian office, and title deeds match the real condition. Moreover, A.P. Parlindungan¹¹ suggests that registration is important for legal certainty as prevention of ownership and border disputes as well in the interest of taxation.

Data maintenance is the duty of PPATs. They issue deeds which are one of the sources of judicial data required in updating the administration of land registration. Therefore, in the implementation of land registration, PPATs are of a strategic position in assuring and accelerating the registration of titles. PPATs thus have absolute authority in issuing deeds in the interest of the aforementioned registration.

According to Government Regulation (PP) No. 24 of 1997, every legal action relating to land objects ought to be concluded before a PPAT. Without an authentic deed issued by a PPAT, the head of the agrarian office should not accept a registration. Thus, PPATs hold a monopoly in making land title transfer agreements. This indicates how important and

¹⁰ Urip Santoso, *Agrarian Law, a Comprehensive Study*, Kencana, Jakarta, 2012, p.294

¹¹ A.P. Parlindungan, *A Guidance of the Implementation of Basic Agrarian Law and Procedure of Land Deed Officer*, Mandar Manju, Bandung, 1991, p.23



strategic the value that the government attaches to the duties assigned to PPATs are. Therefore, PPATs have to be professional in performing their duties, demonstrating decisions that are e.g., honest, careful, and accurate, and are compliant with procedure, rules, and the code of conduct applicable to land deed issuers (Owolewa & Adepoju 2018).

Moreover, in performing their duties and responsibilities, PPATs should develop a synergy with the Agrarian Office. Agrarian office staff are required to assess any documents related to land registration requirements. The carefulness and accuracy of PPATs and agrarian office staff is crucial for strengthening a negative publication system. From the description above it could be explained that PPATs should be responsible in drafting authentic deeds, including the substance of those deeds that are concluded before them and signed by all of the parties, formally produced through protocols that follow all standard procedures and regulations.

Causes of Land Disputes

Disputes take place generally due to a conflict among parties, relating to any conflict or difference on an agreement or other legal action. Usually, the parties struggle for and defend their right (title). Every dispute has legal consequences. Private laws regulate individual legal relationships that contain agreement between parties, if an agreement that has been signed cannot be voluntarily implemented then a legal consequence will occur, needing resolution.

Any land dispute is commonly initiated by a control- or ownership-related conflict and disagreement over land borders. According to John Gillspie and Hualing Fu¹², in developing countries, increasing numbers of land disputes are inevitable in parallel with other aspects and given that their legal systems are still in a developmental process.

In rapidly urbanizing and developing countries, such as China and Vietnam, land pressures and ongoing disputes are inevitable. Land taking creates ongoing and contested relationships between states agencies, developers, and land users. Without clear legal authority, unequivocal judicial foundations or irrefutable land compensation strategies, agreements will break down and be reshaped through fresh conflicts until a new consensus is reached. Dispute resolution is therefore highly dynamic, and land disputes are rarely settled once and for all. This description indicates that the resolution of land disputes highly depends on a legal authority the legality of which is clear and firm, and also supported by a legitimate government. From the various opinions concerning the roots of problems on land control and ownership disputes, the main causes can be summarised then as:¹³ the less orderliness of

¹² John Gillspie and Hualing Fu, *Resolving Land Disputes in East Asia*, Cambridge University Press, United Kingdom, 2014, p.34.

¹³ Darwin Ginting, *Selected Writings on Agrarian Law*, Revision Edition, Sinergi Mandiri, Bandung, 2013, p.122



agrarian administration in the past (before the enactment of UUPA) and now, splitting of regional administrations, abandoned lands, and less carefulness of PPATs in making land deeds.

With respect to the lack of care of PPATs in performing their work, disputes may in reality take place because the parties didn't appear before a PPAT at the same time; the deed was not read by the PPAT, and or the deed was not signed in the same time by the parties. As a consequence, either party who is capable of proving PPAT negligence may sue the PPAT in relevant District Court because an illegal action has been committed. Our understanding of the various roots of the land dispute problems can be a starting point in an attempt to resolve land disputes, though the reality is still far from achieving justice. From the identification above the author found the following reasons for the difficulty in resolving land disputes in Indonesia:

1. Land problems are complicated, because land dimensions are continually growing in line with the developments in economy and technology;
2. Overlapping in land legislations;
3. Existence of court mafia. The mafia is not visible, but in reality it often happens systematically;
4. Disagreement in interpretation of the laws that govern land dispute resolution.

The implication is that the many land disputes impede sustainable land maintenance and registration processes. At a national level, the quantity of land disputes has been increasing, while the quality of the land disputes is equally more and more complex. Nationally, this fact may harm the government, investors, and people, because it may negatively impact on legal certainty and ultimately damage national interest, both economically and politically. Land law requires legal certainty on land title, object, subject, and legal status. Moreover, each land object possess its own characteristic and uniqueness. Therefore, to ensure certainty a mapping-related technical competence is needed that could prevent land disputes.

As a response to land disputes, the massive land certificate-issuing program implemented by the Jokowi administration is one of the measures of land dispute prevention. However, the strategic role of PPATs is equally important, in that they should carry out their duties in proportional, professional, careful, and accurate ways, for their products to meet the required standard quality in the interest of the government and its people. It is here that PPATs are, in performing their duties, challenged not to be lured by their own instantaneous interest or even to be part of a land mafia. Moreover, with the condition of poor law enforcement nationally in Indonesia now, the dedication and loyalty of PPATs are required: they are challenged to consistently keep the honour of their job as required by their oath.



Implementation of PPAT Duties in Preventing Land Disputes

Legal Status of PPAT in Land Registration

PPAT agency was born amid the development of welfare state concept, so that it actively takes part in realizing the state goal, according to its authority. In welfare state theory, government as the personification¹⁴ of state, besides having a duty of protecting state sovereignty, is required to regulate social activities and to develop people economy so as to achieve public welfare. The existence of the agency is clear in performing its duties and functions. Today, its existence is provided for in Government Regulation on land registration and rules of PPAT job, so that the products of its job are in the initial stage of a sustainable land maintenance and registration process. From a judicial viewpoint, its existence is outside the government, though PPATs are appointed by a minister. This is logical and justifiable, given that they should be neutral in performing their duties and functions.

However, in performing their duties they should comply with legal norms issued by the government, e.g., before being appointed, they should take an oath. The oath says that the officers should be neutral and responsible and obey the government. In addition, they should be honest, careful, and accurate in their actions. In certain situations, the job's products can be used as a legal evidence. Accordingly, they should also be able to keep pace with current developments particularly in science and technology. Given that the position is as a public officer whose duties include providing services to citizens, the honour and thrust from both government and people should be professionally secured. As a profession, the job has social responsibility as well in that disadvantaged citizens should be accessed to the services provided by the officer. Moreover, in job implementation and in the context of the interrelationship among colleagues and societies, officers are required to comply with their code of conduct which emphasizes a moral message for the members. Given the heavy responsibility imposed on them, regulation of agency should be required by law.

The Role of PPAT and Solution to the Problems Encountered in the Implementation of PPAT's Duties of Preventing Land Disputes

From a viewpoint of authority, it can be said that issuance of land deeds as a basis of land registration or mortgage is an absolute authority or monopoly right of PPAT officers. In performing their duties and functions, PPATs play a role of preparing their judicially and morally defendable, quality products. If it can be accomplished, the acceleration and

¹⁴ Sunarya Hartono, What is Rule of Law?, Bandung, Alumni, 1976, p.103



improvement of the land registration system which is currently negative, but has a tendency to positivity in character would gradually be successfully realized as an accurate certificate product. This poses the question, why do the government not bravely implement a positive publication system? An academic answer is that in the early days of Indonesian independence, all legislation was a colonial product implemented on a basis of concordance principle. Likewise, the institutions in the government were not permanent and the nation was in a state of highly dynamic development acceleration. Additionally, a new independent country is usually categorized as a developing country. Characteristics of developing countries are unstable monetary, political movement uncondusive for economic growth, and weak law enforcement, that is, the implementation of modern rule of law principle is still staggering, and thus applicable laws often lag behind economic and technological developments. After 70 years of independence and then entering into a reformation era in 1998, the nation has emerged into a democratic and transparent country, and recognized the importance of human rights. And our laws have been developing such that over 90 percent of our laws have been the products of national governments. In the current condition the development of the country has been acceptable, though it still requires foreign loans to finance its development. Since the reform era, however, the nation has become aware of democracy, political and human right and monetary law. Resultant of such a condition, if the nation is to be advanced nation it should want and be able to master science and technology.

In reality, the majority of advanced nations use a positive publication system in their land registration. That is, the development of land registration in various countries is generally affected by population growth, people's social-economic conditions, and technological development. Given the development of the nation's conditions, it is time for the government to take into account¹⁵ the plus-minus of both negative and positive publication systems. This is in agreement with the opinions of land registration experts as shown in different articles. According to the author, it is time for Indonesia, as a modern and advanced state, to practice a positive publication system in land registration as provided for in the draft Agrarian Law currently finalized by the Parliament, so that conformity, peace, and welfare to Indonesia's people, the majority of which own only a tiny amount of land, can be realized. However, in supporting the positive publication system, the role of PPAT agency should be increased in institution terms and be provided for by a legislation equivalent to law. Academically, there is a need to improve the quality of candidate PPATs by enforcing a minimum educational level and ensuring a neutral, proportional and professional stance, capable keeping pace with

¹⁵ Liliana Arif Gondoutomo, Land Registration by Negative System tending to be Positive, Journal of Agrarian, Center for Research and Development of National Agrarian Agency of Republic of Indonesia, Jakarta, 2014, p.32



scientific and technological development in their profession without ignoring moral messages in applicable codes of conduct.

In response to the result of positive publication system that grants absolute land certificates, an insurance facility for PPAT products and government-issued land certificates is needed. The application of the system above may stimulate the incentive for both individual and private bodies to register their lands ultimately increasing land registrations for positive impact on PPATs. The major impact will be on those investors who invest their capital directly, because they generally need relatively large lands.

Closing Remarks

Conclusion

From the theoretical study and legal norms it could be concluded as follows:

1. The legal status of PPAT agency was born amid the development of a modern state concept, that is, a welfare state, where the government actively takes part in arranging the social development and people economy in attempt of accelerating the realization of the 1945 Constitution Preamble, i.e., to make the nation's people prosperous in a broad meaning. PPAT agency has to actively play a role in supporting the realization of the country's goals by upholding firmly good government's principles, and proportional and professional in performing its duties and functions. Thus, it may contribute to accomplishing state duties in agrarian area, particularly in land registration that provides legal certainty.
2. A solution is to enhance the role of PPAT so as to prevent or at least to minimize land disputes and as such its products have to be of high quality, and defensible judicially and morally. It is time for the government to apply positive publication in land registration, so that its products are enforceable. To respond the products, PPAT insurance facility and agrarian office-issued land certificate insurance must also be provided.

Recommendation

The proposed recommendations from this study then are as follows:

1. Given the heavy responsibility imposed on PPAT agency, it is important to strengthen its role in the future and land registration should be regulated by legislation.
2. The legal status of PPAT agency should remain outside the government, so that neutrality can be ensured in role performance.



3. A positive publication system in land registration should be applied soon. To improve PPAT products, PPATs should hold a master-equivalent academic degree as a minimum, should be neutral, proportional and professional, and keep pace with challenges in science and technology, performing their profession without ignoring the moral messages as provided in the relevant codes of conduct.
4. In response to the results of positive publication that make land certificate absolute, insurance facility for PPAT products and for Government-issued land certificate insurance have to be provided.

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