

LEGAL STATUS OF LAND DEED OFFICERS IN LAND REGISTRATION FOR PREVENTING LAND DISPUTES IN INDONESIA

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ABSTRACT

Land registration involves several different institutions, among others, land deed officers (PPATs), Kelurahan/Desa (Village) Office, and Agrarian Office, each holding different role in accordance with their own duties and functions. Based on statistic data, land disputes have been consistently increasing year by year, both in number and in quality, being more and more complex. According to earlier research results, there were some causes of land disputes, one of which being inaccuracy of PPATs in conducting their duties. Thus, the problem roots and their solution have to be sought, in order for PPATs can contribute to land registration processes from initial stage to final stage, till the issuance of land certificate, which gives a legal certainty to the objects, subject, and status of land titles, as well as protection to land owners. In the end, it would bring about conformity, peace, and welfare to Indonesia's people, the majority of which 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 could 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 from keeping state security, is to actively support societal development process and society economy in a bit to achieve welfare. PPAT agency, being a part of 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 defendable, juridically and morally. To the end, some measures are required, among others: given the heavy responsibility imposed to PPAT and agrarian office, it needs to strengthen PPAT and land registration agencies by a law-level legislation, thus securing legal certainty. In doing 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 the developments in science and technology in doing their professional duties. 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.

Keywords: Legal Status of PPAT, Land Registration, Land Disputes

INTRODUCTION

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

As a consequence, it 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 causes 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 early be prevented, they may disturb public order, do harm to the government, and discourage investors.

Based on the description above, the researcher would investigate 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. It can stimulate a reformation in land registration and drafting of 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

In studying the development of land law, particularly concerning PPAT agency, to support the prevention of land disputes theoretically, "welfare state theory" would be used, with an emphasis on legal certainty, which is actually included too in the theory. The classic goals of law are to keep order, legal certainty and justice. Later on, there was 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 20th 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 tyrant. In a welfare state, in the author's opinion, legal certainty is of highest importance. Therefore, the conducts of administrators in performing their their authority can be better directed in realizing public welfare as the constitution mandates. Other function of legal certainty is to resolve disputes. According to Hart, 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.

It can be said in brief that the theory is used as a theoretical justification which puts 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. The state concept has contained the elements of: 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 the government 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 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, hence 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, with integrity, and honest. If the product of the initial/upstream stage is wrong, the goal of continuous maintenance and registration could not be sustained. As a consequence, the goal of achieving legal certainty could not be achieved either, and land registration programs would be disturbed, or don't go on 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 juridical aspect, measurement, and mapping, those regulations are very detailed and complete, so that it can support in creating title subjects and object certainty. It also emphasizes that a sustainable development has to be supportive in creating legal certainty in agrarian area, and also emphasizes the major duties of PPAT. The legal certainty in 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 Agrarian Office. Therefore, to maximize the measures of preventing land disputes, the three agencies have to be synergized from the initial, middle, to end processes in a consistent and sustainable way.

In other side, to realize public welfare particularly in agrarian area, it is stated in Jokowi administration's "*Nawacita*" that to improve the life quality of Indonesia's people it needs to encourage the implementation of landreform and land ownership program of 9 (nine) million hectares, so called agrarian reformation, in which land registration program is included.

The emergence of the policy is closely related to the government's measures of protecting individual rights, particularly those economically disadvantaged, in gaining access to and asset of land.

The crucial issues described above 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 has just a tiny land, or even only cultivate their former lands which are now owned by others. Thus, there should be protection of legal certainty by a certification-issuing process.

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 even contributes much to the welfare of the community and public welfare in a broad meaning.

METHODS

To investigate the legal status of PPATs as strategic officers in supporting the accomplishment of land registration capable of preventing land disputes, a juridical analysis should be conducted. Then, to examine the variable above, a juridical-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 honoring their official oath, code of conduct, and standard procedure. It hopefully can result in good performance, thus minimizing land disputes. The 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 others: 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-dept inquiry of juridical 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 juridical 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. In line with it, Bagir Manan doesn't equate authority and power (*macht*). The power grants a right either to do or not to do. The regulation of land registration regulates 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 unreal 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 expected, in keeping with the development and challenges of the era in conducting their profession.

Theoretically and practically, land registration is intended to get legal certainty, land administration order, and protection of land owners. It means that registration is a sequence of initial registration process involving maintenance as well, so that the data is kept at an agrarian office, and its title deed matches the real condition. Moreover, A.P. Parlindungan suggests that the registration is important for legal certainty, besides from preventing ownership and border disputes as well as taxation interest.

The data maintenance is the duty of PPATs. They issue deeds which are one of the sources of juridical 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. It means that PPATs have an 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 agrarian office should not accept a registration. Thus, PPATs hold a monopoly in making land title transfer agreements. It indicates how important and strategic is the value that the government attaches to the duties assigned to PPATs. Therefore, PPATs have to be professional in performing their duties, e.g., being honest, careful, and accurate, and being complying procedure, rules, and code of conduct applicable to land deed issuers.

Moreover, in doing their duties and responsibilities, PPATs should develop a synergy with Agrarian Office. Agrarian office staffs are required to assess any documents related to land registration requirements. The carefulness and accuracy of PPATs and agrarian office staffs are greatly demanded for strengthening a negative publication system. From the description above it could be explained that PPATs should be responsible in making authentic deeds, including the substances of those deeds that are concluded before them and signed by all of the parties, made formally, and by following all standar procedures and regulations.

Causes of Land Disputes

Disputes take place due generally to a conflict among the 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 any legal consequences. Private laws regulate individual legal relationship that contain agreement between the parties. If an agreement that has been signed cannot be voluntarily implemented then a legal consequence will occur, which has to be resolved.

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

In rapidly urbanizing and developing societies, 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 juridical 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.

The 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 are: the less orderliness of 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.

Relating to the less carefulness of PPATs in performing their works, disputes may in reality take place because the parties didn't appear before a PPAT in the same time; the deed was not read by the PPAT, and 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 to a relevant District Court for a reason that the latter has committed an illegal action.

Our understanding on the various roots of problem can be made as a starting point in attempt to resolve land disputes, though the reality is still far from people's sense of justice. From the identification above the author found out some reasons for the difficulty in resolving land disputes in Indonesia, namely:

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.

As an implication, 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, the fact may harm the government, investors, and people, because it may negatively impact legal certainty and in the end 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 on an object a mapping-related technical competence is needed. It is expected that the uniqueness can prevent land disputes.

As a response to land disputes, the massive land certificate-issuing program implemented by Jokowi administration is one of the measures of preventing land disputes. However, the strategic role of PPATs is equally important, so that they should carry out their duties in proportional, professional, careful, and accurate ways, for their products to meet the standard quality in the interest of the government and 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, in the condition of poor law enforcement nationally now, the dedication and loyalty of PPATs are required and they are challenged to consistently keep the honor of their job as required by their job 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 should actively take part in realizing the state goal, according to its authority. In welfare state theory, government as the personification of state, besides from having a duty of protecting state sovereignty, is required to regulate social activities and to develop people economy so as to achieve public welfare. From the background, the existence of the agency comes to be clear, viewed from the aspect of authority, 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. In a juridical 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 made as a legal evidence. Accordingly, they should also be able to keep in pace with the current developments particularly in science and technology. Given that the position is a public officer whose duties include providing services to citizens, the honor and thrust from both government and people should be kept professionally. As a profession, the job has social responsibility as well, so that disadvantaged citizens should be freed in getting the services provided by the officer. Moreover, in watching the implementation of the job and interrelationship among colleagues and societies, the officers are required to comply with their code of conducts which emphasize more on moral message for the members. Given the heavy responsibility imposed to them, it should be considered to regulate the existence of the agency by a 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 juridically and morally defendable, quality products. If it can be accomplished, the acceleration and improvement of the land registration system which is negative but tends to be positive in character would gradually be realized successfully as an accurate certificate product. Actually, why do the government not bravely implement a positive publication system? An academic answer is that in the early independent days of the nation all legislations were colonial products implemented on a basis of concordance principle. Likewise, the institutions in the government were still not permanent, because the nation then need to highly dynamic acceleration of development. In addition, a new independent country is usually categorized as a developing country. Characteristics of developing countries are unstable monetary, political movement unconducive for economic growth, and weak law enforcement, that is, the implementation of modern rule of law principle is still staggering, and thus applicable laws are often lagged behind of economic and technological developments. After 70 years of independence and then entered 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 good enough, though it still needs foreign loans to finance its development. Since reformation era, however, the nation has come to be aware of democracy, politic, human right, law, and monetary. As a resultant of such condition, if the nation to be an 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 account the plus-minus of both negative and positive publication systems. This is in agreement with the opinions of land registration experts as shown in their different articles.

According to the author, it is time for Indonesia, as part of modern and advanced states, to practice a positive publication system in land registration as provided for in 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 land, could be realized. However, in supporting the positive publication system, the role of PPAT agency should necessarily be increased in institution terms and to be provided for by a legislation equivalent to law; academically, it needs to improve the quality of candidate PPATs by an educational level of magister in minimum; and they have to be neutral, proportional and professional, capable of being in keeping with the development in science and technology in implementing their profession without ignoring moral messages as provided for in applicable code of conducts.

In response to the result of positive publication system that grants absolute land certificates, insurance facility for PPAT products and government-issued land certificates is needed. The application of the system above may stimulate the animus of people, individual and private bodies, to register their lands sporadically. It will increase land registrations in the end, positively impacting on PPATs. It will impact on those investors who put their capital directly, because they usually need relatively large lands.

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, 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 governments 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 to take in enhancing the role of PPAT so as to prevent or at least to minimize land disputes is that its products have to be of high quality, and defensible juridically and morally. It is time for the government to apply positive publication in land registration, so that its products are of absolute force. To respond the products, PPAT insurance facility and agrarian office-issued land certificate insurance have to be provided.

RECOMMENDATION

The recommendations to propose are follows:

1. Given the heavy responsibility imposed to PPAT agency, it is important to strengthen it in the future and land registration should be regulated in a law.
2. The legal status of PPAT agency should remain outside the government, for it to be neutral in performing its profession.
3. A positive publication system in land registration should be applied soon. To improve PPAT products, PPATs should hold a magister-equivalent academic degree in minimum, should be neutral, proportional and profesional, in keeping with challenges in science and technology, and perform their profession without ignoring the moral messages as provided in the code of conducts.
4. To respond 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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