

**LIABILITY FOR LAND ACQUISITION OFFICIALS DUE TO LATE
REGISTRATION OF DEED OF ASSISTANCE OF ONLINE
DEPENDENCY IN LAND OFFICE**

(Analysis of Supreme Court Verdict No. 1563 k/pdt/2010)

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ABSTRACT

This research discussed on the Liability for Land Acquisition Officials Due to Late Registration of Deed of Assistance of Online Dependency in Land Office, with a problem that is ratio decidendi Supreme Court verdict No. 1563 K/Pdt/2010 which refuses the appeal of the cassation with the consideration of the debtor cannot prove the delay and the legal consequences for the creditor for the late registration of the mortgage deed (APHT) by land titles registrar (PPAT) to the Land Office for the issuance of the mortgage certificate, it is concluded that: Ratio decidendi Supreme Court Decision No. 1563 K/PDT/2010, which rejects the plaintiff's arguments concerning the deed of granting rights of mortgages legal disability because PPAT sends the APHT files more than 7 days after the signed documents is contrary to Article 13 mortgage law (UUHT). However, the Supreme Court in its verdict rejected the arguments of cassation from the plaintiff's with the consideration that the appellant cannot prove his arguments. PPAT who is late in submitting deed granting of mortgages can be said to commit unlawful acts that are violate the provisions of article 62 government regulation (PP) No. 37 of 1998, but to the delay if the plaintiff can prove himself to suffer a loss, but if he is cannot prove it, then the PPAT cannot be liable for liability in the form of compensation on the basis of having acted contempt of court as an article 1365 Civil Code, due to elements of loss and the causal relationship between the act and the resulting loss is not fulfilled.

Keywords: Liability, Land Acquisition Officer, Delayed Registration of Deed of Grant Rights

1. INTRODUCTION

Based on the provisions of article 1131 on the Civil Code, guarantee differentiated into the special guarantee which created between creditors with the debtor and the special guarantee which created for immovable goods in the form of rights to the land loading with mortgage right

such as arranged in the law of the Republic of Indonesia No. 4 of 1996 about the mortgage right of land and property which related to land (hereinafter referred to as UUHT).

Article 1 No. 1 of mortgage law (UUHT) defines the mortgage right is the right on the land and the property which related to land, the next called mortgage, is the guarantee which imposed on the land right be intended in the law No. 5 of 1960 about the basic rules of agrarian subjects, following or not following the other things which constitute a unity with those land, to repay certain debt, which gives the position of priority to a certain creditor to another creditor.

Article 13 paragraph (1) and (2) UUHT, stated that the granting of mortgages shall be registered at the land office. At least 7 (seven) working days after signing the deed of granting of mortgage right, land title registrar (PPAT) shall be sent the deed of granting the relevant mortgage and other letter needed to the land office. The penalty of violation will be stipulated in the laws and regulation which regulate of the PPAT position.

An article 40 paragraph (1) of Government regulation (PP) No. 24 of 1997 about land registration (hereinafter referred to as PP No. 21 of 1997) revealed that at least 7 working days since the date of signature of the relevant deed. PPAT shall be required the deed which made it the relevant documents to the land office for registration. The sanction of PPAT as article 62 PP No. 24 of 1997 that the PPAT in its duties neglect the provisions of article 40 and also the provisions and instructions are given by cabinet minister or appointed officials is subject to administrative action in the form of written warning until termination from his position as PPAT, without reducing the possibility of claim damages by lawsuit partner who suffers losses which caused by the ignored those provisions.

The delay of PPAT in sending the mortgage deed file is disputed by Wati Rachmawati (WR) and Herizal Febriansyah (HF), get a credit facility from PT. Bank Shinta Indonesia after handing over the freehold title (SHM) land area No. 1981/Kel. Sukarasa G.S. No. 647/1978. Dated March 9, 1978, the width an area of 548 m², proved in the certificate of right of insurance rank 1 No. 6837/1996 with the burden of right insured until the amount of IDR. 250.000.000,- in which attached by mortgage deed (hereinafter referred to as APHT) No. 602/3/01/Bdg/APHT/1996, dated September 10, 1996.

The deed of the mortgages imposition sent to the land office, the delay occurs such as, APHT sent to the national land agency (BPN) dated September 26, 1996, whereas APHT made in date September 10, 1996 (there are 16 days stretches of time). Hereinafter for APHT to No. 6 report the third of APHT on January 22, 1997. While the third of APHT were made on January 6, 1997 (there are 16 days of stretches time), so the debtor assumed that the deed granting of the mortgage was invalid, and also a certificate of mortgage which published is not valid as well.

The District Court of Bandung who check at the first level in its verdict No. 168/PDT/G/2007/PN.BDG, its command rejected the accusation of plaintiff's claim for the entire. Bandung High Court who check at appeal level in its verdict No. 328/Pdt/2002/PT.BDG, its command strengthen the verdict of Bandung District Court No. 168/PDT/G/2007/PN.BDG.

The Supreme Court who checks the cassation level in its verdict No. 1563 K/Pdt/2010, its command rejected the cassation appeal from the cassation petitioner. It is stated that the Supreme Court in its verdict is ratified the mortgage certificate, even though PPAT was late in submitting APHT. As determined in article 13 paragraph (1) and paragraph (2) UUHT, mentioned that the granting mortgages shall be registered at the land office. At least 7 working days after the signing of the deed of granting mortgage, PPAT shall be sent the deed of granting the relevant mortgages and other letter which required to the land office.

This paper is an important study about the APHT registration by the PPAT to the Land Office for the publish of mortgage certificate, with several reasons: Firstly, there is a time limit to PPAT within no more than 7 days of submitting APHT to the Land Office for processed in mortgage certificate maker. Secondly, the existence of PPAT's obligations to submit the deed which should made it and the relevant documents to the Land Office for registered. Thirdly, Supreme Court, its verdict No. 1563 K/Pdt/2010, refuses the claim with plaintiff's/debtor's reason cannot prove the delay in submitting the deed who made it and the relevant documents to the Land Office to be registered on the office.

Starting from the background description as mentioned above, the research questions are as follows:

- a. What is the judge of *ratio decidend* that rejects the appeal of petitioner cassation in Supreme Court verdict No. 1563 K/Pdt/2010?
- b. What are the legal consequences for creditors in late registration of the APHT by PPAT online to the Land Office for the issuance of a mortgage certificate?

2. RESEARCH METHOD

The methode used in this thesis is normative legal research which means the research is conducted by examining legal norms, legal principles, legal philosophy, legal doctrine and legal principle in literature materials. Regarding the notary liability to the APHT which late to be registered to the Land Office by online and the sanction to PPAT in the case of late registration the APHT deed which in this case is the obligation of PPAT in implement the duties of his office appointed by the creditor.

3. RESULT AND DISCUSSION

3.1 The judge of Ratio Decidendi in which reject the appeal of petitioner cassation in the Supreme Court verdict No. 1563 K

It is stated on article 1 No. 24 PP Nono. 24 of 1997 that PPAT is general official authorization to make certain certificate of land. PPAT is a general official according to Boedi Harsono is “a person who appointed by the government with the duty and authority to provide services to the public in certain fields” (Harsono, 2007: 11). Sri Winarsi argued that the definition of “general official has a juridical character, that is always in the framework of public legal. Its public characteristic can be seen from the appointment, dismissal and PPAT authority. (Winarsi, 2002: 186). PPAT as general official authorizes to make a certain deed of land.

According to Sudikno Mertokusumo (Mertokusumo, 2007: 160). The legal security is a guarantee that the law is enforced, that rightful claimant according to the law can obtain the right and the verdict can implementable. Although legal security closely related with justice, however the law is not identically with justice. The law is general, binding to everyone, generalized, whereas the justice is subjective, individuamlistic, and not generalized.

Legal security is the question that can only be answered normatively, not from social perspective. Normative legal security is when a rule is created and invited surely because it regulates clearly and logically. Clearly, it means that there is no doubt (multi-interpretation) and logical it means that it becomes a system of norms with other norms so it is not impinged or cause a conflict of norms. The norm conflict inflicted from the indeterminacy of the rules may take the form of norm conformance, norm reduction or norm distortion. Legal security pointed to clear law enforcement, permanent, consistent and consequent implementation cannot be influenced by the subjective conditions.

According to Philipus M. Hadjon, authority comes from 3 points, they are: 1) attribution, 2) delegation, and 3) mandate. Whereas in the term of decision making, authority can be obtained through two ways, they are attribution and delegation. Attribution is the authority inherent in a position. Attribution is the authority of the government in carrying out actions which is sourced directly from the law in a material manner which means the authority is obviously attached to the position. Delegation is delegation of the authority. Delegation means submission of authority (to make besluit) by the government officials (State Administrative Officer) to other lawsuit partner and such authority become the responsibility of the other lawsuit partner. The party who is giving/delegating authority is called delegate and who receives delegation of authority called delegatory (Hadjon, 1997: 1&130).

PPAT has authority to make deed related with land. According to Pitlo, Deed is a signed letter, made to be used as the evidence, and to be used by people, for the purpose of whom the letter was made (Pitlo, 1986: 52). Deed in the letter form, indicating that the deed must be made in written. The deed as the evidence of the agreement made in writing even made with an authentic deed, the employees of deed authentic in the civil code arranged in book IV of the Civil Code about the evidence and expiration. Based on the Article 1868 of the Civil Code, "An authentic deed is a deed which its form determined by law is made by or in the presence of the public servants who is ruling for it in the place where the deed is made".

The authority of the PPAT makes certain land deeds that are the object of land registration under article 9 of PP No. 24 of 1997, among other areas of land owned by ownership, right to use, use rights and use rights; land management rights; land of waqf; ownership rights of apartment units, mortgages; State land. It is clear that one of the powers of PPAT is to make APHT. According to the explanation of article 23 letter e PP No. 24 of 1997, APHT is a deed granting of mortgage as referred to in UUHT.

PPAT has the main duty to carry out part of the land registration activity by making the deed as evidence of certain legal acts concerning the right to land or Ownership of the Housing Unit, which shall be the basis for registration of the change of land registration data caused by the legal act as Article 2 paragraph (1) PP No. 37 of 1998. Such legal acts, they are APHT and authorization to impose the mortgage. The deed of PPAT referred to in article 1 No 4 PP No. 37 of 1998 is a deed made by PPAT as a proof of the implementation of certain legal acts regarding the right of land or the Ownership of the Unit Flats.

Relation with PPAT and the mortgages imposition, that the legal act of imposition of land which the making of the act is the authority of PPAT, covering the deed of loading of the Right to use the land of right of ownership as referred to in Article 37 of the Basic Agrarian Law and the making of deed in the framework of the imposition of mortgage set in this Law as general defined of UUHT.

The grant of mortgage is preceded by a pledge to grant the mortgage as a security for the settlement of a particular debt, poured in and inseparable from the agreement of the respective debts or other agreements that generate the debt. The granting of mortgages shall be made by the issuance the Deed of Assurance of Liability by PPAT in accordance with the prevailing laws and regulations as Article 10 UUHT. In accordance with the trait of the *accessoir* from the mortgage, the grant shall be a subsequent relation of the principal agreement, the agreement which creates a legal relationship of the receivable secured debt. An agreement resulting in the relationship of these debts may be made under the hands of the contractor or shall be made by an authentic deed, depend on the legal provisions which set of the governing subject. In the event that the

debt-receivable relationship arises from the agreement of debts or credit agreements, such agreements may be made at home and abroad and the parties may be individuals or foreign legal entities as long as the credit is used for development purposes in the territory of Republic of Indonesia.

The registration of the mortgage as above shall be done by the Land Office by preparing the Land of Rights of the dependents and record it in the land title book which is the object of the Mortgage Right and copying the note to the land title certificate concerned, as Article 13 in UUHT. One of the principles of mortgage is the principle of publicity. Therefore, the registration of the Dependent is an absolute requirement for the birth of the dependent and binding of the Deposit Rights to a third party. Sanctions for violations will be stipulated in the laws governing the position of PPAT in accordance with article 13 in UUHT.

The provisions of Article 13 of UUHT mentioned above have stated unequivocally that PPAT has the authority to make APHT (APHT) and in making of APHT, and APHT shall be registered at the Land Office. No later than 7 (seven) working days after the signing of APHT, PPAT shall be required to send the deed of granting right of mortgage concerned and other necessary letter to the Land Office. Associated with the provisions of Article 40 PP No. 24 of 1997, that the expire date is 7 working days from the date of the signature of the deed concerned, PPAT shall submit the deeds made and the relevant documents to the Land Office to be registered. PPAT shall be obliged to submit a written notice concerning the submission of the deed referred to above to the parties concerned. The existence of the phrase "PPAT shall submit a written notice concerning the submission of the deed referred to above to the parties concerned", means that the proves have to be sent or not to those APHT and PPAT is not the owner of the mortgage object.

In fact, APHT which made by PPAT as referred to No. 4 sent to the Land Office on September 26, 1996, meanwhile, APHT was made on September 10, 1996 (there is a time span of 16 days). APHT No. 6 APHT was made on January 6, 1997 (there is a time span of 16 days), so the APHT's report exceeds the time limit required by law that is the longest for 7 working days. Therefore, the fourth of APHT referred to in No. 4 and 6 of this lawsuit are legally flawed and therefore null and void. The delay of PPAT submitting APHT was questioned by Wati Rachmawati and Herizal Febriansyah and according to him resulted in the certificate of mortgage, but Supreme Court No. 1563 K / PDT / 2010, neglect the reasons which submitted by Wati Rachmawati and Herizal Febriansyah with the consideration that judex Facti has been applied the law properly and correctly to reject the Plaintiff's claim because the Plaintiff could not prove the claim arguments appropriately and correctly.

Based on the discussion as mentioned above relating to the ratio decidend of the Supreme Court verdict No. 1563 K / PDT / 2010, which neglect the plaintiffs' arguments (Wati Rachmawati and

Herizal Febriansyah) regarding the legal defects of the APHT because PPAT send the APHT files more than 7 days after the file is signed contrary to Article 13 UUHT. However the Supreme Court in its verdict neglect the arguments of the appeal from Wati Rachmawati and Herizal Febriansyah with the consideration that the appellant cannot prove his arguments, which means that if the applicant can prove the delay in sending the file in APHT, then the possibility of the claim is granted. Supreme Court verdict No. 1563 K / PDT / 2010 is not appropriate, because the burden of proof is not Wati Rachmawati and Herizal Febriansyah, but PPAT which publishes the APHT.

Registration of mortgages shall be done no more than 7 (seven) working days from the date of signature of the relevant deed, PPAT shall submit the deeds made and the relevant documents to the Land Office to be registered. PPAT shall be obliged to submit a written notice concerning the submission of the deed referred to above to the parties concerned.

3.2 Legal consequences of creditors for late registration of the Deed Granting Right of Mortgage by PPAT online to Land Office for the issuance of certificate of liability

The provisions in Article 62 of PP No. 24 of 1997 stated that PPAT in its duty to ignore the provisions as meant in article 38, article 39 and article 40 PP No. 24 of 1997 and the provisions and instructions given by the appointed Minister or Official shall be the subject to administrative action in the form of a written warning until termination from his position as PPAT, without prejudice to the possibility of compensation by parties suffering losses resulting from the abandonment of such provisions.

The previous idea shows that if PPAT does not convey the notice of submitting the deed of granting the relevant mortgage and other necessary letter to the Land Office to the parties as stipulated in article 40 paragraph (2) of PP No. 24 of 1997 that PPAT is obliged to give written notification regarding the submission of the deed to the parties concerned. It means that PPAT has violated the provisions of article 40 PP No. 24 of 1997, the consequences of PPAT may be charged to administrative penalty in the form of written warning until dismissal from his position as PPAT, without reducing the possibility of being compensated by parties suffering losses caused by the negligence of article 13 UUHT addition in article 40 PP No. 24 of 1997.

Regarding the termination penalty of PPAT from his position due to negligence or neglect of article 13 UUHT addition article 40 of PP No. 24 of 1997, as article 10 of PP No. 37 of 1998 addition Perkaban No. 1 of 2006 explains that there are two classifications of dismissal from the position of PPAT, respectfully dismissed and unrespectfully dismissed. PPAT is dismissed with respect from its position because: the request itself is no longer capable of performing its duties due to the state of health of the body or the health of its mental, after being declared by the health

examiner team authorized at the request of the minister or officer appointed to a minor violation of the prohibition or obligation as PPAT appointed as civilian employee or ABRI; While the PPAT dismissed with no respect from his position, because: a. commit grave breach of prohibition or obligation as land PPAT; b. sentenced to imprisonment / jail for committing a criminal offense punishable by imprisonment or imprisonment for 5 years or more heavily under a court decision that has obtained permanent legal force.

Regarding the type of violation, based on the land provisions, the violation is divided into 2 types which become the basis for termination of PPAT. Minor violations include: 1. Picking up fees beyond the provisions of legislation; 2. Within 2 months after the expiration of leave does not implement the job back; 3. Not submit monthly reports regarding the deeds made; 4. Concurrent position.

Serious violations, such as, helping to commit conspiracy resulting in land disputes or conflicts Conducting deeds as conspiracies resulting in land disputes or conflicts Conducting deeds outside of their working areas except those referred to in articles 4 and 6 (3). Providing false information in deed results in land disputes, conflicts Opening branch offices, representatives, other forms located outside and or within their work areas as referred to in article 46; 5. Violating the oath of office as PPAT in making of PPAT deed is done, whereas known by the PPAT concerned that the parties authorized doing the legal acts or their proxies in accordance with legislation is not present in front of him.

Guidance and supervision of PPAT, that as stipulated in article 66 paragraph (3) of this KBPN regulation, the guidance and supervision of PPAT by the Head of Land Office are as follows: Assisting to convey and explain the policy and regulation of land and technical guidance of PPAT task which has been determined by Head of Agency and regulation; Checking the deed which made by PPAT and notify in writing to the relevant PPAT if a deed does not fulfill the requirement to be used as a basis for registration of its rights; Conduct examination on the implementation of PPAT operational obligations.

Taking into account the description and discussion regarding the legal consequences for creditors for the late registration of APHT by PPAT to the Land Office can be explained that the provisions of article 13 paragraph (2) of UUHT addition article 40 paragraph (3) PP No. 24 of 1997 concerning the obligation of PPAT to transmit certificate of granting of related mortgages and other necessary letter to the Land Office. If PPAT does not send submission's notification of the deed assignment to the parties, in this case is the debtor, according to article 62 of PP No. 24 of 1997, will be charged of penalty both administrative sanction and civil sanction.

The provisions of article 62 of PP No. 24 of 1997 stated that "without prejudice to the possibility of compensation by parties suffering losses resulting from the abandonment of such provisions", related to PPAT blasphemy violates the provisions in PP No. 24 of 1997, so it has committed as violating the law and can be sued for compensation purpose.

Regarding the damages of unlawful acts or *onrechtmatige daad*, specified in Article 1365 of the Civil Code, which determines: "Any act which is unlawful, which carries harm to another, obliges the person who, for whose fault, issues the loss, substitutes for the loss". In view of the provisions of Article 1365 of the Civil Code above, it contains the following elements:

1. Unlawful acts (*onrechtmatige daad*);
2. There must be an error;
3. There must be a loss incurred;
4. There is a causal relationship between deed and losses (Muhammad, 1999: 142).

Elements must be unlawful. PPAT which makes the deed of granting the mortgage no more than 7 working days after signing the deed of granting mortgage, PPAT is obliged to send the deed of granting the related mortgage and other necessary letters to the Land Office as Article 13 paragraph (2) UUHT, and PPAT shall be obligated to submit written notification concerning the submission of the deed as mentioned above to the parties concerned as article 40 paragraph (2) of PP No. 24 1997. If the PPAT does not give written notice of the notification to the parties, among others the debtor, it can be said that it has committed an act violating the provisions of article 40 paragraph (2) PP No. 24 of 1997, so that the element must have unlawful acts have been fulfilled.

The element must be an error. With regard to errors in unlawful acts, civil law does not distinguishes between the errors caused by the deliberate actors, but also because of negligence or lack of caution perpetrators. This provision is in accordance with that proposed by Riduan Syahrani as follows: "does not distinguish between mistakes in deliberate and mistakes in the form of lack of care" (Syahrani, 1999: 279). PPAT who has made a deed that is not in accordance with the procedure should know that he has no authority to make a deed or incorporate incorrect information, but still do so, which means that his actions are done intentionally. This means that the target that an element must have an error has been fulfilled.

Elements must be a loss. According to Riduan Syahrani, the matter of loss in unlawful deeds, "can be material loss and can be an immaterial loss" (Syahrani, 1999: 280). Losses in material form is losses in which its amount can be calculated, while the immaterial losses, the amount cannot be calculated. For example, good name will be polluted and cause the death. PPAT who has made a deed that is not in accordance with the procedure if in carrying out its activities as

PPAT, but the auction has not been implemented, so that the rising element of loss is not fulfilled yet.

The existence of a causal relationship or causal relationship means that the loss suffered is caused by the act against the law perpetrated by the perpetrator. This is in accordance with the proposed Riduan Syahrani citing the theory of Von Kries as follows: "A new thing can be named cause of a result, if in the experience of society can be expected that the cause will be followed by the consequence" (Syahrani, 1999: 281). This means that if there is a cause but the cause does not cause a loss, or a loss arises but is not caused by the offender, it cannot be said of a causal relationship between the act and the resulting loss. If due to the act of PPAT which has made the deed which is not in accordance with the procedure but still carrying out its activities which resulted in other people suffering losses, but in relation to the delay of submitting the APHT the owner of the object of mortgage is not harmed both material and immaterial, so that the element that must have a causal relation between deeds and losses incurred are not fulfilled.

In view of the previous description, it can be explained that the lawsuit compensation is based on an unlawful act if the perpetrator commits an act which fulfills the whole of Article 1365 Civil Code. Regarding who is required to prove the existence of unlawful acts, according to Article 1865 the Civil Code determines: "Anyone who postulates that he has a right, or to uphold his own right or deny any right of another person, points to an event, is required to prove the existence of a right over the event ". This means that in an unlawful act, which is required to prove the existence of an unlawful act is a party whose rights are violated which must prove that its rights have been violated by others. Therefore, if the party who feels his right is harmed, but cannot prove a violation of the rights because one of the elements is not met, then the lawsuit compensation on the basis of unlawful acts will not succeed.

Taking into consideration of the description above can be explained that the PPAT cannot be requested liability in the form of compensation on the basis of having committed acts against the law as Article 1365 Civil Code, because the element of loss and causal relationship between the act with losses arising not fulfilled. Although, PPAT is not accountable in a civil case, because the dereliction of the PPAT may be charged of sanctions as stipulated in article 62 of PP No. 24 of 1997.

4. CONCLUSION

Ratio decidendi of Supreme Court verdict No. 1563 K/PDT/2010, rejected the plaintiffs' arguments (Wati Rachmawati and Herizal Febriansyah) regarding the legal defects of APHT because PPAT transmits APHT files more than 7 days after the file is signed contrary to Article 13 UUHT. However, the Supreme Court in its verdict rejected the arguments of the appeal from Wati Rachmawati and Herizal Febriansyah with the consideration that the appellant cannot prove his arguments, which means that if the applicant can prove the delay sending of APHT file, the lawsuit is granted, Wati Rachmawati and Herizal Febriansyah, but PPAT which make of APHT.

PPAT who is late in submitting deeds granting mortgages can be said to commit unlawful deed that is violateing i the provisions of article 62 of PP No. 37 of 1998. However, if the proving is failed, the PPAT cannot be held liable in the form of a compensation for having committed an act unlawful as Article 1365 Civil Code, because of the element of loss and the causal relationship between the act and the resulting loss is not fulfilled.

SUGGESTION

For the PPAT, the suggestion is to pay more attention to the concept of prudence in carrying out their duties, especially in the case of APHT's registration at the Land Office. So that, they can provide legal security to the parties.

For the creditors, it is better for them to be more selective in choosing the PPAT's partners. So that, they can provide certainty and legal protection to the creditor in the form of Certificate of Mortgage Right which has the executorial force, if the debtor is defaulted then the Certificate of mortgage can be used for execution of the guarantee of the mortgage of his position especially in the case of APHT's registration at the Land office. So that, they will be able to provide any legal security to the corresponding parties.

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