

Urgency of the Regulation of No-Charge Service by Land Deed Officials (PPAT) for the Incapables

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Abstract: The obligation of Land Deed Official (PPAT) to provide services without charging a fee to someone who cannot afford it, as regulated in the Republic of Indonesia Government Regulation No.24 of 2016 concerning amendment Government Regulation No. 37 of 1998 concerning Land Deed Official (PPAT) Position Regulation, lacks restrictions in the regulation results in the blurring of norms. The need for definite regulation is necessary considering that the legal basis for providing free services is only stipulated in one article, and if interpreted, it might not be strong enough to become the basis for the implementation of the Land Deed official's obligation. In addition to the non-regulation of standardization for the person unable to pay, another factor is that the current regulations are no longer relevant when observed from the phenomena occurring in society today. Thus, the issue in this research is the urgency of legal arrangements regarding the obligations of Land Deed Officials in providing services without charging a fee to someone who cannot afford it. The aims of this research are directed to analyze and formulate the urgency of regulation implementation as well as the legal protection provided by the government towards less privileged people. It was to determine whether the regulation remains relevant in its implementation. This research used normative legal research as a method with the Legislative Approach and Conceptual Approach.

Keywords: Urgency, Legal Certainty, Someone who Unable to Pay, Services Without Charging Fee, Land Deed Official (PPAT)



INTRODUCTION

As an agrarian country, The concept of state control over land is the underlying concept of land management in Indonesia.¹ Land is a significant staple for Indonesian people. Aside from a place of living, Land is also a means of living and plays an economic role for Indonesians. Land plays a significant and crucial role in the existence of humans. It serves not only as a habitat and platform for our activities but also as the main source of sustenance. Lands have been used for various undertakings over the ages, including farming and constructing communities.²

Due to this significance, the Government regulates the Land administration, in which the registered lands in the National Land Affairs Agency should be in the actual condition or status. The conditions or statuses required concern the physical and juridical data of the lands, particularly when there are any changes in the registered juridical data. The Land Deed Official (PPAT) is responsible for this administration. According to Government Regulation Number 24 Year 1997 regarding Land Registry, a transfer or encumbrance of a land right can be registered only if it is evidenced with a deed issued by the authorized PPAT.

Land Deed Officials (PPAT) functions to accommodate civil law by people. A Land Deed Official (PPAT) is responsible for making the authentic deed and counseling the clients or appearers regarding the laws. In legal counseling, a PPAT elucidates the legal and social aspects concerning the deed to avoid future issues. A PPAT is not allowed to discriminate against the appearers' social, economic, or political status and should serve them equally to remain professional in carrying out the honor of Land Deed Officials (PPAT). According to Article 34 of the 1945 Constitution of the Republic of Indonesia, the state is obliged as follows:

- 1) Destitute people and neglected children shall be nurtured by the state;
- 2) The state shall develop a social security system for all of the people and empower the poor and incapable society in accordance with human dignity;

¹ Rizqi Abdulharis and others, "State Land Management for Orderly Administration of Land in Regencies/Cities," *BHUMI: Jurnal Agraria dan Pertanahan*, 8.1 (2022), 41.

² Try Widiyono and Md Zubair Kasem Khan, "Legal Certainty in Land Rights Acquisition in Indonesia's National Land Law," *Law Reform* (2023): 128.



- 3) The state shall be responsible for the provision of decent health care facilities and public service facilities.”³

For the destitute people and neglected children referenced in the Constitution, the Government and Regional Government provide social rehabilitation, social security, social empowerment, and social protection to implement the state’s obligations and ensure the basic needs and rights of the poor and incapable society. According to the newest statistics, the poverty rate in Indonesia is as follows:

- 1) “The percentage of impoverished in September 2022 was 9,57. It increased by 0,03 percent from March 2022 and decreased by 0,14 percent point from September 2021.
- 2) The number of impoverished in September 2022 was 26,36 million. It surged for 0,20 million from March 2022 and declined for 0,14 million from September 2021.
- 3) The impoverished in cities in March 2022 was 7,50 percent, and it increased to 7,53 percent in September 2022. The percentage of impoverished in villages in March 2022 was 12,29 percent, and it rose to 12,36 percent in September 2022.
- 4) Compared to March 2022, the number of impoverished in cities in September 2022 had increased to 0,16 million (from 11,82 million in March 2022 to 11,98 million in September 2022). At the same time, the number of impoverished in villages had increased to 0,04 million (from 14,35 million in March 2022 to 14,38 in September 2022).
- 5) The poverty line in September 2022 was Rp535.547,00/capita/month, composed of the Food Poverty Line of Rp397.125,00 (74,15%) and Non-Food Poverty Line of Rp138,422,00 (25,85%).

In September 2022, the average poor household in Indonesia comprised 4,34 members. Before, the average poverty line in each poor household was Rp2.324.274,00/poor household/month”.⁴ Human beings are living beings and have dependencies in terms of food, clothing, shelter, and everything else. Another meaning human beings can live with the help of others. Human nature is different even though it is realized that everyone always

³ *The 1945 Constitution of the Republic of Indonesia, State Gazette of the Republic Indonesia Year 1959 Number 75, n.d.*

⁴ Badan Pusat Statistik: Berita Resmi Statistik Nomor 07/01/Th.XXVI, *Profil Kemiskinan di Indonesia September 2022* (Jakarta: Badan Pusat Statistik, 2023).



needs the help of others.⁵ Humanization is interpreted as an attitude always to humanize people. Liberation means the nation's liberation from the cruelty of poverty, the hubris of technology and the extortion of abundance.⁶

To ensure people's basic needs and develop local and national social welfare, the state shall be responsible for providing adequate public service facilities in line with the Constitution. The public service includes the Land Deed Officials (PPAT), whose role is essential to people and particularly refers to providing service at no cost for the 'incapables.'

According to Article 32 Section (2) of Government Regulation Number 24 Year 2016 regarding the Regulation of Land Deed Officials (PPAT), a PPAT shall not refuse any legal client. The law states that 'PPAT and Temporary PPAT are obliged to provide service at any cost for the incapables.'⁷ However, as reviewed in Government Regulation Number 24 Year 2016 regarding Adjustments in Government Regulation Number 37 Year 1998 regarding the Land Deed Official regulations, the term 'Incapable' is not clearly defined and limited. The subject of 'Incapable' in Article 32 Section (2) can be interpreted as 'not being able to receive the no-charge service'.

The ambiguous term in Article 32 Section (2) allows a norm vague in the regulation's elucidation and implementation. The pertinent article does not ratify the obligation enough because it has no clear and specific standards and conditions. This loophole leads to the subjective definition of 'incapable' by the PPAT and provokes them to be careless of their duty. Based on this background, the study is titled 'Urgency of the Regulation of No-Charge Service by Land Deed Officials (PPAT) for the Incapables'.

THEORETICAL BASIS

Theory of Legal Certainty

According to Nusrhasan Ismail, legal certainty in laws requires several aspects related to the internal structure of the norm:

- a) A clear concept to use. The norm should consist of descriptions of certain behaviors combined into more specific concepts.

⁵ Jamiludin, Alimin Alwi, and Ambo Upe, "Social Integration in Multicultural Societies: A Qualitative Study," *Jurnal Ilmu Sosial dan Humaniora* 12, no. 2 (2023): 344.

⁶ Fifik Wiryani and Mokhammad Najih, "The Criticism of Land Procurement Law to Improve Landowners Welfare in Indonesia," *Sriwijaya Law Review* 5, no. 2 (2021): 180.

⁷ *Government Regulation Number 24 Year 2016 Regarding Adjustments on the Government Regulation Number 37 Year 1998 Regarding the Regulation of the Land Deed Official (PPTA), State Gazette of the Republic Indonesia Year 2016 Number 120, Additional State Gaze, n.d.*



- b) Hierarchy. Hierarchy is important because it concerns the norm's validity and binding. Clear hierarchy also works as a guide for institutions authorized to create regulations based on the laws.
- c) Consistency is the norm. This refers to the correlated laws and regulations that do not counter each other.

Nusrhasan Ismail also explained that legal certainty requires a legal regulation in the laws created by the authorities as a juridical aspect to warrant the legal certainty that the established laws shall be obliged by the state's people. The researcher employed a theory by Nurhasan Ismail because it aligns with the main topic of this research. The Governmental Regulation Number 24 Year 2016 regulates the Land Deed Officials' (PPAT) obligation of no-cost service for those who are incapable. The researcher found a gap in this legal situation.

The regulation provides an unclear definition of 'incapable,' which allows for multi-interpretations and ambiguity in its comprehension and implementation. Therefore, further analysis of the theory of legal certainty is necessary to establish a clear definition for justified service in future implementations conducted by the PPAT toward qualified people.

Theory of Legal Protection

Legal Protection theory researches and analyzes the forms or goals of legal protection, protected subjects, and the legally granted protection objects for the subjects. The definition of legal protection theory comprises as follows: (a) A form of protection or a goal of protection; (b) Legal subject; (c) Legal protection object.

In every law, the form or goal of the protection given to the subject and its protection object is different from one to another. To ensure protection and equal rights of service for those who are incapable, The Governmental Regulation Number 24 Year 2016 regulates the Land Deed Officials' (PPAT) obligation of no-cost service for those who are incapable.

Legal protection of incapable people refers to every endeavor to ensure people's legal security. Therefore, the regulations shall be appropriately administered to accommodate people. However, the Governmental Regulation Number 24 Year 2016 does not explicate the criteria, terms, or requirements for a person to be legally registered as 'incapable'. This loophole leads to the subjective definition of 'incapable' by the PPAT and ineffective



implementations. For this reason, an unequivocal legal definition of 'incapable' is needed to ensure the legal protection of the regulation.

Theory of Equality Before the Law

In providing their service, Land Deed Officials (PPAT) are not allowed to discriminate against people based on their socio-economic background or any other reasons. PPAT should only refuse to serve an appearer for legal reasons. Legal equality is one of the most important principles as it measures the justice of the implemented law for people. Every citizen shall have equal protection and justice before the law.

This principle of equality manifests legal equality in every individual without exceptions. The principle can be a basis for protecting marginalized groups or minorities.

Theory of Lawmaking

Laws and regulations are an essential part of the national law system to achieve the national law system in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia. Theoretical research of laws and regulations can never be separated from the political aspect in line with the legal aspect of the state administration's political framework. According to Mahfud MD,⁸ law politics is a legal policy or the official line (of regulation) regarding the upcoming laws and regulations such as making new laws or replacing the old ones to achieve the national target.

Satjipto Rahadjo⁹ defines legal politics as an act of choice and decision to achieve a societal goal within the existent law. The act involves several basic questions as follows:

- a) what goal to achieve with the existent legal system;
- b) how to achieve the goal;
- c) when to achieve the goal and how to change the system;
- d) how a proper pattern can help decision-making in achieving the goal.

⁸ Moh Mahfud MD, *Politik Hukum Di Indonesia* (Jakarta: PT. Raja Grafindo Persada, 2009).

⁹ Ibid., 10.



According to Bagir Manan, legal politics refers to the current and future acuity regarding the law's drafting, making, and enforcement.¹⁰ There are three main aspects of legal politics:

- a) Politics of lawmaking;
- b) Politics of the substantive content of law; and
- c) Politics of law enforcement.

The politics of lawmaking demonstrates the acuity related to the craft, renewal, and development of legislation. The politics of lawmaking involves as follows:

- a) the acuity of crafting legislation;
- b) the acuity of jurisdictional law and judges' verdicts, and
- c) the acuity of unwritten rules.

The politics regarding the substantive content of law is the acuity revolving around the fundamental aspects of law:

- a) attaining the philosophical, judicial, and sociological aspects;
- b) reflecting the acuity in the economy, social welfare, culture, politics, and defense;
- c) reflecting the purposes and functions of the law;
- d) the mission to achieve national aspirations in politics, economy, social welfare, culture, and others.

Furthermore, Jimly Asshidique stated that Indonesia's national development includes structural-institutional, cultural-behavioral, and legal instrumental development. Those three development elements contrive well in legislation, administration, and judicature systems because each element coordinates with the legal constitutions, supporting legal subjects, and the regulatory normative instrument.

In a more tapered sense, the legislative instruments are also related to lawmaking, promulgation, socialization, and enforcement. There are also institutional elements, humanitarian elements, and procedural elements incorporated within the legislative instruments. To support the legal functions and activities, a macro-level of policy design regarding national law development, an integrated administration system including regulations

¹⁰ Bagir Manan, "Politik Perundang-Undangan Dalam Rangka Mengantisipasi Liberalisasi Perekonomian," *Fakultas Hukum UNILA, Lampung* (1996): 2.



(*regelen*), national administration establishment (*beschikkingen*), verdicts (*vonis*), and other dispute resolutions is highly necessary.

The legislation in Indonesia is structured hierarchically as the national legal system. The hierarchical system is entirely integrated and culminated by the principle of constitutional supremacy. Hans Kelsen defined the highest norm as *Grundnorm*. On the other hand, Hans Nawiasky, in his *Von Stufenbau der Rechtsordnung* theory, asserted that the highest norm in a state should be the *Staatsfundamental norm* instead of *Staatsgrundnorm*, emphasizing the state's fundamental norm.

Theoretically, the *Grundnorm* of a system of norms is incontrovertible. In contrast, the highest norm of a state may change due to situations such as *coup de etat*, *putsch*, *Anschluss*, and others.¹¹ Kelsen and Nawiasky later instigated the norm hierarchy in a pyramid or the Pyramid theory.

According to the exposition above, the hierarchy system in legislation contextually revolves around three main principles. These three main principles are also fundamental in understanding Indonesia's legislation law:¹²

- 1) *Lex superior derogat lex inferiori*: A law higher in the hierarchy repeals the opposing lower one.
- 2) *Lex specialis derogat lex generali*: A special law repeals an opposing general law.
- 3) *Lex posterior derogat lex priori*: A newer law repeals a prior one.

RESEARCH METHOD

The concept of law as institutionalized patterns of social behavior. This type of research study is a sociology of law that sees law as it is in society. This model of legal research is known as non-doctrinal legal research. Second, the concept of law manifests symbolic meanings of social behavior as seen in their interactions.¹³ As is commonly understood, legal research is a scholarly

¹¹ Attamimi in Satya Arinanto, "Proses Perumusan Dasar Negara Pancasila (Studi Tentang Kedudukan Pancasila Sebagai Dasar Negara Dan Tentang Polemik Mengenai Hari Lahir Dan Penggali Pancasila Dalam Perspektif Sejarah Hukum Tata Negara)," *PPS-FH UI, Unpublished* (1997): 14.

¹² PP OTODA, *Rekonstruksi Hukum Pelaksanaan Otonomi Khusus Dalam Bidang Legislasi (Studi Di Provinsi Papua Dan Papua Barat)* (PP OTODA Universitas Brawijaya dengan DPD RI, 2011).

¹³ Afif Noor, "Socio-Legal Research: Integration of Normative and Empirical Juridical Research in Legal Research," *Jurnal Ilmiah Dunia Hukum*, no. 2 (2023): 96-97.



activity grounded in specific methods, systematic approaches, and particular modes of thinking.¹⁴ Legal research is a process of comprehending legal situations to make a conclusion and find solutions.¹⁵

In doctrinal research, abstract legal principles are used to measure truth in legal studies. Objects and references used in doctrinal research are the norms of norms, concepts, and doctrines that develop in legal thinking. In making conclusions, doctrinal research uses a deductive syllogistic method. Doctrinal legal research is also called literature law research.¹⁶

The method employed in this study was normative legal research, which involves researching the applicable literature. This method examines the written rules or other legal materials for library research or document study. This research used the statute approach and conceptual approach. The statute approach stems from the applicable legislation and its relevance to the legal issues. The approach reviews and analyzes all laws and regulations related to the legal issue in this research, particularly the Governmental Regulation Number 24 Year 2016 regarding Adjustments in the Government Regulation Number 37 Year 1998 regarding the Land Deed Official regulations.

On the other hand, the conceptual approach originates in principles and doctrines of the law. The materials acquired from this approach were analyzed using the normative qualitative method. With the normative method, this research focused on the existing rules as positive laws. Furthermore, this research is qualitative as it analyzed a law institution from the literature review.

RESULTS AND DISCUSSION

A. The Relevance of the Authorities of Land Deed Officials (PPAT) in Government Regulation Number 24 Year 2016

1. The Duty of Land Deed Official (PPAT)

The registered lands and administration must correspond to the actual situation or status, including physical and juridical data. The

¹⁴ Dian Hadiati, Abdul Rachmad Budiono, and Hanif Nur Widhiyanti, "Legal Relationship Between Platform Service Providers and Online Transportation Driver as Gig Workers (Platform Workers)," *International Journal of Islamic Education, Research and Multiculturalism (IJIERM)* 5, no. 3 (2023): 756.

¹⁵ Kornelius Benuf and Muhamad Azhar, "Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer," *Gema Keadilan* 7, no. 1 (2020): 23.

¹⁶ Gareth Davies, "The Relationship between Empirical Legal Studies and Doctrinal Legal Research," *Erasmus Law Review* 13 (2020): 3-12.



physical data involves land size, while the juridical data involves the land's legal record and previous juridical data. From an administrative perspective, a robust and valid land right ownership evidence is in the form of a land certificate issued by an authorized official, in this case, is the land affairs office.¹⁷

A Land Deed Official (PPAT) is responsible for deed issuance, such as acquisition duty of right on land and building or encumbrance duty of right on land and building. The acquisition and encumbrance of rights on land and buildings should be evidenced with a deed authorized by PPAT and other deeds regulated by the legislation to be registered and assist the Head of the Land Office in the registry.

According to Article 2 Section (1) of Government Regulation Number 37 Year 1998 regarding the Regulations of Land Deed Official (PPAT),¹⁸ 'Land Deed Official (PPAT) is subjected to duty of land registry by issuing the deed as legal evidence concerning the land right or an apartment ownership right as a basis of the adjustments in the land registry data.' In compliance with their code of ethics, PPAT and temporary PPAT must also¹⁹ 'do legal counseling for people who need the service and raise awareness of people's legal rights and obligations as a part of society.'

The code of ethics of the Association of Land Deed Officials (IPPAT) also states that PPAT is morally obliged to the provision of legal advice and legal counseling for society. For example, the appearers should inform the factual transaction cost of the object and pay the PPh and BPHTB according to the cost. Before processing the Deed of Sale and Purchase, PPAT must inquire about the required documents for the deed, conduct check backgrounds, confirm the data, analyze the data's validity, and provide legal counseling.

¹⁷ Ricco Survival Yubaidi, "The Role of Land Deed Official Regarding Legal Certainty of Complete Systematic Land Registration," *Jurnal Hukum dan Peradilan* 9, no. 1 (2020): 32.

¹⁸ *Government Regulation Number 37 Year 1998 Regarding the Regulation of Land Deed Official, as Adjusted in Government Regulation Number 24 Year 2016 Regarding the Adjustments on the Government Regulation Number 37 Year 1998 Regarding the Regulation of the L,*

¹⁹ "Annex of ATR/BPN Ministerial Decree Number 112/KEP/4.1/IV/2017 Regarding the Code of Ethics of the Association of the Land Deed Officials (Article 3 Letter (H))."



PPAT is also subjected to the provision of legal advice by explaining the PPh obligation for the transferring party and the BPTHTB obligation for the receiving party because tax is one of the state and region's sources of income for social welfare. Moreover, the tax payment is one of the formal requirements to issue the Deed of Sale and Purchase. To establish legal certainty and legal protection on equal land rights and encourage economic growth, the land registry process should be accessible and unexacting to everyone.

Based on the elaboration above, the duty of PPAT can be concluded as follows:

- (a) Making deeds for legal activities related to the land rights and encumbrance of mortgage.
- (b) Providing legal counseling for those in need of the service.
- (c) Assisting parties involved in the legal act in submitting the transfer deed, evidenced conversion, and land right registry.

2. Authority of Land Deed Official (PPAT)

A Land Deed Official (PPAT) possesses the authority to make evidence of legal acts regarding land rights and apartment ownership rights for a requirement in the registry. The legal acts are as follows: ²⁰

- (a) buying and selling;
- (b) exchanging;
- (c) grant or bequest;
- (d) participating in the economy (inbreng);
- (e) communal rights sharing;
- (f) giving the Building Use Rights (HGB)/Using Rights above Property Rights of land;
- (g) giving the Hyphoteek Rights;
- (h) giving the authority to make Hyphoteek Rights.

In accordance with the authority of the Land Deed Official (PPAT) in assisting the Head of the Land Office in land administration, the deed issued by PPAT qualifies as authentic. A deed made by PPAT is evidence of a legal act.

²⁰ Government Regulation Number 24 Year 2016 Regarding the Adjustments on the Government Regulation Number 37 Year 1998 Regarding the Regulation of the Land Deed Official, Op. Cit, Article 2 Section. (2)



Therefore, deed-making must be as strict and clear as possible to avoid disputes in the future.

. In its authority, Land Deed Official (PPAT) issues land right deeds or an apartment ownership right deed in its area, except for the deed of trade and exchange, deed of corporate's income (inbreng), and the deed of dividends along with the deed of land right and apartment ownership right outside the PPAT's area. These exceptions can be issued by PPAT, whose field involves a land area or an apartment unit with the rights as an object to a legal act.

A deed is a signed letter that reports the basis act of rights or agreement and is issued as legal evidence. To fit in this definition, a letter should be signed and issued as evidence from the beginning. The requirement of signature in the letter is also accentuated in Article 1869 of the Civil Code:²¹

"A deed which, due to the incompetence or incapability of the official or due to the absence of format, cannot be regarded as authentic, may be enforced as a private document, if the parties have executed the document."

Based on its form, a deed is categorized into authentic and private deeds. Article 1868 of the Civil Code states:²² "An authentic deed is one which has been drawn up in a legal format, by or before public officials who are authorized to do so at the location where this takes place."

Based on the explanation above, it can be concluded that the duty of Land Deed Official (PPAT) revolves around land administration, such as making deed as legal act evidence. To carry out the duty, PPAT can execute authentic deeds regarding all legal acts on Land Rights and Apartment Ownership Rights. In line with the obligations of PPAT to provide service at no cost for the Incapables, the service refers to the definition mentioned in Article 32 Section (2) of Government Regulation Number 24 Year 2016 regarding PJPPAT. The article states that a deed is issued for legal acts such as sale and purchase; trade and exchange; grant, corporate's income (inbreng); joint dividends; grant of Right to Build/Right to Use on Ownership Right; grant of a mortgage; and encumbrance of the mortgage. Buying and selling; exchanging; grant or bequest; participating in the company (inbreng); communal rights sharing,

²¹ Subekti and Tjirosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: Pradnya Paramita, 2004).

²² Ibid., 475.



giving the Building Use Rights/Using Rights above Property Rights of Land; giving the Hypotheek Rights; giving the authority to make Hypotheek Rights.

Due to PPAT's essential role in public service and national income, legal acts on Land Rights and Apartment Ownership Rights are encouraged to boost national income as it increases tax payment. Another essential role of PPAT is checking the Income Tax (PPh) payment status of income earned from the land right transfer and Acquisition Duty of Right on Land and Building (BPHTB) before making the deed.

This is in line with the researcher's findings from an open interview with an undisclosed Informant, ²³ According to the Informant, PPAT in the area of Katingan City (Central Kalimantan) has never counseled any clients of impoverished, especially regarding the PPAT deed-making. The number of such clients is little to none. The only record of impoverished clients is when they requested a Notary Deed for the public, such as the Deed of Establishment of the Foundation. This service charges no cost. However, this no-cost service is extremely rare since PPAT usually issues authentic deeds for commercial use."

Aside from the PPAT's authority in doing authentic deeds regarding legal acts on Land Rights and Apartment Ownership Rights, the duties of the PPAT can be widely defined since there are no written caveats in interpreting the duties. Moreover, the Code of Ethics of the Association of Land Deed Officials (IPPAT) also regulates PPAT's obligations in legal counseling for the public. Legal counseling can also be carried out in community service or consultation with the client.

Accordingly, providing service at no cost is strictly an obligation for the Land Deed Official (PPAT) for the Incapable society. The obligation does not stop at issuing authentic deeds as legal evidence but shall extend to the service of legal counseling in line with the Code of Ethics of the Association of Land Deed Officials (IPPAT).

B. Urgency of the Regulation of No-Charge Service by Land Deed Officials (PPAT) for the Incapables

The concept of a state of law or often referred to as the rule of law is a concept that prioritizes law as the basis for carrying out an action taken by the state. Indonesia as a state of law is stated in Article 1 paragraph (3) of the 1945

²³ "An Interview with a Notary/Land Deed Official, 14 July 2023,".



Constitution, which reads, "The state of Indonesia is a state of law." This understanding is a teaching that says that the highest power lies in the Law or there is no other power except the Law.²⁴ After establishing the rule of law, the next step is to promote the well-being of society by safeguarding individuals' entitlement to land ownership, which is a fundamental human right.²⁵

Basic legal values include the relevant values of justice, certainty, and usefulness. Fulfillment of basic legal values is then mapped into legislation considerations, including a philosophical basis representing aspects of justice, a sociological one representing aspects of benefit, and a juridical one representing aspects of certainty. In line with the meaning of general regulatory means or *regelindaad*, the regulatory function is legislation's core. The regulatory function is inherent because legislation contains generally accepted rules. In the regulatory function, there must be adjustments to the parameters, namely philosophical, sociological, and juridical values. These parameters must exist in harmony with each other. Philosophical values are related to regulatory objectives in laws and regulations aligned with justice aspects. Sociological values relate to the aim of regulating laws and regulations to create beneficial aspects in society. Meanwhile, juridical values are related to regulatory objectives in legislation, which must maintain aspects of legal certainty. The regulatory function is inherent in the type of legislation with a general regulatory nature.

The implementation function is the follow-up of regulations in laws and regulations. It can be found in technical and procedural laws and regulations as implementers of laws above it or equivalent. Implementation functions can be found in Government Regulations, Presidential Regulations, Ministerial Regulations, Governor Regulations, or Regent/Mayor Regulations. Knowing the definition of rules that govern technically and procedurally is necessary. Laws and regulations with a technical and procedural nature contain instructions for implementing rules without narrative norms. Legislation with a technical and procedural nature tends to appear applicative or implementable concerning practical matters as a form of implementing the core rules. The norm

²⁴ M Chandra et al., "The Urgency of Reharmonization in Construction of The Stage Formation of Law," *Jurnal Penelitian Hukum De Jure* 22, no. 3 (2022): 311.

²⁵ Muhammad Ali et al., "The Ideal Construction of Legal Ownership of Land Rights in the Administrative System of the National Land Agency," *International Journal of Science and Society*, no. 4 (2023): 129.



content of legislation, which has a limited technical and procedural nature, is applicative, providing examples of applications relating to technical and procedural matters.

Legislation that has a technical and procedural nature can be exemplified by several models of Ministerial Regulations, which include technical and procedural matters in their attachments. These technical matters include formats, templates, letter forms, application forms, and other technical and procedural matters. In addition, the function of execution can be found in the regulations that are the jurisdiction of the executive branch of power. For example, Government Regulations are laws and regulations that have a technical and procedural nature as implementing regulations of the Law.

1. Subject Matter in Government Regulation Number 24 Year 2016 regarding Adjustments in the Government Regulation Number 37 Year 1998 regarding the Regulation of Land Deed Official (PPTA)

Government Regulation can be created despite no request from related laws and no requiring statement from associated laws. This validates that Government Regulation is an executive jurisdiction that functioned as an instrumental in interpreting legislation and its implementation and elaboration.”²⁶

Government Regulation is a domain branched from the executives. The primary purpose of Government Regulation is to regulate the implementation of laws.”²⁷ The subject matter of the Government Regulation is the one in legislation delegated to the government. Hence, the Government Regulation's subject matter comprises the legislation's implementation.

Based on the explanation above, Government Regulation Number 37 Year 1998 adjustments regarding the Regulation of Land Deed Official (PPAT) are established to improve the PPAT's roles and services for society in the land registry. This adjustment supports the deregulation policy in agrarian/land matters to encourage the implementation of economic policy. The adjustments include as follows:

²⁶ Muhammad Junaidi, *Teori Perancangan Hukum, Telaah Praktis Dan Teoritis Penyusunan Peraturan Perundang-Undangan* (Semarang: Universitas Semarang Press, 2021).

²⁷ Maria Farida Indrati S., *Ilmu Perundang-Undangan, Jenis, Fungsi Dan Materi Muatan* (Yogyakarta: Kanisius, 2007).



- (a) Requirements to be PPAT;
- (b) Extension of PPAT employment beyond retirement from 65 years old to 67 years old;
- (c) An addition to the types of termination of employment;
- (d) Expansion of work area from 1 (one) regency/municipality to 1 (one) province;
- (e) Prohibition of dual positions.

The obligation of PPAT stated in Article 32 Section (2) regarding the provision of services at no cost has unfortunately resulted in a vague norm as it does not elucidate the standards of being an 'incapable'. Hence, this statement does not meet the fundamental legal values of philosophical, sociological, and juridical basis. As for the philosophical basis, the regulation should have established people's equality before the law. Sociologically, the regulation should have been useful to people especially the incapables. Lastly, the juridical value should have served to ensure the legal certainty of the regulation.

In its implementation, the Government Regulation is fundamentally technical and procedural as it provides structured implementation steps with practicability at its core. Therefore, the Regulation reflects examples of implementation related to technical and procedural matters. After review, the norm matter of no-charge service in the Government Regulation is equivocal, leading to legal uncertainty.

2. Subject Matter in the ATR/BPN Ministerial Regulation Number 33 Year 2021 regarding the Service Cost of Land Deed Official (PPTA)

The Ministerial Regulation has a specific regulatory dimension. A state institution makes it with that authority from a Law whose content regulates that it is limited to the fields that are the duties, authorities, and responsibilities of that Ministry sector. The material content of Ministerial Regulations may not conflict with higher Legislation and General Principles of Good Governance. Adjustments are made to aspects of the nomenclature according to the field and type of institution.

Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) of the Republic of Indonesia Number 33 of 2021 concerning Fees for Services of Land Deed Officials (PPTA), as an implementing regulation of Government



Regulation Number 24 of 2016 that the stipulation of this Ministerial Regulation is intended to increase the ease of doing business in Indonesia regarding property registration. There is a need for clarity regarding the costs of transferring land rights, including regulating the obligations of a Land Deed Officials (PPTA) and a Temporary Land Deed Officials (PPTA) in providing deed-making services without charging fees to people who cannot afford it as proven by a Certificate of Poverty issued by the authorized institution.

This Ministerial Regulation also does not technically regulate the criteria for incapacitated persons. The conditions imposed are not accurate enough to validate the correctness of the data, wherein the content of the norms of the Ministerial Regulation has an applicable technical and procedural nature, meaning that it provides an example of application related to technical matters and procedures in the attachment. These technical matters are formats, templates, forms of letters, forms of requests, and other technical and procedural matters.

The Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 33 of 2021 concerning Fees for Land Deed Officials (PPTA) is currently still valid if viewed from the implementation function. The need for technical matters relating to implementation guidelines can be added to the attachment to this Ministerial Regulation.

The principle of the Formation of Legislation in the Law on the Formation of Legislation in Indonesia is regulated in Article 5 of Law Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislation²⁸, stating that in forming laws and regulations must be based on the principle of forming good laws and regulations, which include:

- (a) "Principle of Clear Purpose Every law and regulation must have a clear purpose to achieve.
- (b) Principle of Institution or Founding Officials Every law and regulation must be made by a state institution or authorized

²⁸ Law Number 13 Year 2022 Regarding the Second Amendment of Law Number 12 Year 2011 Regarding the Legislation Making, State Gazette of the Republic Indonesia Year 2022 Number 143, Additional State Gazette of the Republic Indonesia Number 6801., n.d.



legislative officials. Legislation is subject to revocation if issued by any unauthorized institution or official.

- (c) Principle of Consistency between the Types, Hierarchy, and Subject Matter Every legislation must attentively observe the proper subject matter for the type and hierarchy of the law and regulation.
- (d) Principle of Feasibility Every legislation must calculate the feasibility of the law and regulation in terms of philosophical, sociological, and juridical values.
- (e) Principle of Utility and Functionality Every legislation must align with people's needs to develop and regulate national welfare.
- (f) Principle of Clear Arrangements Every legislation must meet the technical requirements such as its structures, diction, and digestible legal language that does not inflict multiple interpretations in its implementation.
- (g) Principle of Openness Every legislative process, including the proposal, arrangements, discussion, establishment, invitation, and review, should be accessible to the public, especially those who will be directly affected, and open to suggestions and criticism in both oral and written via online and offline."

Apart from reflecting the principles above, certain laws and regulations may contain other principles in accordance with the legal field of the relevant laws and regulations. Explanation of Article 6 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislation, states that:²⁹

- (a) Principle of Aegis Every subject matter of the legislation must protect people to create a secure society.
- (b) Principle of Humanity Every subject matter of the legislation must protect and respect the human rights and dignity of every Indonesian citizen proportionally.
- (c) Principle of Nationality Every subject matter of the legislation must reflect the ancestral characteristic of Indonesia, which is unity in diversity.

²⁹ "Law Number 12 Year 2011 Regarding the Legislation Making, State Gazette of the Republic Indonesia Year 2011 Number 82, Additional State Gazette of the Republic Indonesia Number 5234."



- (d) Principle of Amicability Every subject matter of the legislation must reflect amicable negotiation for consensus in every decision-making.
- (e) Principle of Geographic (Kenusantaraan) Every subject matter of the legislation observes the needs of every region of Indonesia, and the subject matter of the legislation established by the regional government is a part of the national legal system in accordance with Pancasila and the 1945 Constitution of the Republic of Indonesia.
- (f) Principle of Bhinneka tunggal ika Every subject matter of the legislation must regard the diversity of people, religions, ethnicity and inter-group relations, regional situations, and culture in society.
- (g) Principle of Justice Every subject matter of the legislation must reflect proportional justice for every citizen.
- (h) Principle of Equality before the Law and Government Every subject matter of the legislation must not discriminate against diverse backgrounds of religions, ethnicity, inter-group relations, genders, and social statuses.
- (i) Principle of Law Enforcement and Legal Certainty: Every subject matter of the legislation must accomplish law enforcement by legal certainty.
- (j) Principle of Balance and Harmony: Every subject matter of the legislation must reflect the balance and harmony between matters of individuals, society, and nation.

To arrange subject matters of the legislation, it should conform to the theory of principles of Law Making as follows:

- (a) Lex superior derogat lex inferiori: A law higher in the hierarchy repeals the lower one.
- (b) Lex specialis derogat lex generali: A special law repeals a general law.
- (c) Lex posterior derogat lex priori: A later law repeals a prior one.

In forming legislation, one must pay attention to the principles used as a guide in formulating provisions that will be stated in legislation. This principle is also an integral part of the legal system to ensure the implementation of the formed laws and regulations.

With the development of technology and changes in social norms, the law must be able to adapt and respond to provide legal certainty and



protect human rights. Furthermore, law also plays a vital role in achieving social and political goals, such as promoting justice and equality and ensuring government accountability. Legal change and renewal is important in ensuring that the legal system can respond effectively to societal changes. In changing and updating legal regulations, this complex and dynamic process is greatly influenced by the interaction of various factors. Changes and updating legal regulations are influenced by legal and institutional factors and various other factors, including political, economic, and social.

Apart from the above, public demands also play an important role in changing and updating legislative regulations. Community participation in the legislative process, either through public consultation or through civil society organizations, can encourage changes in legislation so that if a regulation is no longer relevant and is still in use at this time, changes and updates to regulations can be made, especially in this case. Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning Regulations on the Position of Land Deed Officials (PPTA) and their derivative regulations Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) of the Republic of Indonesia Number 33 of 2021 concerning Fees for Land Deed Officials (PPTA).

CONCLUSION

Article 32 Paragraph (2) of Government Regulation Number 24 Year 2016 is no longer relevant as the researcher found authentic Deeds of Land Deed Officials (PPAT) in practice are of commercial interest. This is in line with the Land Deed Officials' (PPAT) role to encourage state revenue sourced from tax revenues. Therefore, the definition of 'incapable' determined by the Minister of Social Affairs Regulation and standardization from the Central Statistics Agency does not match the criteria and conditions for the no-charge service. This ambiguous word choice hinders the implementation of the regulation.

A similar thing is in the Ministerial Regulations of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (ATR/BPN) Number 33 Year 2021 concerning Fees for Services of Land Deed Officials (PPTA). A regulation should be able to fulfill fundamental legal values, including a



philosophical basis representing aspects of justice, a sociological basis representing aspects of benefit, and a juridical basis representing aspects of certainty. In the regulatory function, the parameters must be adjusted, namely philosophical, sociological, and juridical values. These parameters must exist and be in harmony with each other. Meanwhile, the implementation function is related to the follow-up to regulations in technical and procedural laws and regulations as the implementer of laws and regulations above it or equivalent. Legislation with a technical and procedural nature tends to appear applicative or implementable concerning practical matters as a form of implementing the core rules. The norm content of legislation, which has a limited technical and procedural nature, is applicative, as it provides examples of applications relating to technical and procedural matters. Changes and renewals can be made if a regulation is irrelevant.

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