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# The Authority of the Public Notary to Include Fingerprint Documents in Deeds to Prevent Document Forgery

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**This study aims** to analyze the authority of Land Deed Officers (PPAT) to affix the fingerprints of the parties as supplementary documents to the original deed, as well as to examine the formulation of regulations regarding the obligations of PPATs to prevent the criminal act of document forgery.

**The research method** employs a normative legal approach, focusing on the construction of PPAT obligations under Government Regulation No. 37 of 1997 on Land Deed Officers.

**The novelty** of this research lies in the construction of obligations for PPATs that have not yet been specifically regulated in either official regulations or technical provisions for deed preparation. This construction aims to provide legal certainty for general PPATs, temporary PPATs, and special PPATs in their efforts to prevent the criminal act of document forgery.

**The findings** indicate that the affixing of fingerprints on the draft deed is not explicitly regulated in either the PPAT's official regulations or the technical provisions for deed preparation. The reconstruction of the PPAT's obligation to affix fingerprints on deed drafts can be achieved by updating Article 21 of Government Regulation No. 37 of 1998, which focuses on authentication mechanisms, standardization of procedures, and sanctions.

**This study concludes** that the affixing of fingerprints to documents essentially plays a significant role, not only as a substitute for a signature but also as a preventive measure against the criminal act of document forgery. However, this attachment requires a clear legal basis so that all Public Notaries (PPATs) have a common foundation for requiring parties to affix their fingerprints on supplementary documents to be attached to the original deed.

**Keywords:** Public Notary (PPAT); Fingerprint; Document Forgery

**Abstrak**

**Penelitian ini bertujuan** untuk menganalisa kewenangan Pejabat Pembuat Akta Tanah (PPAT) dalam melekatkan sidik jari penghadap sebagai dokumen tambahan pada minuta akta, serta untuk mengkaji formulasi pengaturan kewajiban bagi PPAT untuk mencegah terjadinya tindak pidana pemalsuan surat.

**Metode penelitian** menggunakan pendekatan yuridis normatif, dengan berfokus terhadap konstruksi kewajiban PPAT dalam Peraturan Pemerintah Nomor 37 Tahun 1997 Tentang Pejabat Pembuat Akta Tanah.

**Kebaruan** penelitian ini terletak pada konstruksi kewajiban bagi PPAT yang belum diatur secara khusus dalam peraturan jabatan maupun dalam ketentuan teknis pembuatan akta.

*Konstruksi memiliki tujuan untuk memberikan kepastian hukum bagi PPAT umum, PPAT sementara, maupun PPAT khusus dalam upaya melakukan pencegahan tindak pidana pemalsuan surat.*

**Hasil Penelitian** menunjukkan bahwa pelekatan sidik jari pada minuta akta PPAT tidak diatur secara dalam regulasi jabatan PPAT maupun ketentuan teknis pembuatan akta. Rekonstruksi kewajiban PPAT untuk melekatkan sidik jari pada minuta akta dapat dilakukan dengan memperbarui ketentuan pasal 21 Peraturan Pemerintah Nomor 37 tahun 1998 yang berfokus terhadap mekanisme autentifikasi, standarisasi prosedur dan sanksi.

**Penelitian ini menyimpulkan** bahwa pelekatan dokumen sidik jari pada dasarnya memiliki peran yang signifikan, tidak hanya sebagai pengganti dari tanda tangan, tetapi juga berperan sebagai instrument preventif terhadap tindak pidana pemalsuan surat. Namun pelekatan tersebut memerlukan landasan yuridis yang jelas agar seluruh PPAT memiliki landasan yang sama untuk mewajibkan penghadap membubuhkan sidik jari pada dokumen tambahan yang akan dilekakan pada minuta akta.

**Kata kunci:** PPAT; Sidik Jari; Pemalsuan Surat

## 1. INTRODUCTION

A public official is a professional title obtained by completing all the steps prescribed by regulations to qualify for that title. Public officials provide services to the public regarding specific matters within their area of expertise, which must be carried out with a sense of authority.<sup>1</sup> As a public official, a PPAT's authority lies in drafting deeds related to land matters; a PPAT must possess competence, integrity, and analytical acumen, both in drafting deeds and in providing other services to the public.<sup>2</sup> The general concept of the term PPAT, or Land Deed Officer, is no longer unfamiliar to the public.

Legally, the position of PPAT was established in response to the need for reform in the field of land registration, as set forth in Government Regulation No. 37 of 1997 on Land Deed Officers.<sup>3</sup> The 2016 amendments to the regulations governing the Office of the Land Deed Officer did not alter the obligations in the deed drafting process, unlike the obligations of notaries, which were updated in the 2014 Notary Act. Land Deed Officers require a clear legal basis for affixing fingerprint documents to the draft deed. Affixing the party's fingerprint document to the draft notarial deed serves to prevent the criminal act of document forgery.

Previous research using the same theoretical framework was conducted by Sri Hasstuti Djalil, titled "Legal Analysis of Notarial Deeds Without Fingerprints", which states that the absence of a fingerprint sheet does not affect the authenticity of a notarial deed. The notary's

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<sup>1</sup> Dwi Augustia Ningsih dkk., "Implementasi Fungsi Pejabat Publik Yang Dapat Diemban Oleh Notaris Dalam Menjalankan Kewenangannya Sebagai Pejabat Umum," *Jurnal Notarius* 1, no. 2 (2022), <https://jurnal.umsu.ac.id/index.php/notarius/article/view/13958>.

<sup>2</sup> Dewi Rasda, Muhammad Sabir Rahman, dan Bakhtiar Tijjang, "Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Dalam Pendaftaran Peralihan Hak Milik Atas Tanah," *Jurnal Litigasi Amsir* 9, no. 1 (November 2021): 1. <http://journalstih.amsir.ac.id/index.php/julia/article/view/55/47>

<sup>3</sup> Baharudin, "Kewenangan Pejabat Pembuat Akta Tanah (PPAT) Dalam Proses Jual Beli Tanah," *Keadilan Progresif* 5, no. 1 (31 Maret 2014), <https://jurnal.ubl.ac.id/index.php/KP/article/view/441>., diakses pada 28 Desember 2023

obligation to attach a fingerprint document to the original deed serves an important purpose: to protect the notary from attempts to deny the signature and to serve as additional evidence in the event of a dispute regarding the deed they have drawn up.<sup>4</sup> A study conducted by Aninditha Budi Prihapsari titled "The Principle of Legal Certainty Regarding the Notary's Obligation to Affix the Parties' Fingerprints to the Draft Deed" states that the basis for affixing fingerprints to the draft deed is to verify the identity of the parties and to serve as evidence that the parties in question have understood and agreed to the contents of the deed that has been drawn up. The rule regarding the notary's obligation to affix fingerprint documents does not, in fact, affect the authentication of the deed but applies the principle of legal certainty in the performance of their duties as a public official.<sup>5</sup>

The urgency of this study stems from the fact that the position of the PPAT as a public official currently lacks a clear legal basis for requiring parties to affix their fingerprints to the original deed, while cases of forgery of PPAT deeds remain prevalent. Penalties for perpetrators of document forgery are established on a graduated scale, specifically to protect authentic deeds.<sup>6</sup> One of the new requirements for notaries is to attach a fingerprint document to the original deed; for evidentiary purposes, the fingerprint document can help verify whether the party who signed the document matches the identity provided.<sup>7</sup> Meanwhile, in the context of PPATs, there are currently no regulations requiring the collection of fingerprints from the parties involved, which are then affixed to the original deed.

The study focuses on analyzing how PPATs affix the parties' fingerprints to the draft deed, given that the regulations governing the PPAT position, established in 1998 or 2016, do not require PPATs to ask the parties to affix their fingerprints to the draft deed being prepared. The potential for document forgery remains wide open, particularly in areas where there are no General PPATs (Notaries who also serve as PPATs). The current PPAT regulations do not yet adequately address the need for concrete evidence regarding the criminal offense of document forgery, even though an authentic deed is considered complete among other forms of evidence if all elements of its creation are fulfilled. The need for evidence lies not only in the authentication of deeds created by PPATs, but fingerprints are also essential for broader verification and identification when a deed is tampered with, whether by the parties involved or by irresponsible PPATs and their staff.

## 2. METHOD

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<sup>4</sup> Sri Hastuti Djalil, "Analisis Hukum Terhadap Akta Notaris Yang Tidak Dibubuhi Sidik Jari" (Universitas Hasanuddin, 2020), [http://repository.unhas.ac.id/437/3/20\\_B022171058\\_Tesis%28FILEminimizer%29\\_1-2.pdf](http://repository.unhas.ac.id/437/3/20_B022171058_Tesis%28FILEminimizer%29_1-2.pdf).

<sup>5</sup> Aninditha Budi Prihapsari, "Prinsip Kepastian Hukum Kewajiban Notaris Melekatkan Sidik Jari Penghadap Pada Minuta Akta" (Thesis, Universitas Jember, 2018), [https://repository.unej.ac.id/xmlui/bitstream/handle/123456789/87991/ANINDITHA%20BUDI%20PRIHAPSARI%2c%20S.H.%2c%20M.H.-150720201053.pdf\\_.pdf?sequence=1&isAllowed=y](https://repository.unej.ac.id/xmlui/bitstream/handle/123456789/87991/ANINDITHA%20BUDI%20PRIHAPSARI%2c%20S.H.%2c%20M.H.-150720201053.pdf_.pdf?sequence=1&isAllowed=y).

<sup>6</sup> Christellia G. N. Lamatenggo, Harly S. Muaja, dan Deizen D. Rompas, "Kajian Yuridis Pemalsuan Surat Sederhana (Pasal 263 KUHP) Dalam Kaitannya dengan Pemalsuan Akta Otentik (Pasal 264 Ayat (1) Ke 1 KUHP)," *Lex Crimen X*, no. 1 (2021), <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/32029/30413>.

<sup>7</sup> Muhammad Rafiq Utama, "Kewenangan PPAT Dalam Pembuatan Akta Peralihan Hak Atas Tanah Melalui Jual Beli," *Grondwet* Vol 3, No 2 (2024), <https://doi.org/10.61863/gr.v3i2.43>.

This study can be categorized as normative legal research. Normative legal research, also known as normative law research, is a dogmatic form of research aimed at identifying rules, principles, and doctrines to address specific issues.<sup>8</sup> The approach used in this study is a conceptual approach to mitigating forgery in PPAT deeds, as well as an examination of applicable regulations or legal instruments. To support this research process, the researcher reviewed several legal sources, including the Civil Code, Law No. 1 of 2023 on the Criminal Code, Law No. 5 of 1960 on the Basic Principles of , Government Regulation No. 39 of 1998 on Land Registration, Government Regulation No. 37 of 1998 on the Position of Land Deed Officers, subsequently updated in several points by Government Regulation No. 24 of 2016, and Law No. 2 of 2014 on Amendments to Law No. 30 of 2004 on the Office of the Notary. Meanwhile, to support the analysis conducted on primary legal materials, the author also utilized secondary legal sources consisting of books, journals, draft laws, or expert opinions relevant to the research theme. This research analysis employs a systematic interpretation technique to interpret laws in relation to other regulations within the overall legal system, thereby enabling the drawing of conclusions.<sup>9</sup>

### **3. DISCUSSION**

#### **3.1. Attachment of Fingerprint Documents by the Public Notary**

Law No. 5 of 1960 on the Basic Provisions of Agrarian Law was enacted as a government measure to ensure the welfare of the people, particularly with regard to the earth's resources, water, airspace, and the resources contained therein. The mandate of Article 1, paragraph (2) of the UUPA can definitively serve as the basis that all natural resources spread across the entire territory of the Unitary State of the Republic of Indonesia (NKRI) are the right of all Indonesian people.<sup>10</sup> Among the various aspects outlined in Article 1, paragraph (2), land plays a crucial role in the government's vision of establishing an equitable and just system. Legally, the definition of land is set forth in Article 4, paragraph (1) of the Basic Agrarian Law (UUPA), where land is defined as the surface of the earth,<sup>11</sup> Ownership is a central issue in the political and legal discourse on agrarian law; the status of land influences the formation of a society's social patterns or structures.<sup>12</sup>

The position of PPAT was established to fulfill the mandate of Government Regulation No. 10 of 1961 on Land Registration. One of the specific mandates contained in this regulation is Article 19, which states that every legal act involving the transfer or conveyance of land rights must be carried out by means of a deed drawn up by or in the presence of an official appointed by the Minister of Agrarian Affairs. This mandate is further regulated in Minister of Agrarian Affairs Regulation No. 11 of 1961 on Land Deed Officers. The designation of PPATs as officials

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<sup>8</sup> Zainudin Ali, *Metodologi Penelitian Hukum* (2010). 24.

<sup>9</sup> Sudikno Mertokusumo dan A Pitlo, *Penemuan Hukum* (1993). Hal. 45

<sup>10</sup> Utama, "Kewenangan PPAT Dalam Pembuatan Akta Peralihan Hak Atas Tanah Melalui Jual Beli."

<sup>11</sup> Risti Dwi Ramasari dan Shella Aniscasary, "Tinjauan Yuridis Kekuatan Hukum Sertifikat Tanah Elektronik Berdasarkan Peraturan Menteri Agraria Dan Tata Ruang Nomor 1 Tahun 2021," *Jurnal Hukum dan Etika Kesehatan* Vol 2, No 1 (mendatang), <https://jhek.hangtuah.ac.id/index.php/jurnal/article/view/38/24>.

<sup>12</sup> Enny Agustina, "Kajian Yuridis Program Penerbitan Sertipikat Hak Atas Tanah Eleketronik," *Jurnal Fakultas Hukum Universitas Palembang* Vo. 19, No 3 (2021), <https://jurnal.unpal.ac.id/index.php/solusi/article/view/424>.

with the authority to execute deeds is intended to assist the government in the implementation of land registration as mandated by Article 19 of Law No. 5 of 1960 on the Basic Provisions of Agrarian Law (UUPA).<sup>13</sup>

The PPAT has authority that is independent of the executive, legislative, and judicial branches of government.<sup>14</sup> The authority of a PPAT and a notary shares a commonality, namely the authority to execute authentic deeds. However, the scope of a PPAT's authority to execute deeds is limited to land matters and apartment units. Article 1870 of the Civil Code states that authentic deeds possess full probative force; anyone who disputes the authenticity of a deed that has been drawn up must be able to prove the matter they are disputing; therefore, authentic deeds possess both formal and material probative force.<sup>15</sup> A deed drawn up by a Public Notary must satisfy all the requirements set forth in Article 1868 of the Civil Code. If any of the requirements in that article are not met, the legal status of the deed is downgraded to that of a private document.<sup>16</sup> As a form of evidence that fully establishes a right, a notarized deed is of great importance to the public, particularly in securing legal protection for their rights.<sup>17</sup>

The basic reference used by the PPAT to draft deeds is the annex referred to in Article 96(1) of Regulation of the Minister of Agrarian Affairs and Head of the National Land Agency No. 3 of 1997. The standard form of the deed is regulated in said regulation, so that deeds drawn up thereafter are adapted to the legal status of the parties concerned in the drafting of the deed. Regulation of the Minister of Agrarian Affairs and Head of the National Land Agency No. 3 of 1997 serves as a reference for fulfilling the formal requirements of a deed as referred to in Article 1868 of the Civil Code. The authority of the PPAT in drafting deeds is limited to a specific legal jurisdiction, as stipulated in Article 12 of Government Regulation No. 37 of 1998 on the Regulations Governing the Office of the PPAT; the legal jurisdiction of the PPAT covers a regency or city, but this has been updated with the issuance of Government Regulation No. 24 of 2016 on the Regulations Governing the Position of Land Deed Officers; the PPAT's working area now covers a single province. The jurisdictional areas of temporary PPATs and special PPATs follow the areas of assignment as government officials.<sup>18</sup>

Pursuant to Government Regulation No. 24 of 2016 on Regulations Governing Land

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<sup>13</sup> Andri Pranata, "Problematika Daerah Kerja Pejabat Pembuat Akta Tanah," *Jurnal Hukum Kenotariatan Otentik's* 3, no. 2 (2021): 2, <https://doi.org/10.35814/otentik.v3i2.2415>.

<sup>14</sup> Satrio Abdillah, "Batasan Kewenangan dan Tanggung Jawab Notaris-PPAT dalam Edukasi Prosedur Pembuatan Akta Otentik Ditinjau dari Pasal 51 KUHP," *Journal of Education Research* 4, no. 1 (Februari 2023): 67–72, <https://doi.org/10.37985/jer.v4i1.125>.

<sup>15</sup> Apriandy Iskandar Dalimunthe dkk., "Sinkronisasi Pasal 1868 Kuhp Perdata Dalam Menunjang Terselenggaranya Konsep Cyber Notary Di Indonesia," *Journal of Innovation Research and Knowledge* 3, no. 3 (2023): 705–16, <https://doi.org/10.53625/jirk.v3i3.6347>.

<sup>16</sup> Kadek Setiadewi dan I Made Hendra Wijaya, "Legalitas Akta Notaris Berbasis Cyber Notary Sebagai Akta Otentik," *Jurnal Komunikasi Hukum (JKH)* 6, no. 1 (2020): 126, <https://doi.org/10.23887/jkh.v6i1.23446>.

<sup>17</sup> Kholidah dkk., *Notaris Dan PPAT Di Indonesia Aplikasi Teori Dan Praktik Dalam Pembuatan Akta* (Yogyakarta: Semesta Aksara, 2024).

<sup>18</sup> Anak Agung Sagung Saviti Mahawishwa Karmani, I. Nyoman Putu Budiarta, dan Ni Gusti Ketut Sri Astiti, "Implementasi Peraturan Pemerintah Nomor 24 Tahun 2016 Terhadap Daerah Kerja Pejabat Pembuat Akta Tanah," *Jurnal Preferensi Hukum* 3, no. 2 (April 2022): 455–60, <https://doi.org/10.22225/jph.3.2.4962.455-460>.

Deed Officers (PPAT), PPATs can be classified into three categories: general PPATs, temporary PPATs, and special PPATs.<sup>19</sup> As a public official, a PPAT is a land deed officer authorized to issue authentic deeds regarding rights to land and units in multi-unit housing complexes. Second, there is the temporary PPAT, an official appointed by the government to carry out the task of drafting land deeds in areas where there are not yet enough regular PPATs. The officials appointed by the government to serve as temporary PPATs are sub-district heads and village heads. Third, there is the special PPAT, an official from the land office assigned to draft special deeds as part of the implementation of government programs.<sup>20</sup> The authority held by the designated official is to draw up deeds regarding legal acts in accordance with the duties they are required to perform.<sup>21</sup>

The authority held by a PPAT is authority acquired by attribution. Philipus M. Hadjon explains that authority (*bevoegheid*) refers to legal or formal power (*resmacht*). Philipus identifies three sources of authority: authority by attribution, authority by delegation, and mandate. The authority in question means that actions taken by the government must be based on legitimate authority or formal authority.<sup>22</sup>

Historically, the requirement to attach a fingerprint card or sheet to a notarial deed arose due to concerns and the high number of disputes involving notaries, particularly prior to 2014. Disputes frequently arose when one of the parties involved acted in bad faith or with malicious intent during the deed drafting process. The method used was to modify their signature, even if only a small part of it was altered and the modified signature remained largely identical to the original.<sup>23</sup> Under such circumstances, a notary would certainly have difficulty distinguishing between and analyzing which signatures are forged and which are genuine. To determine whether the signatures affixed to the deed by the parties involved are authentic, an examination by a specialized expert is required, or the signatures must be sent directly to the forensic laboratory (*Puslabfor*) to verify their authenticity.

The provision requiring the affixing of a fingerprint on the draft deed was originally intended as a substitute for the signature of a party who was unable to sign the deed. Based on the provisions contained in the Notary Law, a substitute for a signature on a draft deed is referred to as a surrogate; specifically, surrogates are regulated in Article 44(1) of Law No. 2 of 2014 on the Office of the Notary. That provision stipulates that after the deed is read aloud by

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<sup>19</sup> Hatta Isnaini Wahyu Utomo, *Memahami Peraturan Jabatan Pejabat Pembuat Akta Tanah* (Jakarta: Kencana, 2020). 96.

<sup>20</sup> Komang Febrinayanti Dantes dan I. Gusti Apsari Hadi, "Kekuatan Hukum Akta Jual Beli Yang Dibuah Oleh Camat Dalam Kedudukannya Sebagai Pejabat Pembuat Akta Tanah Sementara (Ppats) Ditinjau Dari Peraturan Pemerintah Nomor 24 Tahun 2016 Tentang Peraturan Jabatan Ppat," *Jurnal Pendidikan Kewarganegaraan Undiksha* 9, no. 3 (2021): 3, <https://doi.org/10.23887/jpku.v9i3.40163>.

<sup>21</sup> Akur Nurasa dan Dian Aries Mujiburohman, *Tuntunan Pembuatan Akta Tanah* (Sleman: STPN Press, 2020). 9-10.

<sup>22</sup> Syendi Surya Atmaja, "Pelaksanaan Memorandum of Understanding Antara Badan Pengawasan Keuangan dan Pembangunan Dan Kejaksaaan Tinggi Terhadap Pengawasan Keuangan Pemerintah Provinsi Lampung," *Digilib Unila*, 2015, <https://digilib.unila.ac.id/10556/>.

<sup>23</sup> Virgin Nigita, "Urgensi Dan Implikasi Hukum Penerapan Sidik Jari Penghadap/Para Penghadap/Para Pihak Pada Minuta Akta Notaris (Studi Terhadap Pasal 16 Ayat (1) Huruf C Undang-Undang Nomor 2 Tahun 2014 Tentang Jabatan Notaris)" (Thesis, Universitas Islam Indonesia, 2017), <https://dspace.uui.ac.id/handle/123456789/9227>. 91

the Notary, it is signed by the parties or parties to the deed, the witnesses present, and the Notary; however, if one of the parties to the deed is unable to affix their signature to the deed, they are required to explain the reason. The surrogate contains a statement from the party written by the Notary regarding the reason why that party is unable to affix their signature to the deed. This statement is called a "statement of inability to sign."

G.H.S. Lumban Tobing explains that a signature may be replaced by a surrogate under the law in the following circumstances. First, the party is unable to sign the deed due to a reading disability or illiteracy. Second, the party is unable to sign, even if they are capable of writing, in cases where a person's condition, whether temporary or permanent, prevents them from affixing their signature to the deed, even if they possess the ability to write.<sup>24</sup>

In certain special circumstances, such as when a party is unable to sign due to an inability to read or write but is still capable of understanding the entire contents of the deed that has been read and explained to them, the party affixes their fingerprint to the original deed as a form of consent to its contents. However, when the party is unable to sign due to a temporary condition and the party has the ability to read and write but their physical condition prevents them from affixing a signature, such as when the party experiences tremors or shaking while writing, the Notary is required to request that the party attach a medical certificate from a doctor regarding the condition that renders them unable to sign the deed. For parties whose condition is deemed to prevent them from affixing both their signature and fingerprint simultaneously, Habib Adjie explains: "When a party cannot affix their signature, the substitute for that signature is called a 'surrogate,' which has the same legal force as a signature. The statement made to replace the signature is written by the Notary, stating that the party was unable to affix their signature due to a specific impediment, and this is explicitly stated in the deed."<sup>25</sup>

The structure of a PPAT deed is regulated by Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 16 of 2021 concerning the Third Amendment to Regulation of the Minister of Agrarian Affairs and Spatial Planning/ Head of the National Land Agency No. 3 of 1997 Concerning Implementing Provisions of Government Regulation No. 24 of 1997, Also Known as PERKABPN 2021.<sup>26</sup> Although the standard regulations regarding the form of deeds have undergone several changes, there have been no changes to the closing section of the deed, which continues to state that the contents of the deed have been read aloud and explained by the PPAT to the parties and, as proof of the truth of the statements made by the first party and the second party, the deed is signed or thumbprinted. The word used in the annex to the

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<sup>24</sup> G.H.S. Lumban Tobing, *Peraturan Jabatan Notaris* (Erlangga, 1992). 41.

<sup>25</sup> Gusti Ayu Mahadewi Larashati, "Pertanggungjawaban Notaris Terhadap Keabsahan Akta Autentik Yang Menggunakan Surrogate," *MORALITY: Jurnal Ilmu Hukum* 9, no. 1 (Juni 2023): 1, <https://doi.org/10.52947/morality.v9i1.335>.

<sup>26</sup> Yulia Syanu Citra Pertiwi dkk., "Autentikasi Akta Pejabat Pembuat Akta Tanah Yang Pengesahan Aktanya Tidak Sesuai Pada Saat Penandatanganan Para Pihak Dihadapan Pejabat Pembuat Akta Tanah," *Mimbar Yustitia* 5 (2021). <https://e-jurnal.unisda.ac.id/index.php/mimbar/article/view/3066/1983>

regulation is “or,” which implies an alternative: when a party cannot affix a signature, a thumbprint (surrogate) is sufficient to be affixed to the original deed.

The fingerprint document referred to in the 2014 Notary Law, if not attached to the original deed, will not fundamentally affect the authentication of the deed. The fingerprint document is not included among the elements referred to in Article 1886 of the Civil Code regarding authentic deeds. If a notary fails to attach the fingerprint document to the deed, this does not result in the deed being classified as a private document; however, such negligence may be subject to administrative sanctions as regulated by the association. Within the scope of PPATs, the techniques and structure for drafting deeds are regulated in the Appendix to PERKABPN No. 8 of 2012; these provisions govern the forms of deeds that may be used by PPATs, but there is no provision requiring PPATs to attach the parties’ fingerprint documents as mandated by the Notary Law for notaries.

Fingerprint documents are an integral part of the notarial deed draft. The attachment of these documents is part of the protocol, which holds the status of a state archive and must be retained by the notary in accordance with applicable regulations. Normatively, the notary’s protocol set forth in Article 1, Paragraph 13 of the 2014 Notary Law and the PPAT’s protocol in Article 1, Paragraph 5 of the 2016 PPAT Regulation do not have substantial differences; however, the PPAT’s protocol includes several specific documents that must be attached, such as deeds and other supporting evidence. Another fundamental difference lies in the absence of an explicit obligation for the PPAT to attach the parties’ fingerprint documents to the deed, in contrast to the notary’s obligation under Article 16(1)(c) of the 2014 Notary Law.

In practice, the documents referred to in both the notary and PPAT protocols are attached to the deed in accordance with the required document composition. To effect a transfer of rights, the deed is typically bundled sequentially with the parties’ identification documents, such as ID cards, driver’s licenses, passports, family cards, marriage certificates, along with other documents serving as proof of ownership of the object to be transferred or the legal act to be performed. The mechanism for binding deeds and documents applies to both PPATs, as regulated in Article 25(1), and to Notaries, as regulated in Article 16(1)(g). The key distinction in the completeness of documents between the two (PPATs and Notaries) lies in the parties’ fingerprint documents.

The disparity in compliance with protocols between notaries and PPATs is clearly evident, particularly when examined through the lens of the documents required to be attached to the deed. Notaries are explicitly required to attach the parties’ fingerprint documents to the deed draft, whereas such a requirement is not found in the regulations governing the PPAT position. This disparity in compliance obligations creates differing standards for the preparation of deeds, particularly regarding the achievement of legal protection for the parties involved. Such conditions indicate an imbalance that is inconsistent with the principle of equal legal protection for the parties involved in a deed, even though both PPATs and Notaries hold the status of public officials.

The absence of specific and comprehensive regulations regarding the mechanism for

affixing the parties' fingerprints in the PPAT's official regulations creates a legal vacuum. The potential for inconsistencies in the practice of affixing fingerprints will impact legal certainty for the parties in obtaining protection regarding the identity provided. This can serve as an initial step toward promoting the harmonization of PPAT regulations with the Notary Public Act. The purpose of harmonization is certainly not merely to achieve administrative interests, but to achieve legal certainty and justice for all parties involved in a deed.

To support the analysis of the applicable regulations, the author conducted direct interviews with PPATs to understand the implementation of current regulations as well as the "living law" regarding the use of parties' fingerprint documents in PPAT deeds. The interview results are as follows: first, Notary-PPAT Leny Wibowo in Batu City, S.H., M.Kn., explained that the mechanism for affixing the parties' fingerprint documents to the notarial deed draft is based on the provisions set forth in Article 16(1)(c) of Law No. 2 of 2014 Amending Law No. 30 of 2004 on the Office of the Notary. The affixing of fingerprints is carried out by taking all of the party's fingerprints, consisting of 5 right fingerprints and 5 left fingerprints, with each fingerprint affixed to the column provided. According to an explanation by Ms. Leny Wibowo, the authority of the PPAT to affix the parties' fingerprints on the draft deed is based on the need for self-protection (for the PPAT), which can serve as supplementary evidence or reinforcement during an examination should a dispute arise regarding the deed in the future. For the PPAT, this is a common practice in the legal world.

The second Notary-PPAT in Malang Regency, Faraitodhie Kusuma Marhaedra, S.H., M.Kn., explained that the mechanism for affixing the parties' fingerprints to the draft deed by both the PPAT and the Notary is not significantly different; both are provided with a special document to affix fingerprints after the deed has been signed by the parties. Ms. Faraitodhie Kusuma explained that the legal basis for attaching fingerprint documents to the Notary's deed draft is Article 16(1)(c) of the 2014 Notary Office Act. Meanwhile, the affixing of fingerprint documents on the PPAT deed minutes is based on the purpose of the Notary's obligation to affix fingerprints on the deed minutes as a form of self-protection.

One of the three Notaries-PPATs in Malang Regency, Evina Dhana H., S.H., M.Kn., explained the mechanism for affixing fingerprints to a notarial deed draft: when the draft is read aloud in the presence of the parties, the Notary prepares a separate fingerprint sheet. The format or form of the fingerprint sheet is not explicitly specified in the Notary Public Act or other regulations. Meanwhile, the sheet used for affixing fingerprints on PPAT deeds differs slightly from the fingerprint sheet for notarial deeds; this difference lies in the numbering of the fingerprint sheet, which consists of the deed number sequence followed by the year.

The results of the interviews with the three informants can be used to affirm the existence of a legal paradox in PPAT practice. The affixing of the party's fingerprint is carried out without a regulatory basis within the hierarchy of PPAT Office Regulations; in the application of the 2014 Notary Law (UUJN) within the PPAT profession, the principle of *Lex Specialis derogat legi generalis* does not apply. The attempt to adopt Article 16(1) of the 2014 Notary Law (UUJN) lacks legally binding force regarding PPAT deed documents. This situation

raises legal implications regarding the authority of PPATs as well as legal certainty concerning the standards and mechanisms for fingerprint affixation. The affixation of fingerprint documents by PPATs is fundamentally intended for a good purpose: to accommodate the need for proof of the signature affixed by the party to the deed. Should a denial of the signature or a dispute arise in the future, such documents can serve as a protective instrument for the PPAT. Potential legal risks that may arise later, whether in the realm of civil litigation or criminal charges, can at least be addressed by the PPAT using strong evidence. As a foundational basis used by general PPATs (Notaries-PPATs), temporary PPATs, and special PPATs, the authority to affix fingerprint documents must be clearly and comprehensively regulated so that it can be used to prevent the criminal act of document forgery, particularly as it pertains to PPAT deeds.

### **3.2. Clarification of the PPAT's Obligation to Attach Fingerprint Documents to the Draft Deed to Prevent the Criminal Offense of Document Forgery**

Indonesia is a country that follows a written legal system, or civil law, in which the legal system prioritizes regulations or laws that have been formally enacted through statutes or other regulations.<sup>27</sup> Law No. 12 of 2011 on the Formation of Legislation serves as the foundation for how regulations are created in Indonesia. Article 5 of Law No. 12 of 2011 stipulates that the process of formulating legislation must be conducted in accordance with the principles of legislative drafting, which include clarity of purpose, institutional framework, hierarchy, effectiveness, transparency, and so on.

The legal principles governing the enactment of legislation must be carefully observed to ensure that the regulations or laws enacted and subsequently enforced do not conflict with these principles. One of the principles of legislative drafting is the principle of *lex superior derogate legi inferiori*, which means that a law of higher rank may supersede a law of lower rank. This principle applies to regulations of differing ranks that are in conflict with one another.<sup>28</sup> The hierarchy of legislation in Indonesia is set forth in Article 7(1) of Law No. 12 of 2011 on the Formation of Legislation.<sup>29</sup>

The duties and authorities entrusted by the state to public officials, including PPATs, must be based on clear provisions appropriate to their respective levels. In the context of preventing document forgery, the affixing of the applicant's fingerprints can be used as a measure against criminal acts of document forgery in PPAT deeds. Preventing criminal acts of document forgery in PPAT deeds naturally requires several approaches. A normative approach can be implemented by improving existing regulations for PPATs; to support regulatory

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<sup>27</sup> Firdaus Muhamad Iqbal, "Kontribusi Sistem Civil Law (Eropa Kontinental) Terhadap Perkembangan Sistem Hukum Di Indonesia," *Jurnal Dialektika Hukum* 4, no. 2 (2022): 180–200, <https://doi.org/10.36859/jdh.v4i2.1120>.

<sup>28</sup> *Memahami 3 Asas Hukum: Lex Superior, Lex Specialis, dan Lex Posterior*, t.t., diakses 17 Agustus 2024, <https://accounting.binus.ac.id/2022/11/22/memahami-3-asas-hukum-lex-superior-lex-specialis-dan-lex-posterior/>.

<sup>29</sup> Fathorrahman, "Politik Hukum Hierarki Peraturan Perundang-Undangan Indonesia," *HUKMY: Jurnal Hukum* 1, no. 1 (April 2021): 73–90, <https://doi.org/10.35316/hukmy.2021.v1i1.73-90>.

updates, an interpersonal approach is essential to foster compliance and shared understanding.

Document forgery can be mitigated in several ways; first, by educating the public on maintaining harmony through consistent honesty, particularly when using legal documents. Document security systems can be strengthened by verifying fingerprints, iris scans, and other biometric data. However, given Indonesia's current capacity to adapt to technology, the most feasible and relevant short-term measure is the affixing of fingerprints on deeds created by PPATs. Such affixing cannot be carried out without a clear legal basis, given that PPATs are public officials whose authority to serve the public is derived from mandates in laws or other regulations. The affixing of fingerprints must be regulated to ensure a clear legal framework and avoid legal uncertainty.

Soerjono Soekanto has explained the function of law as a mechanism of social control, often referred to as social control. The concept of social control is that law possesses a coercive nature, compelling all elements of society without exception to comply with applicable regulations or laws. Forms of social control based on this concept can be categorized into two parts: preventive measures and repressive measures. Etymologically, preventive measures can be interpreted as anticipating or preventing something from occurring. The regulation requiring PPATs to affix fingerprint documents to the minutes of deeds serves as a preventive measure to prevent or at least minimize the occurrence of criminal acts of document forgery regarding PPAT deeds.<sup>30</sup> In addition to serving as a precaution in the event of a dispute, this obligation can be invoked by the PPAT to obtain legal protection and defend their rights regarding their work as a PPAT, particularly when the entire process of drafting the deed of transfer of rights has been carried out in accordance with applicable regulations.<sup>31</sup>

Preventive measures, which serve to deter the commission of criminal acts of document forgery, particularly in the context of PPAT deeds, require complementary measures, namely repressive measures, which play a crucial role in addressing such crimes once they have occurred. Repressive measures target the perpetrators or legal entities that violate applicable regulations. The penalties imposed on the perpetrators are commensurate with the nature of the violation. Perpetrators of the criminal act of forging PPAT deeds face a maximum prison sentence of 8 years, as stipulated in Article 264 of the Criminal Code. Repressive prevention measures encompass several stages, including the procedures by which law enforcement officials conduct investigations, inquiries, prosecutions, as well as the execution of sentences and rehabilitation of perpetrators of document forgery.<sup>32</sup>

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<sup>30</sup> "Perbedaan Upaya Preventif dan Represif serta Contohnya," diakses 16 Desember 2024, <https://www.hukumonline.com/berita/a/upaya-preventif-lt63e0813b74769/>.

<sup>31</sup> Utama, "Kewenangan PPAT Dalam Pembuatan Akta Peralihan Hak Atas Tanah Melalui Jual Beli." <https://ejournal.grondwet.id/index.php/gr/article/view/43/35>

<sup>32</sup> Azelchie Caroline, Lisnawaty W. Badu, dan Nuvazria Achir, "Faktor Penyebab Dan Upaya Penanggulangan Tindak Pidana Penggelapan Kepemilikan Hak Atas Tanah: (Studi Di Desa Pilohayanga)," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (Mei 2024): 44–53, <https://doi.org/10.62383/amandemen.v1i3.245>.

The restructuring of PPAT obligations can be carried out through the Minister of Law's authority to draft government regulations; in this context, the new obligations are intended to update the existing PPAT regulations. To avoid a conflict of norms when formulating new regulations, the draft revision of PPAT obligations can begin by taking into account the norms set forth in Article 21 of Government Regulation No. 37 of 1998, which governs the duties of PPATs in performing their duties. This article is the focus of the updates that must be made, given that the 2016 PPAT regulation did not alter the content of previously enacted regulations. The substantive content that can be used for planning the updates should at least cover the following key points:

First, the purpose of attaching fingerprint documents is to enhance security for both the PPAT and the parties involved. Updates to the existing regulations could begin by adding a provision to Article 4 of Government Regulation No. 37 of 1998, which governs the obligation of the PPAT to perform biometric authentication by taking the fingerprints of each party as referred to in Article 1, point 8 of Government Regulation No. 37 of 1998. These fingerprints are affixed to a biometric document sheet that forms part of the PPAT protocol. After the fingerprints are taken, this document sheet is attached to the deed along with the other supporting documents.

To ensure standardization, provisions regarding the technical aspects of fingerprint collection and storage must be established. To prevent multiple interpretations, as previously occurred during the update of notary obligations in the 2014 Land Law (UUJN), Article 5 may be added to provide legal certainty regarding the practice of affixing fingerprints. The standardization referred to here pertains to regulations established by the minister responsible for land affairs. Professional associations such as PPAT or IPPAT may develop guidelines regarding the technical implementation, guided by the ministerial regulations as stipulated in the preceding article.

As a measure to address the loss or damage of fingerprint documents that have been collected, Article 6 may be used to regulate the process of re-collecting the applicant's fingerprints. The PPAT is required to file a report via a minutes of proceedings or a statement regarding the loss of the fingerprint document, which will subsequently be submitted to the organization's management as well as to parties with an interest in the matter. Re-collection may be conducted based on a decision by the organization's management, which has the authority to assess and determine whether re-collection of the applicant's fingerprints is necessary. The reporting obligation is intended to protect the applicant's personal data, as stipulated in applicable laws and regulations.

In certain circumstances where the applicant is unable to provide fingerprints due to medical reasons, the obligations of the PPAT must be specifically regulated. These provisions may be outlined in Article 7 regarding the specification of the party's medical condition, which must be based on a medical certificate from a doctor. If fingerprinting can be performed using another body part, the process must still be conducted in accordance with the specific

regulations established by the organization. If fingerprinting is no longer feasible, the PPAT must include a statement at the end of the deed referencing the attached medical certificate.

New obligations must, of course, be balanced with legal consequences. Penalties for PPATs who fail to perform their duties must be clearly defined, given that the primary purpose of fingerprinting is to ensure security for all parties, including the witnesses present who participate in signing the deed. Sanctions may be tiered under Article 8, ranging from administrative sanctions such as reprimands to dismissal from office or other sanctions arising from the failure to fulfill the fingerprinting obligation. Given that the primary purpose of fingerprinting is protection, the PPAT must carefully consider the consequences if this obligation is not fulfilled.

The implementation of the new regulations will certainly require a process and adjustments to the work systems within the scope of the PPAT's office. Although the spheres of authority of Notaries and PPATs differ, the academic text of the UJUN can be used as a basis for reflection before the PPAT regulations are updated. In addition to the legal basis, several technical provisions must be prepared, given the dynamics that arose following the enactment of the 2014 Land Deed Act regarding new obligations for notaries. The executive board of the Association of Land Deed Officers plays a crucial role in establishing standard operating procedures (SOPs) for the collection of fingerprints from parties involved.

The relevance of fingerprint collection to reducing the incidence of document forgery can be examined through the data verification process for parties. The Supreme Court issued Decision No. 1974 K/Pdt/2001, one of whose rulings was to overturn the decision issued by the District Court No. 445/Pdt.G/1999/PT.Bdg, regarding the unlawful acts committed by the defendant in a land sale dispute. In essence, the case revolved around the forgery of the plaintiff's signature by the defendant; however, the court's decision did not include a criminal verdict or findings from a forensic laboratory stating that the signature on the deed in question had been forged or was non-identical.

In another forgery case, as seen in Judgment No. 248/Pid.B/2022/PN.Jkt.Brt, the defendants, in this instance two PPATs simultaneously, were proven beyond a reasonable doubt to have participated in forging a document in a land sale deed. This forgery was committed by the PPATs by forging the seller's signature on the deed they drafted. Following an examination during the trial and supported by forensic laboratory test results, the signatures of all parties whose legal status could be categorized as the seller were found to be non-identical. The PPAT who committed the forgery in that case was sentenced to 2 years and 8 months' imprisonment and a fine of Rp.1,000,000,000 (one billion rupiah).

Reflecting on the above case, the affixing of the party's fingerprints on a PPAT deed, if mandated as a normative requirement, can serve as a preventive instrument against the criminal act of document forgery. The weak protection of the party's personal data in the context of PPAT deed preparation, which has historically been sufficient with a signature alone, creates an opening for the forgery of signatures. Fingerprints can serve as an effective

preventive measure through biometric verification mechanisms to ensure that the party is indeed the person whose physical data is presented to the PPAT.

The primary role in driving legal reform within the scope of PPAT operations lies with the government, specifically the Ministry of Agrarian Affairs and Spatial Planning and the National Land Agency (ATR/BPN). The development of legal instruments should be adapted to technological advancements. To facilitate the authentication process, a dedicated government platform linked to the applicant's personal data is necessary. While the burden of proof does not fall on the PPAT, such a platform would streamline the verification of physical data against the digital data presented by the applicant before it is affixed to the deed.

The consequence of not attaching a fingerprint document to the PPAT deed draft, if viewed narrowly, does not result in the degradation of the authentic deed into a private deed. The status of the fingerprint document plays a very important role, primarily as two-way protection. The identity of the party, which has been verified through a biometric authentication system, can serve as protection in the event of a future denial of the signature affixed to the deed. Furthermore, from the perspective of data security regarding the party's identity, this safeguards against any malicious intent by the PPAT or personnel within their office to collude in falsifying information within the deed.

#### **4. CONCLUSION**

Based on the analysis conducted, it is evident that, to date, PPATs do not have a legal basis regarding the authority or obligations explicitly mandated by their official regulations to attach fingerprint sheets to deeds. Based on interviews with several sources, the practice of attaching fingerprints has so far been carried out by adopting the provisions of Article 16(1) of the 2014 Notary Law and is not based on regulations within the PPAT's official hierarchy. This situation indicates a legal vacuum that could lead to criminal acts of document forgery in PPAT deeds. The inconsistency in affixing practices is confusing, particularly in areas where there are no public PPATs. The affixing of the party's fingerprint serves as a preventive measure to deter the criminal act of document forgery. Regulations regarding this obligation could be recommended in the revision of Government Regulation No. 37 of 1998 on the Position of Land Deed Officers. The affixing of fingerprints can also function as a two-way protection system for both the PPAT and the party involved. The restructuring of these obligations can begin by adding provisions governing the mechanisms, standardization, and tiered sanctions to address legal gaps and enhance the credibility of the PPAT profession.

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