

Responsibilities of the Land Deed Making Office in the Preparation of a Sale Purchase Deed on a Guarantee Without the Consent of the Object Owner

Zahra Bildia¹, Sri Wahyu Handayani²

Universitas Jenderal Soedirman

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Abstract

The responsibility of Land Deed Officials (PPAT) in ensuring the validity of land sale and purchase transactions in Indonesia, as well as the legal consequences in the event of negligence. As a state based on the rule of law based on Pancasila and the 1945 Constitution, Indonesia requires authentic evidence to ensure legal certainty, order, and justice. Authentic deeds, drawn up by public officials such as notaries and PPATs, play a crucial role in every legal act, including land transactions. Judicial Review Decision Number 47 PK/Pdt/2025, in which the PPAT allegedly abused his authority and made a deed that did not comply with procedures, resulted in losses for one of the parties. The research method used was normative juridical, with a conceptual and legislative approach, as well as a literature study to analyze secondary data such as books, journals, and regulations. The results of the study indicate that PPATs have a responsibility to ensure the legality of transactions and prevent future disputes. Negligence in the administrative process, such as not promptly transferring the title to a certificate, can create legal uncertainty. The legal consequences of unlawful acts by PPATs can render the deed they have drawn up null and void and trigger disputes. This study concludes that legal protection for buyers in good faith is crucial. Therefore, improvements to the land administration system and closer collaboration between Land Deed Officials (PPAT) and the National Land Agency (BPN) are needed to create legal certainty and protect community rights.

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Corresponding Author

Sri Wahyu Handayani

Universitas Jenderal Soedirman

Email: zahra.bildia@mhs.unsoed.ac.id

1. INTRODUCTION

The Unitary State of the Republic of Indonesia is a State of Law based on Pancasila and the 1945 Constitution, which has a constitutional basis and an ideal basis that aims to guarantee legal certainty, order, and legal protection based on and based on truth and justice. To achieve these goals, written evidence is required that is authentic and has perfect legal force. Written evidence in the form of authentic deeds as evidence that has an important role in every legal act in society.

Legal acts carried out by a person with written evidence set out in the form of an authentic deed containing formal truth about the existence of a legal act to determine the rights and obligations of every person who carries out a legal act, guarantee legal certainty, and provide proof of the legal act. As stated in Article 1868 of the Civil Code, which states that an authentic deed is a deed in the form determined by law, made by or before a public official authorized for that purpose, at the place where the deed is made.

Notaries and Land Deed Making Officials are public officials appointed by the State who have an important role in serving the legal interests of the community. The State provides attributive authority to Land Deed Making Officials in issuing authentic deeds for the benefit of the community in accordance with Article 1 Paragraph (1) of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials. The profession of Land Deed Making Officials is regulated in Law Number 5 of 1960 concerning Basic Agrarian Principles, Government Regulation Number 24 of 1997. With these regulations, a Land Deed Making Official, in carrying out his position, must submit to and comply with the obligations and prohibitions regulated in these regulations.

Salim HS said that PPAT as a public official, a PPAT receives recognition philosophically, juridically, and sociologically, it is said to receive recognition philosophically because the existence of his position provides services to the community, juridically because his existence has been measured in various laws and regulations and receives recognition sociologically because the existence of his position is very helpful to the community.

Based on the provisions of Article 2, Paragraph (2) of Government Regulation Number 37 concerning the Regulations on the Position of Land Deed Making Officials, a Land Deed Making Official (PPAT) has the main duty to make a deed as evidence that he has carried out a certain legal act regarding land rights or ownership rights to an apartment unit. These legal acts are:

1. Buy and sell;
2. Change;
3. Grant;
4. Intake into the Company (*Input*);
5. Joint Distribution of Rights
6. Distribution of Building Use Rights/Use Rights over Freehold Land;
7. Granting of Mortgage Rights;
8. Granting Power to Encumber Dependency Rights;

As has been mentioned, the PPAT has the authority to make authentic deeds regarding all legal acts mentioned above and must follow the specified procedures. These provisions are contained in Article 1868 of the Civil Code. (*Civil Code*):

1. The form of the deed must be in accordance with the provisions of the Law or made in the form specified by the Law. (*wet*)
2. The deed must be made by or before a Public Official. (*in front of*)
3. The deed was made within the jurisdiction of the Public Official who issued this authentic deed.

Referring to this, PPAT is required to be careful, precise, thorough, and thorough in making deeds to avoid the responsibility that will be imposed on him. PPAT, in carrying out his position, must have a good personality to uphold the dignity and honor of PPAT. However, in practice, it is still common for PPATs to abuse their position as Public Officials. One of the factors is that authentic deeds made before PPATs have legal action, made not in accordance with applicable procedures and provisions, one of which concerns objects that are still used as collateral for certain circumstances and then transferred.

A guarantee is an agreement between a creditor and a debtor, where the debtor pledges a certain amount of his assets to repay the debt according to statutory provisions, but in this event, it is misused by the PPAT as a public official. As a result of this legal act, the deed made by the PPAT has no evidentiary force and can be said to be null and void by law.

In Indonesian society, there are still many cases that occur, which are carried out by Land Deed Making Officials, such as in the case of Decisions. Review of Decree Number 47 PK/Pdt/2025, where the Land Deed Making Officer did things beyond his authority and the applicable regulations. It started when the plaintiff, named Retno Probawati, had a debt of Rp. 350,000,000 at the Malang

branch of PT. BANK MUAMALAT Indonesia. The plaintiff was unable to pay off the debt, and then the plaintiff met with H. Triyo Sugeng, as the third defendant, who was willing to provide a loan to pay off the plaintiff's debt. The two made an agreement, which was stated in a private agreement dated May 21, 2015.

Within the loan repayment period of 5 months, with collateral in the form of 2 (two) Certificates of Ownership, Number 681 Measurement Letter Number 00066 / BUMIAJI / 2011 and Certificate of Ownership Number 682 Measurement Letter Number 00067 / BUMIAJI / 2011 in the name of Retno Probawati. After a period of time, the plaintiff experienced economic difficulties. So that he could not pay off his debt, as a result of this incident, the defendant III and defendant IV took advantage of the situation by pressing the plaintiff to pay off his debt. Defendant III sold the two collaterals in the form of Ownership Certificates Numbers 681 and 682 without the Plaintiff's consent to Henky Indresworo as Defendant IV, after agreeing, he asked the Plaintiff to come to Defendant III's residence, then the Plaintiff felt strange because Defendant IV and Defendant II named Anita Susanty were present there who claimed to be Notary Staff in Malang City by handing over stamped letters and forcing the Plaintiff to sign without first explaining what the contents of the letter were.

On December 3, 2018, the Plaintiff received a summons from Defendant IV, the essence of which was that the Plaintiff had to immediately leave the house he currently occupied. In connection with the summons, the Plaintiff learned that if the two Certificates of Ownership, which were previously collateral for Defendant III, have changed the name of the rights holder from the original name of the Plaintiff to the name of Defendant IV.

After knowing this, the Plaintiff rushed to the Batu City National Land Agency Office to ask about the name change in the Certificate of Ownership Number 681 and Certificate of Ownership Number 682 issued on August 18, 2011. Based on the statement of the Batu City National Land Agency Office Employee, the person who took care of the documents was not the Notary/PPAT in Malang City, but rather the Notary/PPAT Roy Pudho Hermawan, S.H. who is Defendant I, in this case Defendant I engineered the issuance of the Certificate of Ownership, because the Plaintiff never came to Defendant I's office and did not even know about it at all, the certificate making process was carried out at Defendant III's residence without the presence of Defendant I but was represented by Anita Susanty as Defendant II.

2. RESEARCH METHODS

The research method used is Normative Juridical to produce useful results. This normative juridical method is combined with literature related to the problem being studied, and prioritizes analysis using applicable laws and regulations as an important basis for analyzing legal issues. Secondary data sources, such as books, articles, and legal journals. This research aims to understand the relevant legal context and interpret existing provisions. The approaches used in this research are a conceptual approach through a doctrinal perspective, as well as a statutory approach, which analyzes laws and regulations that correlate and relate legally to the problem under study. The author's data collection method uses a literature study related to the object and cites references, including Legislation, Journals, Books, Articles, and the Internet. The data analysis method used is a qualitative analysis sourced from legislation, expert views, legal concepts, and theories, as well as an understanding of the results of the analysis itself.

3. RESEARCH RESULTS AND DISCUSSION

3.1. Responsibilities of Land Deed Officials in Making Deeds of Sale and Purchase on Guarantee Without the Approval of the Object Owner.

The definition of responsibility in the Big Indonesian Dictionary (KBBI) is the state of being obliged to bear all responsibility if unexpected events occur, and may be sued. According to the

legal dictionary, the definition of responsibility is an obligation for someone to carry out what has been required of them due to the consequences of a person's freedom of action related to ethics or morals in acting.

Two terms refer to responsibility in the legal dictionary: liability and responsibility. Liability is a broad legal term that refers to all characteristics of risk or responsibility, encompassing all actual or potential rights and obligations. Responsibility means something that can be accounted for, and includes decisions, skills, abilities, and competencies, including the obligation to be responsible for the laws being implemented.

According to Krannenburg and Vegting, there are two theories of responsibility, namely:

- 1) The theory of *fautes de personelles*, which states that losses to third parties are borne by officials due to their actions having caused losses, and the burden of responsibility is directed at the official as an individual.
- 2) The theory of *fautes de services*, which states that losses to third parties are borne by the agency of the official concerned, responsibility will be borne by the position, not the individual.

According to Abdulkadir Muhammad, there are 3 (three) types of responsibility theories in reviewing unlawful acts (tort liability), namely:

- 1) Liability resulting from unlawful acts committed intentionally (international tort liability), in this case, the defendant must have committed an act in such a way that it harms the plaintiff, or knows that what the defendant did will result in a loss.
- 2) Liability resulting from unlawful acts committed due to negligence (negligence tort liability) is based on the concept of fault, which is related to morals and law, which are intermingled.
- 3) Absolute liability for unlawful acts without questioning fault (strict liability) is based on the act, whether intentional or unintentional, meaning that even though it is not his fault, he is still responsible for the losses arising from his actions.

The concept of responsibility was also put forward by the founder of pure legal theory, Hans Kelsen. According to Hans, responsibility is closely related to obligation, but not identical. This obligation arises because of the existence of legal rules that regulate and assign obligations to legal subjects. Legal subjects burdened with obligations will incur sanctions, which are coercive measures of legal rules so that obligations can be carried out. According to Hans, legal subjects who are subject to these sanctions are said to be "responsible" or legally responsible for violations. To demonstrate personal quality in carrying out one's work, a person must carry it out based on ethical values.

In the Indonesian land system, the role of the Land Deed Official (PPAT) is vital in ensuring the validity of land sales and purchases. The PPAT is responsible for drafting authentic deeds that serve as the basis for changes to ownership data on land certificates. In land disputes, such as Decision Number 47/PK/2022, the validity of this process is often challenged when a transaction occurs, but the land certificate remains in the name of another party. This gives rise to legal challenges involving the PPAT, the National Land Agency (BPN), and related parties.

The duties of a Land Deed Official (PPAT) are regulated in Government Regulation Number 24 of 1997 concerning Land Registration. PPATs are responsible for ensuring the legality of transactions, recording accurate data, and submitting documents to the National Land Agency (BPN) for the transfer of title to the certificate. Therefore, PPATs have a dual responsibility: ensuring the legal validity of the sale and purchase process and preventing future disputes. PPATs have a moral and professional obligation to ensure that the deeds they draw up meet the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code. The accuracy of the data included in the deed is the primary responsibility of PPATs, which, if not carried out

carefully, can lead to disputes. Therefore, PPATs must thoroughly verify documents to ensure there are no administrative flaws that could be detrimental to the parties.

One of the challenges in the PPAT's duties is ensuring that the parties understand the administrative obligations after the transaction is completed. Changing the name on the land certificate is an important obligation that must be completed as soon as possible to prevent ownership conflicts. Article 37, paragraph (1) of Government Regulation Number 24 of 1997 states that every transfer of land rights must be registered with the local land office to update ownership data.

In carrying out their duties, Land Deed Officials (PPATs) must adhere to the code of ethics and regulations governing their profession. Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency (BPN) Number 3 of 1997 provides technical guidelines for Land Deed Officials (PPATs) in preparing land deeds and reporting them to the land office. Violation of this regulation can impact the validity of the deeds and undermine the credibility of the PPAT profession. In this case, the PPAT played a crucial role but faced obstacles when the defendant failed to renew the certificate after the transaction was finalized. This situation created legal uncertainty for the new buyer, who ultimately filed a lawsuit to claim his rights to the land he purchased.

Administrative constraints were a major factor in this case. The land certificate remains in the name of the previous owner despite the transaction indicating weaknesses in the document management process by the Land Deed Official (PPAT) and the National Land Agency (BPN). Inaccuracy or negligence in processing the transfer of land title can impact the legal validity of ownership. The BPN, as the institution tasked with recording the transfer of land rights, plays a strategic role in resolving disputes. Inefficiencies in the registration process, such as lengthy transfer times, can trigger legal uncertainty. In this case, the BPN must improve its service system and collaborate closely with the Land Deed Official (PPAT) to ensure valid and accurate ownership data. The Land Deed Official (PPAT) is responsible for submitting complete and correct documents to the BPN after the sale and purchase process. In this context, the Land Deed Official (PPAT) must proactively ensure that both buyers and sellers understand their obligations. If the Land Deed Official (PPAT) is negligent, legal implications can include the cancellation of the deed or lawsuits from the injured party.

In the land administration system, Land Deed Officials (PPAT) cannot work alone. The National Land Agency (BPN) has the authority to process documents submitted by PPATs. In this case, collaboration between PPATs and BPN is crucial to ensure that certificate transfers are carried out according to procedure. The BPN is also responsible for increasing transparency and efficiency in land registration. Weaknesses in collaboration between PPATs and BPN are often the root of problems in land disputes. Harmonization of working procedures between these two institutions is necessary to create an effective land administration system. Enforcing sanctions for administrative violations is also essential to improve compliance with regulations.

In this case, the court's decision recognized the new buyer's rights to land whose certificate was still in the name of another party. This demonstrates the importance of a valid deed of sale as evidence for a claim. The court also highlighted the crucial role of the Land Deed Official (PPAT) in ensuring the legality of the process, even if administrative negligence occurs. Negligence by the PPAT or related parties in the land title transfer process can have serious consequences. In addition to civil lawsuits, PPATs can also face administrative or criminal sanctions if deliberate violations are found. Therefore, PPATs must always comply with regulations and maintain professionalism in carrying out their duties.

This case also reflects the need for legal education for the public regarding the importance of the certificate transfer process after a transaction. Furthermore, reforming the land registration

system at the National Land Agency (BPN), including digitization, could be a solution to reduce the risk of future disputes. It also serves as a reminder that the validity of a land sale and purchase process depends not only on formal documents but also on the proper implementation of administrative obligations. Land certificates that are not promptly renewed after a transaction can create loopholes for other parties to challenge ownership. Therefore, Land Deed Officials (PPAT) and the BPN must work together to ensure that every transaction is properly recorded. The PPAT's role in ensuring the validity of land sales is crucial to preventing legal disputes. This demonstrates how collaboration between PPAT, BPN, and public legal understanding is a determining factor in achieving legal certainty. Therefore, improving the administrative system and increasing legal awareness must be a shared priority.

3.2. Legal Consequences of Land Deed Making Office for Inappropriate Deeds With the Provisions of the Land Registration Regulations.

An unlawful act is a form of obligation arising from law as a result of human actions that violate the law, as regulated in the Civil Code. Based on the provisions of Article 1365 of the Civil Code, an unlawful act is an act committed by a person whose fault has caused harm to another person.

Thus, every act that violates, whether done intentionally or unintentionally, which is in nature violates the elements of intent and negligence here has been fulfilled, so that it is clear that what is violated is the law and what is seen or considered as law, such as laws, binding customs, judges' decisions, and so on. Furthermore, for this violation of the law to be said to have committed an unlawful act, the consequences of the violation of the law must bring harm to another party. Because sometimes violations of the law do not have to bring harm to others.

According to Munir Fuady, unlawful acts are a collection of legal principles that aim to control or regulate dangerous behavior, to provide responsibility for losses arising from social interactions, and to provide compensation to victims through appropriate lawsuits.

According to Article 1 number 9 of Government Regulation Number 18 of 2021, it states that: "Land Registration is a series of activities carried out by the Government continuously, sustainably and regularly including the collection, processing, bookkeeping, and presentation as well as maintenance of physical data and legal data, in the form of maps and lists, regarding land plots, aboveground space, underground space and apartment units, including the issuance of certificates of proof of rights for land plots, aboveground space, underground space for which rights already exist and ownership rights to apartment units and certain rights that burden them."

The purpose of implementing land registration is to create an information center regarding land plots so that interested parties can easily obtain the data needed to carry out legal actions regarding rights to land and registered apartment units, and to carry out the information function of physical data and legal data from registered land plots and apartment units open to the public.

A deed of sale and purchase, in English, is called a deed *of sale and purchase*. It contains elements including a deed or written evidence, the existence of a legal subject, made before a PPAT, and the existence of an object, as well as the existence of reciprocal rights and obligations. Salim HS stated that a deed of sale and purchase is: "A deed made by the parties in advance and/or before a PPAT, which contains the rights and obligations of the parties, where the seller hands over the rights to land and/or ownership rights to an apartment unit and receives money, while the buyer is obliged to hand over money and has the right to receive the rights to land and/or ownership rights to an apartment unit."

The deed of the Land Deed Making Official as strong, authentic evidence is required to fulfill the procedures stipulated in Article 1868 of the Civil Code, which states that a deed can be said to be an authentic deed if the following factors are fulfilled:

- a. The form of the deed is in accordance with the provisions of the law.
- b. The act was made by or before a public officer;
- c. The deed was made within the authority of the public official who made the authentic deed.

An authentic deed has a role as evidence if something is disputed. This is as stated in Article 1866 of the Civil Code, which states that evidence consists of:

- a) Written evidence;
- b) Evidence with witnesses;
- c) Assumptions;
- d) Confession;
- e) Oath.

According to Article 1457 of the Civil Code, the definition of Sale and Purchase is: "An agreement, by which one party binds himself to hand over an object, and the other party to pay the promised price." Sale and purchase according to Article 1459 of the Civil Code is obligatory in nature, so that the ownership of the goods sold will not be transferred to the buyer as long as there has been no legal handover. Sale and Purchase of land in the National Land Law used UUPA, which is based on customary law, which explains that the sale and purchase of land is a transfer of land rights carried out before an authorized public official, in this case, the Land Deed Making Officer (PPAT).

A deed of sale and purchase is a form of evidence that guarantees the validity of a land transaction, encompassing not only procedural and substantive validity but also the legal validity of the parties involved. A deed of sale and purchase is a form of proof required by law, which strengthens the legality of a land transaction, particularly a land sale and purchase transaction. Apart from that, the land sale and purchase deed made by the Land Deed Making Officer (PPAT) has the following functions:

- a. To authentically prove that a sale and purchase of a particular plot of land has occurred, on a particular day, by the parties mentioned therein.
- b. To fulfill one of the requirements for registering the sale and purchase of an object at the local Land Office
- c. The sale and purchase are carried out in front of the Land Deed Making Officer (PPAT) to fulfill one of the proofs, which is the validity of the sale and purchase carried out by the parties.

Land rights are rights that authorize the holder to use or benefit from the land they claim. Essentially, they are the power granted by law to a person over an object or achievement, thus creating a legal relationship between the two. Therefore, when a person acquires land rights, that person has acquired the power over the land, along with the obligations mandated by law ²²

The case in this decision serves as a concrete example of the importance of this, where the buyer claimed his rights to the land he had purchased, but was hampered by the certificate's status, which was still in the name of the original owner. The Basic Agrarian Law and Government Regulation No. 24 of 1997 concerning Land Registration regulate the legal protection mechanism in land transactions. Article 37 of PP 24/1997 states that the transfer of land rights can only be registered if it is carried out through a deed of the Land Deed Making Official (PPAT). In this case, although the transaction was materially valid, the administrative process for changing the name was not carried out, which created legal uncertainty.

In this case, the Marabahan District Court was faced with the fact that the buyer had made full payment and physically taken possession of the land. However, the legal status of the land was still hampered by an unrenewed certificate. This situation indicates that the buyer acted in good faith by substantially fulfilling his obligations, but was not fully protected due to administrative negligence. Supreme Court jurisprudence emphasizes that legal protection for

buyers acting in good faith is a crucial principle in resolving land disputes. In this case, buyers who act in accordance with legal norms, such as having proof of transaction and physically taking possession of the land, must receive legal protection, including through transaction validation by the court.

The principle of legal certainty, put forward by Gustav Radbruch and Sudikno Mertokusumo, emphasizes that the law must guarantee legitimate rights. In this context, buyers must be able to ensure that their land rights are recognized, without facing uncertainty due to negligence by the seller or relevant authorities. The importance of legal protection for buyers in good faith also aligns with the function of land registration to ensure legal certainty. Failure to renew certificates after a transaction is a form of administrative weakness that is often at the root of land disputes in Indonesia.

The role of the Land Deed Official (PPAT) is strategic in preventing such disputes. Every land sale and purchase transaction must include a clause confirming the obligation to transfer the title to the certificate to guarantee the buyer's rights. This aligns with the principles of land registration as stipulated in Article 19 of the UUPA, which aims to create legal certainty. The court process in this case demonstrates the importance of the judicial institution in resolving conflicts that cannot be avoided through administrative mechanisms. The court provides an opportunity for the aggrieved party to prove their rights and obtain legal recognition.

The defendant's absence in this case is crucial. Under civil procedure, a defendant's absence without justifiable cause can be considered an implicit admission of the plaintiff's claims. However, the court is still obliged to carefully examine the evidence to avoid errors in its decision. This case also underscores the need for reform in Indonesia's land administration system. Digitizing land data and improving land registration mechanisms are essential to reduce the potential for future disputes. Furthermore, strengthening the National Land Agency's (BPN) oversight role in the implementation of administrative obligations, such as title transfers, is also essential.

Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is authorized to make authentic deeds regarding certain legal acts regarding land rights or Ownership Rights for Apartment Units. This definition is taken from Article 1, Number 1 of Government Regulation Number 37 of 1998 concerning the Regulations on the Position of Land Deed Making Officials. Article 1, number 24 states that Land Deed Making Official, hereinafter referred to as PPAT, is a public official who is authorized to make certain land deeds. From these two definitions, it can be seen that Land Deed Making Official is a public official who is authorized to make deeds related to land rights.

As a public official who is authorized to make deeds regarding land, PPAT must of course have the ability and skills in the land sector, so that the deeds he makes do not cause problems in the future, PPAT's position as a public official must be independent both managerially and institutionally, and must be able to accept criticism and supervision (*controlled*) from outside and is responsible to external parties for the results of carrying out his/her duties. To avoid this, the Land Deed Making Officer, as a public official, must comply with several provisions stipulated in the Laws and Regulations.

4. CONCLUSION

The role and responsibility of the Land Deed Official (PPAT) in ensuring the validity of the land sale and purchase process is crucial to providing legal certainty to the parties. The PPAT's primary duty is to create authentic deeds that serve as the basis for changes to land certificate data and to ensure the legality of land sale and purchase transactions in accordance with Government Regulation Number 24 of 1997 concerning Land Registration. In this case, obstacles arose because the land

certificate was still in the name of another party despite a valid transaction, indicating administrative weaknesses involving the PPAT and the National Land Agency (BPN). Inaccurate registration can trigger legal conflicts, so the PPAT must ensure that complete and correct documents are submitted to the BPN and work closely with the agency. Furthermore, legal education for the public regarding the importance of registering changes to land certificate names is key to preventing similar disputes in the future. This case underscores the need for improvements to the land administration system and strict law enforcement to protect the rights of all parties involved.

Legal protection for buyers in good faith in land sales and purchase transactions is a crucial effort to ensure justice and legal certainty. This demonstrates that failure to fulfill administrative obligations, such as transferring ownership of land certificates, can create legal uncertainty that is detrimental to parties who have substantially fulfilled their obligations. Court validation of the rights of buyers in good faith is an essential legal solution when the administration fails to protect the parties involved. The principle of legal certainty, as proposed by legal theories and regulated in the UUPA and PP 24/1997, provides a strong basis for protecting buyers who have acted in accordance with legal norms. Land administration reform, optimizing the role of PPAT (Deed of Land Ownership), and BPN supervision are strategic steps to prevent similar disputes in the future.

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