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Judicial Review of PPAT Calls According to the Criminal Justice System

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Abstract

The purpose of this research is to know, understand, and analyze the calling of PPAT according to criminal justice system related to protection aspect and form of legal responsibility.

This research method uses normative law research type. Normative legal research is a legal research that lays law as a norm system building. The norm system is about principles, norms, and rules, rules of law, court decisions, agreements and doctrines (teachings). Using the approach method: Statutory Approach, Case Approach, and Conceptual Approach. Normative procedure research results in the calling of PPAT as a witness or suspect are imposed by Article 112 of the Criminal Procedure Code while the seizure of the original deed of PPAT (minuta) and warkah can only be done with the special permission of the Chairman of the local District Court under the provisions of Article 43 of the Book Invite Criminal Procedure Law. PPAT as a Public Officer in carrying out his / her position should have special legal protection to keep the honor and dignity of his / her position including when giving testimony and information in examination and trial. Notary and PPAT positions have similarity in carrying out its duty of making an authentic deed based on the wishes of the parties. The calling of a notary in the criminal justice system has a provision which must be followed as the provisions of Article 66 Paragraph (1) of the Law on Notary Call for the interest of the criminal proceeding process shall obtain the approval of the Notary Public Council while the invitation to the PPAT office shall have the legal provisions in general not having legal protection set specifically.

Keywords: Criminal Justice; Calling PPAT

Introduction

In carrying out the mandate in Article 19 paragraph (2) of the BAL on Land Registration. The Government has issued Government Regulation No. 10 of 1961 on Land Registration as it has been revoked and amended by Government Regulation No. 24/1997 concerning Land Registration.

The purpose of land registration under Article 3 of Government Regulation Number 24 of 1997 concerning land registration is Land registration aims:

a. To provide legal certainty and protection to the right holder of a plot of land, apartment units and other registered rights so as to easily prove himself/herself as the holder of the rights concerned;
b. To provide information to interested parties including the Government in order to easily obtain the necessary data in the conduct of legal acts concerning the land parcels and listed apartment units;
c. For the implementation of the orderly administration of land.

In Government Regulation 24/1997 regarding the registration in article 5 explicitly states that the government agency that conducts land registration throughout the territory of the Republic of Indonesia is the National Land Agency (hereinafter abbreviated as BPN). Furthermore, in Article 6 paragraph (2), in carrying out land registration. Head of Regency/Municipal Land Office cannot carry out its own, but requires the assistance of other parties namely Land Deed Officer and other officials assigned to carry out certain activities according to the Government Regulation and the relevant Regulation. Officials other than Land Deed Officials (hereinafter abbreviated as PPAT) assisting the implementation of certain activities in land registration are officials from the Auction Office, Officials of Deed of Wakaf Promotion and Adjudication Committee.

Utilization of land In order to be traded or traded, there is a need for legal certainty and protection for the parties. To obtain the certainty and protection of the law, it is necessary to have an officer authorized to transfer, transfer, and impose right on the land and/or property rights of the apartment unit. The official given the authority, namely PPAT.[1]

Registration of land transfer rights, carried out by PPAT, in accordance with the provisions on PPAT Office Regulation namely Government Regulation No. 24 of 2016 concerning the amendment to Government Regulation No. 37 of 1998 on the Regulation of Position of Land Deed Authority in Article 2 states:

a. PPAT has the principal duty to carry out part of the registration of the land by making the deed as evidence of certain legal acts concerning the right to land or property rights of the apartment unit, which shall be the basis for registration of the change of the land registration data caused by the legal act;
b. The legal act referred to in paragraph (1) shall be as follows:
    1. Buy and sell;
    2. Exchange;
    3. Grant;
    4. Inclusion into the company (inbreng);
    5. Distribution of collective rights;
    6. Provision of Right to Build / Use Right to Land of Property;
    7. Giving Deposit Rights;
    8. Provision of Authority imposes Deposit Rights.

According to Boedi Harsono, the nature of the PPAT position as a general official is:[2]

a. PPAT is a public official who is given a special duty and authority to provide services to the community in the form of making a deed proving that it has been done before him or her legal act of transferring the right to the land, Ownership of Unit of Flats or granting of Land Rights;

[1] Salim Hs, *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah*, Rajawali Pers, Jakarta, 2016, p. 1
[2] Boedi Harsono, 2003. *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaanya, First edition. Hukum Tanah Nasional.* Jakarta : Djambatan.

b. The deed made is an authentic deed, which only PPAT has the right to make it;
c. PPAT is the Administrative Officer of the State, because of his duty in the field of registration of land registration which is an activity in the field of Executive / State Administration;
d. The PPAT Deed is not a decision of the State Administrative Officer, because the deed of relass, that is, a written report from the certificate holder in the form of a statement concerning the acts already committed by certain parties, a legal act before him at a time referred to in the deed concerned;
e. The decision of the PPAT as the State Administration Officer is the decision to refuse or grant the request of the parties who come to him to be granted a deed of the legal act they will do against him. Deciding to refuse or grant the request is an obligation of PPAT.

In carrying out its duties, PPAT has the authority to make an authentic deed of all legal acts as referred to in Article 2 paragraph (2) of Regulation of the Government of the Republic of Indonesia Number 24 of 2016 concerning Regulation of Officials of Land Deed Officials on Land Rights and Ownership of Housing Units Arrange that is located within its work area.

The PPAT deed is an authentic deed and as an authentic deed there are strict requirements in the procedures of form, form and formality to be performed so that the deed is entitled to be referred to as an authentic deed. This is affirmed by Article 1868 Civil Code:

An authentic deed is a deed made in the form prescribed by law by or in the presence of the competent public authority for which it was made.

Based on its duties and authority, PPAT has an important role in helping to create legal certainty for the public related to the legal status, rights and obligations of a person in law that serves as a valid proof of ownership, so important the task of PPAT so that the required prudence, accuracy, and perfection in any legal proceedings it undertakes to avoid the loss of either party and to ensure that the law proceeds accordingly, so that the PPAT which is the legal consultant on the deed made it avoid the errors in the form of administrative, civil or criminal responsibility.

In the case of criminal liability, in the criminal justice system the invitation to the PPAT office is different from the calling of the Notary's office. Legal protection for the position of PPAT is not regulated normatively, in contrast to the treatment given to the position of Notary where the provisions on its calling there is a special procedure which must be obeyed as intended in the provisions of Article 66 paragraph (1) of Law Number 2 Year 2014 About the amendment of Law Number 30 Year 2004 regarding the position of Notary (hereinafter referred to as UUJN), determines:

(1) For the purposes of the judicial process, the investigator, the public prosecutor, or the judge with the approval of the honorary board of Notaries is authorized:

a. Take photocopies of minas deeds and/or letters attached to minuta deeds or Notary protocols in Notary's depository; and
b. Calling a Notary to be present in the examination relating to a Notary deed or protocol which is in the Notary's depository.

Criminal liability is determined on the basis of a liability based on fault, and not only with the fulfillment of all elements of a criminal offense, so that mistakes are placed as determinants of criminal responsibility and are not only seen as a mental element in criminal acts.

The objectives of this research are to know, understand and analyze the calling of PPAT according to the criminal justice system related to the legal protection aspect, to know, understand, and analyze the responsibility of PPAT in performing their duties.

Literature Review

The theory used as an analissis in this study:

1. *Authority Theory*

Philipus M. Hadjono in his writings on the authority states that:

The term authority is aligned with the term "bevoegdheid" in Dutch legal terms. The term "bevoegdheid" is used both in the concept of public law and in the concept of private law, while the term authority or authority is always used in the concept of public law.[3]

F.P.C.L. Tonner cited by Ridwan HR believes that *overheidsbevoegdheid wordt in verband opgevad als het vermogen om positief recht vast te srellen en Aldus rechtsbetrekkingen tussen burgers onderling en tussen overhead en te scheppen* "(the authority of the government in this regard is regarded as the ability to exercise positive law, and so can be created legal relationship between government and citizens).[4]

2. *Theory of Legal Protection*

According to Philipus M. Hadjon, that the means of legal protection there are two kinds, namely:

a. Means of Preventive Legal Protection

In the protection of this preventive law, legal subjects are given an opportunity to file an objection or opinion before a government decision gets a definitive form. The goal is to prevent the occurrence of disputes. Preventive legal protection is of great significance to government action based on freedom of action because with preventive legal protection the government is driven to be careful in making decisions based on discretion. In Indonesia there is no specific regulation on preventive legal protection.

b. Means of repressive law protection

Repressive legal protection aims to resolve disputes. Handling of legal protection by the general courts and administrative courts in Indonesia includes this category of legal protection. The principle of legal protection of government action rests on the concept of recognition and protection of human rights because historically from the west the birth of concepts of recognition and protection of human rights is directed to the limits and lying of public obligations and government. The second principle that justifies the legal protection of government action is the principle of the rule of law. Associated with the recognition and protection of human rights, recognition and protection of human rights has a central place and can be linked to the objectives of the rule of law.[5]

[3] Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia_Introduction to Indonesian Administrative Law*, Gadja Mada University Press, Yogyakarta, 2002, p. 1
[4] F.P.C.L Tonner dalam Ridwan HR, *Hukum Administrasi Negara*, Rajawali Pers, Jakarta, 2006, p. 101
[5] Philipus M. Hadjon, Op.Cit, p. 30

3. Theory of legal responsibility

In Indonesian the word responsibility means the state is obliged to bear everything (if anything happens to be prosecuted, blamed, diperkarakan and so on).[6]

Legal liability is the type of liability charged to legal subjects or perpetrators committing unlawful acts or criminal acts. Type's Legal liability can be categorized into three areas: civil, criminal and administrative.[7]

Method

Type in this research is normative law research. Normative legal research is a legal research that lays law as a norm system building. The system of norms concerned is about principles, norms, and rules, rules of legislation, court decisions, agreements and doctrines (teachings).[8] With approach method:

a. Statute Approach
b. Case Aprroach
c. Conceptual Approach

Result and Discussion

1. Calling PPAT According to the Criminal Justice System

a. Procedure Calling PPAT Position

PPAT and Notary positions are different positions when viewed in terms of authority and legal protection, although in practice law can be found a PPAT who concurrently positions as a Notary. Duplicate positions between Notary and PPAT are made possible by legislation because there is no prohibition from the Law. Notary who concurrently positions as PPAT of accountability and legal protection must be separated, calling to the position of Notary under the criminal justice system has a provision that must be followed as stipulated in article 66 paragraph (1) UUJN where for the purposes of examination, by Investigator, Prosecutor or Judge must with the permission of the Honorary Board of Notary while the calling of the PPAT applies the general rule of law in this case the PPAT which is called as a witness or the suspect is enacted the provision of Article 112 KUHAP while the seizure of the original deed of PPAT (minuta) and warkah can only be done with special permission of the local District Court pursuant to Article 43 KUHAP.[9]

Thus it can be concluded that there is a void of norms associated with special procedures in law enforcement for a PPAT when viewed from the point of legislation related to the position of PPAT. IPPAT which overshadowed all PPAT positions in Indonesia had an understanding with the Police in the form of MoU but the MoU was not included in the regulation of legislation in Indonesia and did not have a binding force in a special manner. One of the logical consequences of the rule of law is the application of the principle of legality, in other words, in the element of the legal state of Pancasila, the principle of

[6] Departemen Pendidikan Dan *Kebudayaan Kamus Besar Bahasa Indonesia* Dalam Salim Hs. Dan Erlies Septina Nurbani, 2014. *Penerapan Teori Hukum Pada Penelitian Disertasi Dan Tesis.* Ed1 Cet. 1 Rajagrafindo Persada, Jakarta, p. 207
[7] *Ibid*. p. 208
[8] Mukti Fajar ND dan Yulianto Ahmad, Dualisme Penelitian Hukum Normatif dan Empiris, Pustaka Pelajar, Yogyakarta, 2013 p, 184.
[9] Sjaifurrachman, 2011, Aspek Pertanggungjawaban Notaris Dalam Pembuatan Akta, Mandar Maju, Bandung, p. 236.

legality becomes particularly important in relation to the legal protection aspect of the PPAT which until now there is no regulatory provision, must be interpreted as protection by means of legal means or protection provided by law, meaning that the regulation of the legal basis must be clearly stated in the positive law.[10]

Based on the above description, the Normative Procedure in the case of PPAT called as a witness or suspect is enforced the provisions of Article 112 of the Criminal Procedure Code, while the seizure of the original deed of PPAT (minuta) and warkah can only be done with the special permission of the Chairman of the local District Court based on the provisions of Article 43 of the Penal Code.

a. Article 112 of the Criminal Procedure Code requires that a person summoned by the investigator for the purposes of the examination shall come to the investigator. For witnesses who do not come to the investigator for no valid reason may be punished under the provisions of Article 224 of the Penal Code, with a maximum penalty of 9 months.
b. Article 43 of the Criminal Procedure Code states that confiscation of other letters or writings of those duty-bound by law to conceal (in this case the PPAT), to the extent not of the State's secrets, may only be made by their consent or by the special permission of the Chairman The local District Court, unless the law determines otherwise.

Based on the above description, besides pointing out some differences, it also shows that Notary and PPAT positions have an equally important role, i.e. there are similarities of urgency and qualification, among others:

1. Authorized to make evidences with perfect proof of authentic deed
2. Qualified as Public Official
3. It is required to keep the contents of the deeds secret, as determined in the formulation of oath of office.

Based on equal status, qualifications and obligations for Notary and PPAT positions, it is necessary to equate also the treatment form for both. Thereby regulating normatively in a regulation on provisions requiring permission of examination in the judicial process for a PPAT, in the case of being called as a witness or suspect should be equalized, that is arranged in PPAT Regulation of Position.

Some examples of causes related to the execution of duties and positions of a PPAT, among others:

1. The PPAT filed and summoned as a witness in the Court concerning the deed made as evidence in a case.
2. The PPAT which is made by the defendant or the defendant in the Court concerning the deed made and considered to be detrimental to the Plaintiff, in relation to the Civil Procedure.
3. PPAT as defendant in Criminal Case.
4. Confiscation of the bundle of deeds in the PPAT.

b. Legal Protection for PPAT

The institutions authorized to supervise the PPAT in carrying out their positions are the National Land Agency (BPN) and the Association of Land Deed Authority (IPPAT) Officials. The role of BPN in this case is to provide guidance and supervision of the PPAT in order to carry out their positions in

[10] Ibid.

accordance with applicable legislation. While the role of IPPAT in this case is to provide guidance and supervision of PPAT in order to carry out their positions in accordance with the Code of Ethics IPPAT.[11]

Legal protection aspect for PPAT in the field of legislation related to PPAT position is more internal or administrative. The rules violated by a PPAT are standard measures of professionalism that should be obeyed by all PPATs as the bearers of the State's authority in making authentic deeds in the field of land. In this respect the protection of PPAT from administrative decisions, aims to provide assurance for a PPAT to be able to defend itself and defend its right to work as a PPAT.[12]

Supervision by BPN and IPPAT is basically a manifestation of legal protection (internal) to the PPAT itself because in the presence of a supervision, then every PPAT in behaving and acting both in carrying out their position and outside the office always in the corridor of law, carrying out its duties, an PPAT is required to always be grounded in the laws and regulations applicable in Indonesia, and is also obliged to carry out its duties in accordance with an agreed ethic in the form of a Code of Conduct. This Code of Conduct restricts the acts of the PPAT so that in performing its duties of office does not act arbitrarily.

As a State administrative body or officer. (BPN and Assembly of Honor) in imposing sanction on PPAT is obliged to issue or make a decision (KTUN). And if PPAT is not satisfied with the decision, the decision will become a state administrative dispute. Thus, an effort that can be done by PPAT, namely directly filing a lawsuit to the State Administrative Court as Court or first level examination. according to Philipus M. Hadjon, that the existence of means of objection *(Inspraak)* is a means of protection of preventive law. To regulate such administrative sanctions in order to provide a sense of justice and legal protection to the PPAT to propose a defense of the administrative sanctions it receives.[13]

While the legal protection aspect for PPAT which is related to the civil and criminal law institution is more external, it means that PPAT as the Public Official to him attaches the Privileges as a consequence of the predicate of his/her position. The term privilege in the field of law is a special or special right granted to a government or a ruler of a State and granted to a person or group of persons, separate from the rights of the people under applicable law. Privileges owned by PPAT, to differentiate treatment (Treatment) against ordinary people. These forms of treatment relate to a special procedure in law enforcement of PPAT, which is related to the treatment in the case of summoning and examining the investigation and trial process, which must be ignored.[14]

In addition to the internal legal protection aspect in the form of guidance and supervision as described above, it is also necessary to pay attention to aspects of legal protection externally, namely those that intersect with criminal and civil sphere. PPAT in carrying out its job duties is vulnerable to law enforcement, besides that aspect of law protection to PPAT is balance or balance to tight supervision aspect for PPAT in carrying out their duty, so that aspect of legal protection externally becomes something very important for PPAT office.[15]

The concept of legal protection against PPAT cannot be separated from the concept of legal protection in general. Based on the conception as a frame of mind based on Pancasila, Philipus M. Hadjon

[11] Pande Putu Doron Swardika, 2014, Tanggung Jawab Dan Perlindungan Hukum Pejabat Pembuat Akta Tanah Dalam Pembuatan Akta Jual Beli Tanah Journal Program Magister Kenotariatan Universitas Udayana.
[12] Dewi Kartika, 2015, Perlindungan Hukum Terhadap Ppat Sebagai Tergugat Dalam Pembuatan Akta Jual Beli Tanah (Study Kasus Atas Putusan Pengadilan Negeri Sorong No.73/PDT.G/2014/PN.Son). Journal Program Studi Magister Kenotariatan Falkutas Hukum Universitas Narotama Surabaya
[13] Hadjon, Philipus M., et.all., *Pengantar Hukum Administrasi Negara Indonesia,* Yuridika, Surabaya, 2002
[14] Op.Cit Dewi Kartika, 2015
[15] Ibid.

argues that the principle of legal protection in Indonesia is the recognition and protection of the dignity of human beings which are based on the principle of Law State which is based on Pancasila.[16]

2. Legal Liabilities of the Land Deed Officer against the Deed of Establishment

a. Civil Accountability

Accountability PPAT in civil cases as a result of an error due to deliberate or negligence be inadvertent, carelessness and inaccuracy in the implementation of the legal obligations for PPAT in making the deed of sale and purchase of land, leading to the implementation of the rights of person's subjective to be disrupted, if leads to a loss for the parties, the relevant PPAT shall be liable to indemnify the parties in the form of reimbursement of costs, compensation and interest. The determination that the deed is degraded to a deed under the hand or declared null and/or null and void, and becomes a criminal offense that causes harm, must be based on a court decision that has permanent legal force. So if there are parties who accuse or judge, that the deed PPAT is fake or not true because there has been a deviation from the terms of material and formal procedures deed PPAT (formal aspect), then that party must prove the allegations or his own judgment through the legal process civil lawsuit not by way of complaining of PPAT to the police.[17]

b. Criminal Accountability

The imposition of criminal sanctions on the PPAT may be carried out as long as such limitations are violated, that is, besides fulfilling the formulation of the violations referred to in the PPAT-related legislation, the IPPAT Code of Ethics must also fulfill the formulation contained in the Criminal Code (Criminal Code). According to Habib Adjie, as for criminal cases related to the formal aspects of notarial deed/PPAT in making authentic deeds are as follows:[18]

1) Making false/falsified letters and using forged/forged letters (Article 263 paragraph (1) and (2) of the Criminal Code);
2) Falsifying authentic deeds (Article 264 of the Criminal Code);
3) Ordering to include false information in authentic deed (Article 266 of the Criminal Code);
4) Conducting, ordering, participating (Article 55 Jo Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code);
5) Helping to make false / or counterfeit letters and using forged/falsified letters (Article 56 paragraph (1) and (2) Jo Article 263 paragraph (1) and (2) of the Criminal Code or Article 264 or Article 266 of the Criminal Code).

From the above matter PPAT cannot be subject to Article 266 paragraph (1) of the Criminal Code. This is because in Article 266 paragraph (1), there is an element of ordering. PPAT in making the deed of sale and purchase is only a media (tool) for the birth of an authentic deed, while the initiative arises from the tap, so in this case PPAT is the party who ordered and not the party who ordered. However, if a PPAT has been deliberately and consciously or consciously cooperating with the tamper, then PPAT may be subject to Article 263 paragraph (1) of the Criminal Code which is related to Article 55 (1) of the Criminal Code, which is to participate in a crime. In addition, since the products produced by the PPAT are in the form of an authentic deed, the PPAT is subject to a denunciation, as set forth in Article 264 paragraph (1) letter a of KUHP Jo. Article 55 paragraph (1) of the Criminal Code.[19]

[16] Op.Cit Philipus M. Hadjon
[17] *Ibid.*
[18] Habib Adjie, 2009, Hukum Notaris Indonesia, Bandung, Refika Aditama, p. 76
[19] Op.cit. Pande Putu Doron Swardika, 2014

PPAT as a Public Official in carrying out his / her position should be given legal protection, related to:

1) To maintain the dignity of the dignity and dignity of his office, including when giving testimony and proceeding in examination and trial.
2) Conceal the deeds and statements obtained for the deed
3) Maintain Minuta Deed PPAT and *warkah* supporting deed attached to minuta deed or Protocol PPAT in storage PPAT.[20]

Conclusion

The procedure of summoning the PPAT office refers to the general principle of law, since there is no legal protection that specifically regulates the PPAT office. Legal subject who is a position of notary and PPAT Legal protection of his/her position shall be separated, Normative in the case of PPAT which is called as a witness or a suspect is imposed by the provision of Article 112 of the Criminal Procedure Code while the seizure of the original deed of PPAT (minuta) and *warkah* is only may be made with the special permission of the Chairman of the local District Court under the provisions of Article 43 of the Criminal Procedure Code.

The accountability of the PPAT office against the deeds made which are not in accordance with the procedures or against the rules of the invitation can be prosecuted under civil law, criminal law, and administrative law. In criminal law Accountability is determined on the basis of the mistake of the manufacturer and not only by the fulfillment of all elements of a crime, so that error is placed as a determinant of criminal responsibility.

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