



## Legal Certainty on Registration of the Transitional Deed of Transition of Land Rights by the Officer of Providing Provisional Land Deed

Edwinda Surya Anggana<sup>1</sup>, Bayu Dwi Anggono<sup>2</sup>, Bhim Prakoso<sup>3</sup>

<sup>1</sup> Students of the Notary Masters Study Program, Faculty of Law, University of Jember

<sup>2,3</sup> Lecturer of the Notary Masters Study Program, Faculty of Law, University of Jember

### ABSTRACT

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PPATS has the authority to make a legal product in the form of a deed of sale and purchase which is often contrary to applicable law, this is what makes PPATS considered incompetent in making a deed. And, compared to a Notary or PPAT who first went through the education level, and before obtaining his position through a long stage with an apprenticeship process at the Land Office/BPN and at the PPAT Office. This reality shows that the position of PPAT/Notary is better than PPATS. Seeing these conditions, it is necessary to have legal regulations that regulate the position of PPATS in carrying out their duties. Based on this, there are interesting legal issues to study, namely: 1). legal reasoning the authority of the Temporary Land Deed Making Official in registering the deed of transfer of land rights, 2). Is the registration of the deed of transfer of land rights registered by the Official Making the Temporary Land Deed in accordance with the provisions of PP Number 24 of 1997 concerning Land Registration and what is the concept of regulating the registration of the deed of transfer of land rights in accordance with the principle of legal certainty.

### Keywords:

Legal Certainty, Deed Registration, Transfer of Land Rights.

### I. INTRODUCTION

The guarantee of legal certainty over land registration is also regulated by the Basic Agrarian Law Number 5 of 1960 (hereinafter referred to as the UUPA), precisely in Article 19 of the LoGA which regulates the guarantee of legal certainty of the rights of a land by the government. The territory of the State of Indonesia whose provisions refer to the PP on Land Registration. For the sake of legal certainty in the ownership of land rights in Indonesia, it is necessary to hold a land registration in the entire territory of Indonesia (A.P. Parlindungan, 1999). The purpose of the land registration is to achieve legal protection and legal certainty for holders of land ownership rights (Mira Novana Ardani, 2019). Later the holder of land rights will get evidence in the form of a certificate of ownership that can be used as a basis for ownership of the land.

The special treatment referred to is by granting certain rights status to land through the implementation of land registration.

*Corresponding Author: Edwinda Surya Anggana*

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This is done with the aim of providing legal certainty over land through the provision of proof of ownership of land rights. The guarantee of legal certainty to be realized in the land registration includes the certainty of the status of the rights registered, the certainty of the subject of the right and the certainty of the object of the right (Urip Santoso, 2014). Land registration is very closely related to Land Deed Making Officials (hereinafter referred to as PPAT), this is clearly regulated in Article 5 of Government Regulation Number 24 of 1997 (hereinafter referred to as PP Land Registration) which explains that in essence, land registration is carried out by the National Land Agency. . This means that the State plays an active role in protecting land rights within the territory of the State of Indonesia, thus the position of land in the State of Indonesia is highly valued for its ownership. This transition will occur because of an intentional act such as buying and selling legal acts, leasing and others. Mohammad Yamin Lubis is of the opinion that if there are parties who have intentional or agreed upon a plot of land, then this implies the transfer of rights to the land (Muhammad Yamin Lubis, 2008). The transfer of land rights is a legal act that can result in the transfer of rights owned by one legal subject to

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another, resulting in the loss of ownership of the land rights they have.

The registration of the transfer of land rights must be immediately registered with the land office no later than 7 working days by the Land Deed Making Officer (hereinafter referred to as PPAT) after the signing of the deed made, based on the provisions of Article 40 PP of Land Registration. The registration of the deed of transfer of land rights must be registered with the land office in order to obtain legal certainty for a certain legal act (Herlien Soerojo, 2003). The deed registered with the land office is a deed of transfer of land rights, while the deed according to R. Subekti and Tjitrosudibio is a letter containing a human action. Meanwhile, Sudikno Mertokusumo argues that what is meant by a deed is a text that is affixed with a signature containing legal events that are part of the basis of an engagement and besides that the deed is also used as a proof (Daeng Jana, 2012).

The registration of the deed of transfer of land rights to the national land agency can only be carried out by PPAT, this is in accordance with the provisions of Article 40 PP of Land Registration. PPAT is given the authority by PP for land registration to register the deed of transfer of land rights by registering the deed of transfer of land rights to the land office. In addition, in practice it is not only PPAT who registers the deed of transfer of land rights but also by the Temporary Land Deed Official (hereinafter referred to as PPATS), of course this creates a legal problem because the PP Land Registration does not regulate the authority of PPATS as an official to register the deed of transfer of land rights. PPATS itself is a government official who is appointed as a land deed official in the area because there is still no PPAT in the area or better known as the Camat (Suharjono, 2009).

Basically the PP on Land Registration implies to register the deed of transfer of land rights no later than 7 working days and the PPAT has the right to register it, this is intended to make it easier for the land agency to register land in the territory of the State of Indonesia. In addition, the PP on Land Registration does not specifically regulate the authority of PPATS and the regulation that regulates PPATS is Government Regulation Number 37 of 1998 (hereinafter referred to as PP Position PPAT). Based on Article 1 Number 2 PP of PPAT Position, what is meant by PPATS is a government official appointed due to a certain position to be able to carry out PPAT duties by making PPAT deeds in areas where there is not enough PPAT.

The PP Position of PPAT is an implementing regulation for the provisions of the PP on Land Registration which regulates the authority of the PPAT to make evidence in the form of certain legal actions in writing relating to certain legal actions regarding ownership rights to land which will be used as a basis for registration. The provisions of Article 37 of the Land Registration Law regulates the transfer of land rights which

in essence regulates the transfer of land rights as in the provisions of Article 2 paragraph 2 of the PPAT position PP can only be registered if there is a deed made by the PPAT and not a deed made by the PPAT. PPATS.

Furthermore, if it is seen in the provisions of the PP for PPAT Position, the authority given to PPATS is limited and this is actually very relevant to the scientific competence possessed by PPATS, because in fact PPATS scientifically cannot be seen as the same as Notaries or PPATs which in their knowledge can be trusted. . In addition, PPATS has never carried out an internship process at BPN or at PPAT, this is what can make PPATS in its scientific field doubtful because if PPATS continues to carry out the same duties as PPAT or Notary then it will be detrimental to legal subjects who experience action maladministration of PPATS actions, so it is deemed necessary to limit or disable the authority of PPATS so that it can reflect the values of certainty and benefit.

There are several cases that have occurred in Indonesia, related to legal actions carried out by PPATS which were declared to have committed unlawful acts, namely at the Kerawang District Court and the Kendal District Court. In the first case, it occurred in the Kerawang District Court, based on the Decision of Case Number: 44/PDT.G/2014/PN.Kwg where PPATS which has authority in the Cibuya District work area was declared according to the decision to have committed an unlawful act, namely PPATS made a deed material in the form of a deed of Sale and Purchase Agreement. However, the PPATS that made the deed did not include one of the parties in making the agreement without the presence of one of the parties, so that in the absence of one of the parties in the making of the Deed by the Panel of Judges examining the case, the PPATS who made the deed of sale and purchase was declared to have made Acts against the law by not paying attention to the principles of prudence, therefore in the Decision it has been stated that all deeds made by PPATS are legally flawed and do not have binding legal force.

The other case occurred at the Kendal District Court where in the Case Decision Number: 49/PDT.G/2012/PN.Kdl, namely a Patebon Sub-district Head as PPATS by the court decision it was stated that the product of the sale and purchase deed he made was null and void, because who sold a plot of land object of the Plaintiff was not included as an heir, so on that basis the Panel of Judges examining the case considered that the legal product made by the Patebon Camat as PPATS must be canceled because it is contrary to applicable law.

The two cases illustrate that PPATS in making a legal product in the form of a deed of sale and purchase has been in conflict with applicable law, this is what makes PPATS incompetent in making all forms of real deeds compared to a Notary or PPAT who obtain his position with legal education and apprenticeship at the BPN office and at the PPAT, so that the position of the Notary and PPAT is better than that of the

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PPATS which in the making of the deed has caused a dispute due to the lack of education level, prudence and accuracy. The existence of inequality and these problems make land a matter that must have ownership rights in order to guarantee legal certainty and legal protection (Diharja Hari Pangestu, 2014). For the sake of legal certainty in the ownership of land rights in Indonesia, it is necessary to hold a land registration in the entire territory of Indonesia. The purpose of the land registration is to achieve legal protection and legal certainty for holders of land ownership rights (Mira Novana Ardani, 2019). This guarantee will protect every human being who owns land from other human beings, thus it is necessary to register a land with the State to guarantee the right of ownership of the land. Furthermore, it is also necessary to understand that this research article was not written as a form of rejection by the author of the existence of Temporary PPAT, but this research was specifically written to review the legal certainty of Temporary PPAT in holding office.

## II. FORMULATION OF PROBLEM

1. What is the legal reasoning for the authority of the temporary land deed official in registering the deed of transfer of land rights?
2. Is the registration of the deed of transfer of land rights registered by the Official Making the Temporary Land Deed in accordance with the provisions of PP Number 24 of 1997 concerning Land Registration?
3. How is the concept of regulating the registration of the deed of transfer of land rights in accordance with the principle of legal certainty?

## III. METHOD

The research method used by the researcher is normative research. The problem approach that the researcher uses is the legal approach (statue approach), conceptual approach (conceptual approach), and case approach (case approach). The legal materials that researchers use are primary legal materials, secondary legal materials and non-legal materials. Analysis of legal materials by researchers using qualitative normative analysis, which is a way to get a brief description of a problem that is not based on statistical data but is based on legal materials that are related to the problem. Then the researcher will draw a conclusion that its use is through the deductive method, which is a general method in concluding the discussion towards a specific method.

## IV. DISCUSSION

### 1. Legal Reasoning Authority of PPATS in Registering the Deed of Transfer of Land Rights

PPATS in carrying out their duties is further regulated in the PP of the PPAT Position as contained in the provisions of Article 1 paragraph 2 which basically PPATS has the task of making PPAT deeds in areas where there are not enough

PPATs. This means that if in certain areas there is no PPAT or there is not enough PPAT, then government officials from the Head of the Camat and Village Head will be appointed as Temporary PPAT (Samsaimun, 2018). The existence of a Temporary PPAT in accordance with the PP. The PPAT position is declared and appointed because of its position to carry out PPAT duties in areas where PPAT is not sufficient, this indicates that the Temporary PPAT has duties and authorities similar to the PPAT which includes several deeds that can be made by PPAT.

The position of PPATS as regulated in the PP of the PPAT position is that it is given the authority to carry out certain legal actions as PPATs can also do and that is the only authority that PPATS can do. The PPATS authority can indeed make it easier for people who want to make a PPAT deed regarding a certain legal action on the status of ownership of land rights (Salim HS, 2016). Furthermore, as stipulated in Article 5 of the PP for the PPAT Position, PPATS is appointed and inaugurated by the Minister who comes from sub-district government officials and village heads. The appointment of the sub-district head and village head as PPATS is because the government official is responsible as the head of government in the sub-district and in the village, because there is no PPAT in the area, the sub-district head and village head are appointed as PPATS.

The basis for the appointment of a sub-district or village head as a Temporary PPAT is because it is based on the provisions of Article 5 PP for the PPAT Position. The appointment of sub-district heads and village heads was actually originally intended to meet the needs of PPAT in the regions. The appointment of the Camat as Temporary PPAT is basically to meet the needs of PPAT in the working area of the Camat concerned. This means that if there is already a PPAT in an area that meets the quota, the newly inaugurated sub-district head will no longer be appointed as a Temporary PPAT (Khairulnas and Leny Agustan, 2018). The Camat himself according to Government Regulation No. 19 of 2008 does not regulate the term of office of the Camat and it depends on the decision of the regional head, namely the Regent, while the appointment of PPATS is based on a certificate made by the regional head so that a Camat can apply to the Land Affairs Office to be appointed as PPATS. . Of course the sub-district head in an area or region will change depending on the policy of the regional head, so that if a problem occurs, it will not be legally responsible because the PPATS position can change at any time (Terry Maharani Wibowo, 2018).

For a sub-district head, to be appointed as a Temporary PPAT, they must first attend PPAT education and training. This is confirmed in the Regulation of the Head of BPN Number 1 of 2006 (hereinafter referred to as Perkaban Number 1 of 2006). The Camat or village head appointed as PPATS as explained above is because in the area there are still PPAT formations. The appointment of the Camat as Temporary PPAT is aimed at assisting the smooth running of

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land administration tasks, namely making a land deed which is an authentic deed regarding all legal actions which include buying and selling, exchanging, grants, entry into the company (inbreng), sharing of joint rights, granting Right to Build/Hak Use over land with Ownership Rights, granting Mortgage Rights, granting power to impose Mortgage Rights regarding land rights and Ownership Rights to Flat Units with work areas within the working area of their position.

On the authority possessed by PPATS, there is no authority to register the deed of transfer of land rights to BPN, although PPATS has the aim of fulfilling PPAT's duties, but in the provisions of the PP on Land Registration concerning registration of deed of transfer of land rights, the authority is PPAT and not PPATS. In addition to PPAT, there are also other officials who are also authorized to issue deed but cannot register the transfer of land rights, namely PPATS, but PPATS who issue deed of transfer of land rights often take actions that are not in accordance with applicable law and cause there is a loss to the party he is helping (Urip Santoso, 2016).

PPATS who do harm to the parties they help are motivated by the lack of legal knowledge possessed by PPATS in carrying out their duties because as stated in Perkaban Number 1 of 2006 that PPATS is appointed by only attending education and training without any conditions from undergraduate graduates, and this is different. requirements with PPAT where the requirements to become a PPAT must be a bachelor's background, and have attended a Notary specialist education or Notary Masters.

There are several cases that occurred as a result of PPATS' actions resulted in the deed being made null and void, namely at the Kerawang District Court and the Kendal District Court. In the first case, it occurred in the Kerawang District Court, based on the Decision of Case Number: 44/PDT.G/2014/PN.Kwg where PPATS which has authority in the Cibuya District work area was declared according to the decision to have committed an unlawful act, namely PPATS made a deed material in the form of a deed of Sale and Purchase Agreement. However, the PPATS that made the deed did not include one of the parties in making the agreement without the presence of one of the parties, the Panel of Judges examining the case considered that the Plaintiff was not present at the time of making the deed of sale and purchase.

In addition, the making of the deed of sale and purchase was not carried out in front of the Temporary PPAT and the Case Examining Judge assessed that if the act of the Temporary PPAT who issued the deed of sale and purchase did not violate the provisions of the terms of making the sale and purchase of land, in this case the Panel of Judges examining the case judged that the act PPATS which is not in accordance with the law and does not consider the existence of prudence on the agreement of the parties in the legal act of buying and selling and in the absence of one of the parties in the making

of the Deed by the Panel of Judges examining the case PPATS who made the deed of sale and purchase is declared to have committed an Action Against The law does not pay attention to the principles of prudence, therefore in the Decision it has been stated that all deeds made by PPATS are legally flawed and do not have binding legal force.

The other case occurred at the Kendal District Court where in the Case Decision Number: 49/PDT.G/2012/PN.Kdl, namely a Patebon Sub-district Head as PPATS by the court decision it was stated that the product of the sale and purchase deed he made was null and void because of the law. who sold a plot of land object of the Plaintiff was not included as an heir, so on that basis the Panel of Judges examining the case considered that the legal product made by the Patebon Camat as PPATS must be canceled because it is contrary to applicable law.

The panel of judges examining the case considered that the sale and purchase that occurred in this case was not a sale and purchase from the land owner and the PPATS actions which continued to make the sale and purchase deed were not careful and violated the rights of others. In addition, the deed made by PPATS contains abuse of formality, namely in bad faith providing incorrect information and is taken for granted by PPATS without first investigating the truth of the information from the parties who will make the deed of sale and purchase, thus the deed made by PPATS PPATS because it is based on an unlawful cause, the Panel of Judges examining the case decides if the PPATS deed is declared null and void.

The two cases illustrate that PPATS in making a legal product in the form of a deed of sale and purchase has been in conflict with applicable law, this is what makes PPATS incompetent in making all forms of real deeds compared to a Notary or PPAT who obtain his position with legal education and apprenticeship at the BPN office and at the PPAT, so that the position of the Notary and PPAT is better than that of the PPATS which in the making of the deed has caused a dispute due to the lack of education level, prudence and accuracy.

Based on the matters as mentioned above, Legal reasoning is the authority of the Temporary Land Deed Making Official in registering the deed of transfer of land rights, namely in principle PPAT/PPATS in carrying out their functions as public officials must have qualified legal knowledge and have a sense of prudence and accuracy in making certain legal products.

In theory, the authority of PPATS in carrying out its duties as PPATS which makes certain legal deeds can be declared authorized and in terms of legal certainty theory, namely the existence of the PP Position of PPAT which regulates the authority of PPATS has also provided legal certainty to the authority of PPATS, but in terms of the theory of expediency is still has not provided benefits because if the PPATS that publishes legal deeds, often commits actions that are contrary to the laws and regulations, this is due to their ignorance of

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legal knowledge, so that because the Temporary PPAT can cause no benefit, it is appropriate if the Temporary PPAT is abolished or abolished .

### **2. Registration of the Deed of Transfer of Land Rights Registered by the Official Making the Temporary Land Deed**

The implementation of land registration as regulated in Article 11 PP Land registration includes land registration activities for the first time and maintenance of land registration data. This article is a repetition of the provisions of Article 19 of the UUPA concerning the meaning of land registration. Land registration activities produce two types of data, namely physical data and legal data, physical data is a description of the location, area and boundaries of land parcels and the units in flats are registered (Rachmad Nur Nugroho, 2017). The land registration also includes the registration of the transfer of land rights, which must be based on a certain deed.

The deed of transfer of land rights is made by a public official. The land deed in this case is PPAT, according to the Dutch language the meaning of "public official" can be interpreted as *Openbaar/Ambtenaar*, which has the meaning related to the government, affairs related to the public, then based on this PPAT is appointed by the government which has duties for the public interest (John Salindeho, 2007). It can be interpreted that PPAT has the same role as the government, which is related to public services to the community, but what distinguishes PPAT is appointed directly by the government by being appointed by the government to authorize PPAT to carry out duties as a public official in relation to issuing certain deeds.

The basis for appointment as Land Deed Making Official is the Decree of the State Minister of Agrarian Affairs or the Head of the National Land Agency dated June 2, 1998 Number 8-XI-1998 concerning Appointment of Land Deed Making Officials and Designation of Working Areas. In particular, the existence of PPAT and PPATS is regulated in the PP for PPAT positions. PPAT carries out part of the land registration activities with the task of making an authentic deed as evidence that certain legal actions have been carried out regarding land rights or Ownership Rights to Flat Units which are used as the basis for registering changes in land registration data caused by legal actions in the specified work area. by the government (absolute competence) namely the rency or city in the same area with the working area of the land office.

Indeed, in principle a sub-district head or village head can be appointed as PPAT through certain education and examinations as regulated in the provisions of Article 18 Perkaban Number 1 of 2006. However, the education and examinations referred to will not be like PPAT and Notaries with educational backgrounds legal science, so that even though there is an education for the sub-district head or village head to be appointed as a Temporary PPAT, it does

not provide a qualified legal science. In fact, there are several cases where the PPATS actions resulted in the deed being made null and void, namely at the Kerawang District Court and the Kendal District Court.

In the first case, it occurred in the Kerawang District Court, based on the Decision of Case Number: 44/PDT.G/2014/PN.Kwg where PPATS which has authority in the Cibuya District work area was declared according to the decision to have committed an unlawful act, namely PPATS made a deed material in the form of a deed of Sale and Purchase Agreement. However, the PPATS that made the deed did not include one of the parties in making the agreement without the presence of one of the parties, the Panel of Judges examining the case considered that the Plaintiff was not present at the time of making the deed of sale and purchase.

In addition, the making of the deed of sale and purchase was not carried out in front of the Temporary PPAT and the Case Examining Judge assessed that if the act of the Temporary PPAT who issued the deed of sale and purchase did not violate the provisions of the terms of making the sale and purchase of land, in this case the Panel of Judges examining the case judged that the act PPATS which is not in accordance with the law and does not consider the existence of prudence on the agreement of the parties in the legal act of buying and selling and in the absence of one of the parties in the making of the Deed by the Panel of Judges examining the case PPATS who made the deed of sale and purchase is declared to have committed an Action Against The law does not pay attention to the principle of prudence, therefore in the Decision the Panel of Judges examining the case decides that all deeds made by PPATS are legally flawed and do not have binding legal force.

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The panel of judges examining the case considered that the sale and purchase that occurred in this case was not a sale and purchase from the land owner and the PPATS actions which continued to make the sale and purchase deed were not careful and violated the rights of others. In addition, the deed made by PPATS contains abuse of formality, namely in bad faith providing incorrect information and is taken for granted by PPATS without first investigating the truth of the information from the parties who will make the deed of sale and purchase, thus the deed made by PPATS PPATS because it is based on an unlawful cause, the Panel of Judges

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examining the case decides if the PPATS deed is declared null and void.

The two cases illustrate that the Temporary PPAT in carrying out its duties as PPAT does not have sufficient capabilities. Based on the theory of authority according to A'an Efendi and Freddy Poernomo, authority is an important part of administrative law. Indoharto stated that authority is the main meaning of constitutional law and state administrative law. Indoharto in A'an Efendi and Freddy Poernomo defines authority as the ability of the laws and regulations given to create legal consequences (A'an Efendi and Freddy Poernomo, 2016).

When viewed from the PP for Land Registration and PP for the PPAT position regarding the authority of the Temporary PPAT, it is stated in Article 3 paragraph (2) of the PP for the PPAT Position which states that the Temporary PPAT has the authority to make a land deed which is an authentic deed regarding all legal actions regarding land rights and property rights. the apartment unit uses the work area in the work area of his position. The authority of the Temporary PPAT is regulated in the PP for PPAT positions related to land rights deeds and while in the PP for Land Registration the authority of the Temporary PPAT does not specifically explain the authority and duties of the Temporary PPAT.

For villages in remote areas, the Head of BPN can appoint a Temporary PPAT. This provision is intended to provide services to the people in remote areas, where there is no PPAT to carry out legal actions for the transfer of land rights. Those who are appointed as Temporary PPAT are Government Officials Role of Land Deed Maker Officials in the Process of Transfer of Sale and Purchase of Land Rights who control the condition of the area concerned, namely the Village Head based on the Elucidation of Article 7 paragraph (2) PP Land Registration. The appointment of the Village Head as Temporary PPAT is carried out by the Head of the BPN based on the very remote location of the village and the number of parcels of land that have not been registered in the village area.

Based on the matter as mentioned above, the registration of the deed of transfer of land rights registered by the official making the temporary land deed is reviewed from PP Number 24 of 1997 concerning Land Registration, namely the PP of Land Registration does not regulate the authority of the Temporary PPAT to register the deed of transfer of land rights while The authority of the Temporary PPAT is obtained from the existence of a PP for the Position of PPAT which authorizes the Temporary PPAT to serve as a PPAT. In connection with the theory of legal protection, the authority received by PPATS is often misused and detrimental to interested parties so that it is contrary to the theory of legal protection and because it does not provide protection to interested parties, the authority received by PPATS is contrary to the theory of expediency.

### **3. The Concept of Regulating the Registration of Deeds of Transfer of Land Rights in accordance with the Principle of Legal Certainty**

The concept itself can be interpreted as an understanding, an image and an opinion that has been thought of, in the sense that a concept is an idea for a certain legal event so that with the idea it is expected to provide a solution to a better thing. In principle, the concept itself is an abstraction of an idea as according to Kant if the concept is an image that has a general nature about something. The picture that has a general nature generally makes it easy for everyone to understand something, so that a good concept will provide an understanding to a good person. This is also in line with the concept of a legal arrangement.

The arrangement for the registration of the deed of transfer of land rights is legally regulated in the provisions of the PP on Land Registration which is a legal regulation regarding the procedure for establishing the status of the position of land rights. Land that has been in the Indonesian state since the establishment of the Indonesian state UUPA has guaranteed every land right with the existence of a land certificate whose implementation is further regulated by the provisions of the PP on Land Registration. belongs to someone who wants to register the land.

Land registration itself is regulated in Article 1 paragraph 1 of PP Land registration, namely activities carried out by the government continuously, continuously, regularly, including: collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data in the form of a list of maps and lists of fields. land parcels and apartment units including verification of land rights where rights and ownership already exist for housing units and special rights that prevent this. Land registration itself is carried out by BPN as a representative of the government to carry out the process of registering lands located in the territory of the Indonesian state.

It is clear that the authority of PPATS is further regulated in the PP of the PPAT position which in principle the authority of PPATS is all legal actions that can be carried out by the PPAT and in the PP of the PPAT position it does not regulate the authority of PPATS in registering the deed of transfer of land rights. If it is seen that the authority to register the deed of transfer of land rights is the PPAT as stated in the provisions of Article 40 of the PP on Land Registration, so that according to the law, the authority of the PPATS is only limited to the PPAT's authority over a legal activity listed in the provisions of Article 2 of the position PP. PPAT.

PPATS itself is a government official who is appointed by the regent as a Temporary Land Deed Making Officer, however, as explained by previous researchers, there are still PPATS who do not have a legal background or legal knowledge that is not credible. Of course, with inadequate legal knowledge, it will provide a service that is not optimal to the community, in addition to not having qualified legal knowledge PPATS

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will also provide a form of financial loss to the community. Of course, this is not a benefit that will be accepted by the community but a bad thing for public services. In Indonesia itself, there are several cases that occur related to PPATS services that are detrimental to the community, namely in the Kerawang District Court and the Kendal District Court.

Based on the explanation of several cases that have been described above, it is known that there is no longer PPAT centralization in each sub-district, but only in remote areas or the furthest sub-districts where Temporary PPAT is placed. However, it must also be realized that the appointment of the Camat as a Temporary PPAT is no longer relevant as a result of this can lead to a conflict of norms. Currently, it is clear that PPAT is a public office holder so that PPAT can be called a public official and cannot hold concurrent positions as a government official. Thus, the Camat as a government official who is appointed because of his position to carry out PPAT duties is a legal uncertainty. Therefore, as a result of the existence of a norm that prohibits PPAT from holding concurrent positions with civil servants in the Government Regulation Number 24 of 2016 there has been criticism for evaluating the norms of PPAT position regulations.

It can be said that there is a need for a legal evaluation of the existence of existing legal norms currently in effect in relation to PPAT. Therefore, it is necessary to change the law in the implementation of Temporary PPAT in order to create a good PPAT system, so it is important to offer a new concept that talks about Temporary PPAT. The rationale underlying the implementation of legal changes is because in law there are only 2 (two) aspects, namely the formation of the law and the implementation or enforcement of the law (Arief Hidayat, 2017). In the context of law-making, Satjipto Rahardjo asserts that law-making materials begin as ideas or ideas which are then further processed so that in the end they actually become materials that are ready to be subject to legal sanctions (Satjipto Rahardjo, 2014). This idea arises in the form of a desire for a problem to be regulated by law in order to achieve legal protection for the community so that in carrying out activities in people's lives it is organized and of course provides legal certainty to the community.

Based on the above, the concept of regulating the registration deed of transfer of land rights in accordance with the principle of legal certainty, namely by removing the authority of PPATS in the PP for PPAT positions, then limiting PPAT to choosing their own legal area of work and giving authority to the National Land Agency to regulate where the PPAT carries out its duties and positions. The granting of authority to BPN to regulate where PPAT carries out its duties and positions so as not to conflict with the theory of authority needs to be made a rule that regulates this matter and the existence of this will create a form of legal protection for interested parties.

### V. CONCLUSION

Whereas in principle PPAT/PPATS in carrying out their positions must have qualified legal knowledge and apply the principles of prudence and accuracy in making certain legal products. Based on the theory of authority, PPATS in making certain legal deeds related to land is indeed authorized based on the PP Position of PPAT, so this also fulfills the legal certainty aspect of the PPATS authority. However, based on the theory of expediency, it still does not provide benefits because if the PPATS that publishes legal deeds as referred to in Article 2 paragraph 2 of the PP Position of PPAT often commits actions that are contrary to the laws and regulations, this is due to their ignorance of legal knowledge, so that This is because Temporary PPAT can cause no benefit.

The registration of the deed of transfer of land rights registered by the official making the temporary land deed in terms of PP Number 24 of 1997 concerning Land Registration, namely the PP of Land Registration does not regulate the authority of the Temporary PPAT to register the deed of transfer of land rights while the authority of the Temporary PPAT is obtained from the existence of PP Position of PPAT which gives authority to Temporary PPAT to serve as PPAT. In connection with the theory of legal protection, the authority received by PPATS is often misused and detrimental to interested parties so that it is contrary to the theory of legal protection and because it does not provide protection to interested parties, the authority received by PPATS is contrary to the theory of expediency.

The concept of regulating the deed of registration of the transfer of land rights in accordance with the principle of legal certainty, namely by removing the authority of PPATS in the PP of the PPAT position, then limiting PPAT to choosing their own legal area of work and giving authority to the National Land Agency to regulate where the PPAT carries out its duties and positions. The granting of authority to BPN to regulate where PPAT carries out its duties and positions so as not to conflict with the theory of authority needs to be made a rule that regulates this matter and the existence of this will create a form of legal protection for interested parties. Then, if the community has received legal protection in the aspect of land services, it will certainly provide benefits in the aspect of land registration, in order to achieve a principle of legal certainty, it can make a legal regulation that limits PPAT to choose their own legal area of work and give authority to the Land Agency. National to regulate where PPAT carries out their duties and positions with an even distribution in 33 provinces in Indonesia.

### REFERENCES

1. Ardani, Mira Novana. 2019. *Tantangan Pelaksanaan Kegiatan Pendaftaran Tanah Sistematis Lengkap dalam Rangka Mewujudkan Pemberian Kepastian Hukum*, Jurnal Gema Keadilan, 6(3). P. 270.

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2. Efendi, Aan & Poernomo, Freddy. 2017. *Hukum Administrasi*. Sinar Grafika. Jakarta. P. 108.
3. Hidayat, Arief. 2017. *Konsep dan Implementasi Negara Hukum Pancasila dalam Mengatasi Permasalahan Hukum Nasional Makalah dalam Seminar Nasional "Konsep dan Implementasi Negara Hukum Pancasila Dalam Mengatasi Permasalahan Hukum Nasional"* in Semarang on date 30 September 2017. P. 7.
4. HS, Salim. 2016. *Teknik Pembuatan Akta Pejabat Pembuat Akta Tanah (PPAT)*. Jakarta: Rajawali. P. 94.
5. Jana, Daeng. 2012. *Teknik Pembuatan Akta*. Yogyakarta: Pustaka Yustisia. P. 1.
6. Khairulnas dan Leny Agustan, 2018, *Panduan Notaris/ PPAT dalam Menghadapi Gugatan Perdata*, Yogyakarta: UII Press. P.35
7. Salindeho, John. 2007. *Masalah Tanah Dalam Pembangunan*. Jakarta: Sinar Grafika. P. 5.
8. Lubis, Muhammad Yamin. 2008. *Hukum Pendaftaran Tanah*. Bandung: Mandar Maju. P. 27.
9. Nugroho, Rachmad Nur. 2017. *Pelaksanaan Pendaftaran Hak Milik Atas Tanah Secara Sistematis Lengkap Dengan Berlakunya Peraturan Menteri Agraria Dan Tata Ruang/Kepala Badan Pertanahan Nasional Nomor 35 Tahun 2016 Di Kabupaten Sleman*, Jurnal FH Universitas Atma Jaya, 1(1). P. 132.
10. Pangestu, Diharja Hari. 2014. *Pendaftaran tanah dari Obyek jual Beli yang tidak bersertifikat*. Jurnal Ilmiah Mataram. 1(1). P. 2.
11. Parlindungan, A. P. 1999. *Pendaftaran Tanah di Indonesia*. Bandung: Mandar Maju. P. 40.
12. Rahardjo, Satjipto. 2014. *Ilmu Hukum*, Bandung: Citra Aditya Bakti. P. 187.
13. Soerojo, Herlien. 2003. *Kepastian Hukum Hak Atas Tanah di Indonesia*. Surabaya: Arkola. P. 30.
14. Suharjono. 2009. *Camat Selaku Kepala Wilayah dan PPAT Sementara*. Jakarta: Ghalia Indonesia. P. 33.
15. Santoso, Urip, 2014, *Hukum Agraria; Kajian Komprehensif*, Jakarta: Kencana, P. 278
16. \_\_\_\_\_, 2016, *Pejabat Pembuat Akta Tanah; Perspektif Regulasi, Wewenang dan Sifat Akta*, Jakarta: Kencana, P.43
17. Samsaimun, 2018, *Peraturan Jabatan PPAT*, Bandung: Pustaka Reka Cipta, P.13
18. Wibowo, Terry Maharani. 2018. *Pembinaan dan Pengawasan kepala kantor pertanahan kabupaten malang terhadap PPAT dan PPATS*. Justitia Jurnal Hukum. 2(2). P. 347.