

ORIGINAL ARTICLE



Analysis of Unlawful Acts by a Land Deed Official Concerning Promised Compensation in the Granting of Land Donations

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Article History

Received
15 March 2026

Accepted
23 May 2026

Available Online
30 May 2026

Keywords

Grants
PPAT
Unlawful acts
Compensation
Land deed official

Abstract

The transfer of land rights through grants must be evidenced by a deed executed before a Land Deed Official (PPAT), who is also obliged to explain the contents and legal implications of the deed to the parties concerned. In practice, however, grants accompanied by compensation frequently give rise to legal issues, particularly where the parties do not fully understand the legal nature and consequences of the transaction. This study aims to analyze the occurrence of land grants accompanied by compensation, the legal responsibility of PPATs, and the legal consequences arising from such transactions. Employing a normative juridical method, this research utilizes statutory, case, and conceptual approaches with qualitative legal analysis. The findings indicate that the PPAT's failure to provide adequate explanations regarding the legal consequences of the deed is associated with a shift in the parties' understanding of the legal nature of grants and may create conditions that contribute to legal uncertainty. From a legal perspective, grants accompanied by compensation may be regarded as inconsistent with the essential characteristics of a grant and, therefore, may affect the validity of the legal act. Accordingly, PPATs should provide comprehensive legal explanations to the parties, while reciprocal legal relationships should be structured through legal instruments that correspond to their actual legal characteristics to ensure legal certainty and minimize the risk of future disputes.

1. Introduction

Grant is one of the legal acts that has long been recognized and practiced in Indonesian society, both within family relationships, among relatives, and with parties outside family relations. Fundamentally, a grant is carried out as a voluntary transfer of ownership rights from the grantor to the grantee during the grantor's lifetime. In practice, grants are frequently used as a means of transferring property, particularly land rights, because they are considered capable of ensuring certainty in property distribution and preventing potential disputes in the future [1].

Based on Article 20 paragraph (2) and Article 26 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), ownership rights over land may be transferred or assigned through grants as one form of legal act involving the transfer of rights, the implementation of which is further regulated by statutory provisions. Furthermore, Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that the transfer of land rights through grants may only be registered if evidenced by a deed executed by an authorized Land Deed Official (PPAT) [2]. According to Boedi Harsono, a grant is made by an individual who has legal capacity to perform legal acts and may involve movable or immovable property carried out before a PPAT.

PPAT plays an important role in the process of transferring land rights because a PPAT deed serves as an authentic instrument that provides legal certainty regarding the legal acts performed by the parties. Based on Article 1 paragraph (1) of Government Regulation Number 24 of 2016 concerning Amendments to Government Regulation Number 37 of 1998 concerning the Position of Land Deed Officials, PPAT is a public official authorized to execute authentic deeds concerning specific legal acts relating to land rights and ownership rights over apartment units [3]. In addition to the authority to execute authentic deeds, PPAT also has the obligation to provide legal counseling to the parties as stipulated in Article 3 letter h of the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 112/KEP-4.1/IV/2017 concerning the PPAT Code of Ethics [4]. Furthermore, Article 22 of Government Regulation Number 37 of 1998 also requires PPAT to read and explain the contents of the deed to the parties prior to its execution [5].

However, in practice, PPATs may not always fully fulfill these obligations, so that the parties do not always fully understand the legal consequences of the legal acts being undertaken. This condition may be associated with legal issues in grants accompanied by promises of compensation, where grants may no longer be understood purely as gratuitous transfers and may instead be interpreted as legal relationships resembling reciprocal agreements. In such circumstances, the legal character of grants becomes subject to interpretation considering the parties' intentions and agreements. Whereas, under Article 1666 of the Civil Code [6], a grant is defined as an agreement whereby the grantor, during his or her lifetime, irrevocably transfers an object without compensation for the benefit of the grantee [7].

This issue is reflected in Decision Number 3/Pdt.G/2023/PN.JTH concerning a breach of contract claim related to a promise of compensation in the process of a land grant, where the grantee promised compensation to the grantor but failed to fulfill such promise, thereby giving rise to a legal dispute. As a comparison, Decision Number 947/Pdt.G/2022/PN.Mdn shows that claims based on unlawful acts may influence the judicial assessment of grants and may result in a grant being declared null and void. Therefore, this study aims to analyze the occurrence of land grants accompanied by promises of compensation, the legal responsibility of PPAT, and the legal consequences arising from the implementation of grants without adequate explanation being provided to the parties.

Based on the foregoing background, it can be understood that the issue of land grants with compensation, as reflected in Case Number 3/Pdt.G/2023/PN.JTH, constitutes an important legal issue that warrants examination. This research aims to explain the occurrence of land grants with compensation based on Case Number 3/Pdt.G/2023/PN.JTH, to explain the legal responsibility of the Land Deed Official (PPAT) regarding the occurrence of such land grants without providing explanations to the parties involved, and to explain the legal consequences of granting land with compensation without an explanation of the contents of the deed by the PPAT. Based on the background described above, the following research questions are formulated: (1) Why did the land grant with compensation occur based on Case Number 3/Pdt.G/2023/PN.JTH? (2) What is the legal responsibility of the PPAT regarding the occurrence of a land grant without providing explanations to the parties involved? and (3) What are the legal consequences of granting land with compensation without an explanation of the contents of the deed by the PPAT?

2. Methods

The research method used in this study is normative juridical research that examines law as a set of norms or rules applicable in society [8–10]. The approaches employed include the statutory approach, case approach, and conceptual approach [11–13]. The legal materials used consist of primary legal materials in the form of the 1945 Constitution of the Republic of Indonesia, the Civil Code, Law Number 5 of 1960 concerning Basic Agrarian Principles, and

regulations related to land registration and the position of Land Deed Officials (PPAT). This study also uses secondary legal materials consisting of books, legal journals, scientific articles, and previous studies related to preliminary agreements and land grant deeds containing compensation clauses, as well as tertiary legal materials such as legal dictionaries.

Data collection was conducted through library research by examining and reviewing primary, secondary, and tertiary legal materials relevant to the issues under study. The collected legal materials were then systematically classified and analyzed qualitatively using a prescriptive method through legal interpretation, with particular attention to the harmonization and consistency of legal norms governing land grants, PPAT responsibilities, and legal acts involving compensation. Conclusions were drawn deductively based on the results of the legal analysis and literature review.

3. Results and Discussion

3.1 Analysis of The Occurrence of Land Grants with Compensation Based on Case Number 3/Pdt.G/2023/PN.JTH

The practice of land grants accompanied by promises of compensation in Decision Number 3/Pdt.G/2023/PN.JTH demonstrates a shift in grants from a unilateral legal act into a legal relationship involving reciprocal interests. In this case, the Land Deed Official (PPAT) did not optimally perform their obligations as stipulated under Article 3 letter h of the PPAT Code of Ethics and Article 22 of Government Regulation Number 37 of 1998, which require the provision of legal counseling as well as the reading and explanation of the contents of the deed to the parties involved [14]. Such negligence resulted in the parties not fully understanding the legal consequences of the grant, thereby creating opportunities for the inclusion of promises of compensation that are contrary to the fundamental nature of a grant.

The grant process began with a request from the grantee, namely the government through the Head of the Aceh Besar Agriculture Office, to use the grantor's land as the site for the construction of a Veterinary Public Health Center (Puskesmas) for public purposes. This request was based on the urgency of the development project to prevent the allocated government budget from expiring or being transferred to another region. From the grantee's perspective, the underlying motive was related to development interests and efficiency in implementing public programs, as a grant was considered more practical than other land acquisition mechanisms.

On the other hand, the grantor's intention did not arise independently but was formed through mutual agreement with the grantee. In Decision Number 3/Pdt.G/2023/PN.JTH, the grantor agreed to transfer the land on the condition that the grantor's child would be accepted as an honorary employee and proposed as a Civil Servant Candidate (CPNS) should future recruitment programs become available. This indicates that the grantor's intention from the outset was not solely based on the willingness to voluntarily provide the land, but also on obtaining certain benefits as compensation for the transfer of land rights.

This situation indicates that the motives of the parties no longer reflect the concept of a pure grant but instead resemble a reciprocal legal relationship containing elements of counter-performance. Article 1666 of the Indonesian Civil Code (KUH Perdata) explicitly provides that a grant is an agreement made gratuitously and cannot be revoked [15]. Furthermore, although parties are granted freedom in making agreements under Article 1338 of the Civil Code, such freedom remains limited by the validity requirements of agreements under Article 1320 of the Civil Code, particularly regarding the existence of a lawful cause [16]. Therefore, the promise of appointing an honorary employee and proposing a Civil Servant Candidate (CPNS) as compensation must be examined regarding its legality, as it relates to state administrative authority that cannot be privately negotiated. Accordingly, the validity of a grant should not be determined solely by the formal requirements of the deed but must also consider the motives,

objectives, intentions of the parties, and the role of the PPAT in providing legal explanations to ensure legal certainty.

3.2 Legal Responsibility of PPAT for the Occurrence of Land Grants Without Providing Explanations to the Parties

Negligence in the implementation of PPAT's official duties constitutes a relevant issue in the practice of land grants as reflected in Decision Number 3/Pdt.G/2023/PN.JTH, particularly when the grant was accompanied by a promise of compensation. As a public official authorized to create authentic deeds, PPAT is not only required to fulfill the administrative aspects of deed preparation but is also obligated to act carefully, professionally, and in accordance with the principle of prudence to ensure that the legal act embodied in the deed complies with applicable legal provisions [17]. From the perspective of Hans Kelsen's theory of legal responsibility, legal liability does not arise solely from intentional acts but may also emerge from negligence in carrying out obligations prescribed by legal norms [18]. Therefore, when PPAT fails to properly perform its duties during the land grant process, such negligence may be analyzed as a form of responsibility attached to the exercise of PPAT's official authority.

In this case, the issue did not concern technical errors in drafting the deed, such as typing mistakes, errors in the form of the deed, or inaccuracies in the parties' data, since the deed of grant had formally fulfilled the legal requirements stipulated under the applicable regulations. Rather, the issue lay in PPAT's failure to carry out the obligation to provide legal counseling and explain the nature of a grant to the parties, as mandated by Article 3 letter h of the PPAT Code of Ethics and Article 22 of Government Regulation Number 37 of 1998. PPAT should not merely function as an official who records the intentions of the parties into an authentic deed but should also ensure that the parties understand the legal consequences of their actions, including the characteristic of a grant as a gratuitous transfer without any form of counter-performance [19]. The absence of such explanations resulted in the parties perceiving the grant as if it could be associated with a reciprocal agreement involving promises of compensation.

From the perspective of legal accountability, PPAT's responsibility may be classified into administrative, civil, and criminal responsibility. Administratively, PPAT may be subject to sanctions if violations of official obligations are committed in accordance with applicable regulations [20]. However, in this case, the promise of compensation was not included in the deed and was only known outside the formal contents of the document; therefore, such circumstances could not serve as grounds for imposing administrative liability. From a civil perspective, liability may arise if PPAT's negligence causes losses to the parties involved. Meanwhile, criminal liability could not be imposed upon PPAT because there was no indication of intentional conduct or falsification of information in the authentic deed.

Nevertheless, PPAT's negligence in this matter still demonstrates a violation of official duties and the principle of prudence due to the failure to provide explanations regarding potential legal issues known to PPAT. Considering Munir Fuady's view, such conduct may be regarded as an unlawful act because it contradicts the legal obligation (*rechtsplicht*) attached to the office of PPAT. This condition illustrates that the current regulation of PPAT's responsibilities remains largely focused on the formal aspects of deed preparation and has not fully addressed responsibility concerning legal circumstances known outside the contents of the deed. Therefore, strengthening regulations concerning PPAT's responsibilities is necessary so that they are not limited solely to formal administrative accountability but also encompass professional and preventive responsibilities in providing legal counseling, thereby ensuring legal certainty and preventing future disputes in the transfer of land rights.

3.3 Analysis of the Legal Consequences for the Parties in Land Grants with Compensation without Explanation of the Deed by the PPAT

The legal basis of a lawsuit and judicial considerations significantly influence the assessment of the validity of a grant in disputes involving the transfer of land rights. This is evident in Decision Number 3/Pdt.G/2023/PN.JTH and Decision Number 947/Pdt.G/2022/PN.Mdn, both of which contain elements of unlawful acts but result in different legal consequences. In Decision Number 3/Pdt.G/2023/PN.JTH, a promise of compensation underlay the transfer of land, whereas in Decision Number 947/Pdt.G/2022/PN.Mdn, the dispute arose from the re-granting of an object that had previously been transferred to another party. According to Mariam Darus Badruzaman, an act may be categorized as an unlawful act not only when it contradicts written legal provisions but also when it violates principles of propriety, good faith, and the legal objectives that should be inherent in a legal relationship [21]. Therefore, any deviation from the essential nature of a grant as a gratuitous transfer may constitute a basis for identifying elements of an unlawful act within the grant process.

In Decision Number 3/Pdt.G/2023/PN.JTH, the land grant was conducted with a promise of specific compensation from the grantee to the grantor, thereby substantively altering the gratuitous nature of the grant as stipulated in Article 1666 of the Indonesian Civil Code (KUH Perdata). However, the lawsuit was filed based on breach of contract (*wanprestasi*), leading the court to distinguish the legal relationship between the grant itself and the compensation agreement, whereby the grant remained legally valid while the promise of compensation was declared null and void. From an analytical perspective, the existence of such compensation demonstrates that the transfer of land rights did not arise solely from the unilateral intention of the grantor but was influenced by reciprocal considerations that became the primary reason for the grant. This situation creates inconsistency between the juridical form of the grant as reflected in the deed and the substantive legal relationship that existed between the parties.

In contrast, Decision Number 947/Pdt.G/2022/PN.Mdn was filed based on an unlawful act, and the court held that the re-granting of an object whose ownership rights had already been transferred constituted an act contrary to law, thereby directly affecting the validity of the grant. Consequently, the grant was declared invalid and the disputed object was restored to its original status. The differences between these two decisions demonstrate that the legal consequences of a grant are determined not only by the existence of elements of an unlawful act but also by the legal construction of the claims submitted by the parties.[8] This condition creates potential legal uncertainty, particularly in grants involving promises of compensation without adequate explanation by the PPAT regarding the fundamental nature of a grant as a gratuitous transfer.

4. Conclusions

The results of this study indicate that the PPAT did not comprehensively explain the contents of the deed and its legal consequences to the parties, resulting in a limited understanding of the legal nature of grants. Consequently, in practice, land grants are not always carried out as purely gratuitous transfers but are sometimes accompanied by expectations of compensation, as reflected in Case Number 3/Pdt.G/2023/PN.JTH and Case Number 14/Pdt.G/2022/PA. This condition may lead to a shift in the legal characterization of grants into arrangements that resemble reciprocal agreements, where their assessment should consider not only the formal validity of the deed but also the underlying intentions and agreements of the parties.

The administrative responsibility of the PPAT in grants accompanied by compensation is primarily related to the formal validity of the deed as stipulated in Article 22 of Government Regulation Number 37 of 1998. However, based on Article 3 letter h of the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number

112/KEP-4.1/IV/2017, PPAT also bears moral and professional responsibility to provide legal explanations and counseling as an implementation of the precautionary principle.

Furthermore, in Case Number 3/Pdt.G/2023/PNJTH, a grant accompanied by a promise of compensation is theoretically considered to involve a defective causa and may therefore be regarded as void under certain legal interpretations; however, the court upheld its validity because the claim was filed based on breach of contract. In contrast, in Case Number 947/Pdt.G/2022/PN.Mdn, which was filed based on an unlawful act, the grant was declared invalid and annulled. This difference in legal construction of claims may contribute to legal uncertainty regarding the judicial assessment of grants involving compensation elements.

Funding: This research received no external funding.

Ethical Clearance: Not applicable.

Informed Consent Statement: Not applicable.

Data Availability Statement: Data is available upon request.

Acknowledgments: The authors would like to express their gratitude to their institutions.

Conflicts of Interest: All the authors declare no conflicts of interest.

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