

An analysis of the implementation of land deed official service fees for low-income individuals in Banda Aceh and Aceh Besar Regency

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Abstract

Article 19 of the Basic Agrarian Law (Law No.5 of 1960) mandates land registration to ensure legal certainty; this is further supported by Government Regulation (PP) No.24 of 2016 concerning the Office of Land Deed Officials (PPAT) and Article 2 of the Regulation of the Minister of ATR/Head of BPN (Permen ATR/ Head of BPN) No.33 of 2021, which mandates the provision of deed-drafting services free of charge to the underprivileged. However, the implementation of these provisions has not proceeded as intended. Therefore, this study aims to analyze the effectiveness of the implementation of Article 2 of the Permen ATR/ Head of BPN No.33 of 2021 in Banda Aceh and Aceh Besar Regency.

Keywords: PPAT service fees, legal effectiveness, underprivileged persons

Introduction

Social justice is a core principle serving as a philosophical foundation for the Indonesian state, as enshrined in the fifth precept of Pancasila and the Preamble to the 1945 Constitution. ^[1] In the context of legal development, this value mandates that every citizen possesses equal rights and opportunities to access public services, including legal services related to land rights. ^[2]

In a state governed by the rule of law like Indonesia, land is not merely a commodity or economic object; rather, it encompasses highly complex sociological, cultural, and juridical dimensions. Under the theory of National Agrarian Law—grounded in the Basic Agrarian Law (UUPA) No.5 of 1960—land possesses a social function. This is stipulated in Article 6, which declares that "all land rights have a social function," meaning land serves to support not only the interests of the community or the Indonesian people as a whole but also the interests of the nation and the state. ^[3]

This provision implies that the exercise of land rights must take social justice into account, including ensuring easy access to legal certainty for the entire population without exception, including economically disadvantaged groups. ^[4]

Land plays a vital role in the lives of the Indonesian people, serving as a source of livelihood, a marker of social identity, and a foundation for sustainable living. ^[5] Consequently, the holding and transfer of land rights must be conducted in an orderly and lawful manner, securing legal recognition through the land administration system. A crucial element of this system is the Land Deed Official (PPAT), who is authorized to draft authentic deeds regarding legal actions concerning land rights.

Article 6 (2) of PP No. 24 of 1997 concerning Land Registration states that "in the implementation of land registration, the Head of the Land Office (BPN) is assisted by the PPAT and other assigned officials..."

A crucial instrument within Indonesia's land law system is the authentic deed drawn up by a PPAT. As stipulated in Article 37 (1) of PP No. 24 of 1997, a PPAT is authorized to draft deeds for specific legal acts concerning land rights. Such a deed constitutes a formal and material requirement for the land registration process at the Land Office; this

aligns with Article 3 (1) of PP No.37 of 1998 regarding the regulation of the PPAT office, which grants the PPAT the authority to create authentic deeds for legal acts involving land rights.

Although the PPAT is an integral part of the legal system ensuring legal certainty in land matters, their services do not yet fully reach the interests of the economically disadvantaged. A primary reason for this is the cost of PPAT services, which is often perceived as high—particularly by low-income individuals - thereby creating a significant barrier to equitable access to land legal services. ^[6] Consequently, many financially disadvantaged people resort to conducting sale-and-purchase or inheritance transactions through informal, private agreements (without authentic deeds) or official land registration procedures. ^[7]

To address this issue, the Government—through Article 32 (2) of PP No. 37 of 1998 (as amended by PP No. 24 of 2016)—mandates that PPATs and Temporary PPATs (PPATS) provide services free of charge to individuals who are financially disadvantaged. Furthermore, the verification of such disadvantaged status is regulated in Article 2 (1) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency (Permen ATR/Head of BPN) No. 33 of 2021 concerning PPAT Service Fees, which reiterates the obligation for PPATs and PPATS to provide deed-drafting services without charge to the financially disadvantaged.

This regulation demonstrates the State's commitment to the principles of social justice and access to justice, particularly for those who lack the economic means to access formal services. The inclusion of Article 2 in the Permen ATR/Head of BPN No.33 of 2021 represents a form of legal affirmative action—a strategy of legal intervention designed to rectify structural inequalities affecting the poor. Through this provision, the state expects PPAT to act not merely as public officials performing formal legal functions, but also as public servants who ensure access to justice for all segments of society. ^[8]

Since the enactment of the Permen ATR/Kepala BPN No.33 of 2021, the implementation of Article 2 has faced various obstacles. Although Article 2 (2) mandates a Certificate of

Incapacity (SKTM) as the basis for providing services free of charge, the regulation lacks detailed provisions regarding criteria for the economically disadvantaged, implementation procedures, and mechanisms for supervision or evaluation. This situation creates the potential for divergent interpretations and applications in the field, thereby affecting the effectiveness with which PPAT and PPATS fulfill their obligation to provide deed-drafting services at no cost to the economically disadvantaged.

Research Methods

This study employs a socio-legal (empirical-juridical) method to achieve a comprehensive analysis.^[9] This method is used to observe the effectiveness of legal implementation in the field through in-depth interviews and case studies regarding the application of Article 2 of Permen ATR/Kepala BPN No.33 of 2021. The socio-legal method was selected because it can illustrate how legal norms governing the provision of services without honorarium are applied in practice.^[10]

Primary data for this study were collected through in-depth interviews with key informants—specifically, several PPAT and PPATS officials serving in Aceh Besar Regency. Additionally, interviews were conducted with members of the public who had been involved in land deed drafting to gather information on common issues arising from the process, as well as with officials from the BPN responsible for issuing the regulation.

Secondary data were gathered from various relevant written sources. Academic literature sources include textbooks on land law and notarial law serving as theoretical references, legal dictionaries for understanding specialized terminology, and relevant scientific journals providing the latest insights in the field.

The research was conducted in Aceh Besar Regency, chosen due to the region's characteristics and dynamic land-related activities. The selection of this location also took into account the urgent need to optimize the role of PPATS in ensuring legal certainty regarding land rights in the area. The study population and sample of respondents comprised three PPAT, two PPATS, one representative from the Aceh Regional Office of the BPN, three individuals from low-income backgrounds, and one village head. Following the collection of primary and secondary data, the information was analyzed using a qualitative descriptive approach; this involved presenting the field research findings (primary data) and correlating them with the literature review (secondary data). The research findings were compiled using a descriptive method to provide a realistic overview of the results obtained in the field, with the aim of addressing the previously formulated research problem.

Result and Discussion

1. General Overview of the Research Site

Banda Aceh is the capital of Aceh Province, occupying a strategic position as a hub for government, the economy, and public services in Indonesia's westernmost region. Situated at the northern tip of Sumatra, the city borders the Strait of Malacca and is encircled by the Aceh Besar Regency.^[11] Administratively, Banda Aceh covers an area of approximately 61.36 km², divided into several districts and “gampong” (villages). Its population exceeds 265,000, indicating a relatively high population density.^[12] In terms of regional function, Banda Aceh serves as a center for

services, trade, education, and land administration. This role drives a high demand for land-related legal services, including the drafting of land deeds by PPAT.^[13] Meanwhile, Aceh Besar Regency geographically surrounds Banda Aceh and plays a vital role as a hinterland area. The regency spans approximately 2,974.12 km² with a population of over 300,000 distributed across various districts and villages.^[14] Geographically, Aceh Besar features diverse terrain, ranging from lowlands to hilly and coastal areas. Its position surrounding Banda Aceh fosters close interconnections in social, economic, and public service aspects.^[15] Regarding land matters, Aceh Besar differs from Banda Aceh; it contains significant amounts of customary land (tanah adat), agricultural land, and land that has not yet been formally registered. Sociologically, the communities in both Banda Aceh and Aceh Besar are strongly influenced by customary values and Islamic Sharia. This influences land law practices, such as trust-based transactions, intra-family land grants, and the management of inherited land.^[16]

Theoretically, this situation reflects a conflict between the instrumental function of law (as a tool for social policy) and the economic function of the legal profession. From the perspective of the sociology of law, the law does not operate in a vacuum but is shaped by the surrounding social and economic structures.^[17] Thus, the ineffective implementation of Article 2 cannot be viewed solely as a failure of the legal norm itself, but also as a reflection of structural resistance to policy change.

Furthermore, when analyzed through the lens of “law as a tool of social engineering,” this policy lacks the adequate instruments needed to drive changes in social behavior, particularly among PPAT. Consequently, the law has failed to fulfill its transformational function.

This study examines the implementation of the provisions of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 in the Banda Aceh and Aceh Besar areas. Normatively, the regulation mandates that PPATs provide land deed drafting services free of charge to underprivileged members of the community. However, in practice, the implementation of this provision faces various challenges, including a lack of public awareness, the absence of a clear verification mechanism regarding the “underprivileged” category, and factors related to the professionalism and economic considerations of the PPATs themselves.

The selection of Banda Aceh and Aceh Besar as research sites is highly relevant, as these two areas represent contrasting urban and rural characteristics, exhibit high levels of land-related activity, and reflect the strong influence of customary values and Sharia law on legal practices within the community.

2. The Effectiveness of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 Based on the Theory of Legal Effectiveness

The effectiveness of law essentially concerns the extent to which a legal norm functions and achieves its established objectives. In the context of this study, the effectiveness of the provisions of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 is measured by the extent to which the obligation of PPAT to provide services free of charge to the underprivileged can be effectively implemented in the Banda Aceh and Aceh Besar regions.

According to Soerjono Soekanto, legal effectiveness is influenced by five key factors: the law itself, law enforcement agents, facilities and infrastructure, the community, and culture.^[18]

a. Effectiveness Based on Legal Factors

The provisions of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 represent a policy normatively aimed at achieving social justice through the provision of cost-free services by PPAT to the underprivileged. Fundamentally, this norm reflects the spirit of the welfare state, wherein the state seeks to ensure access to legal services for the entire population without discrimination. However, field research in Banda Aceh and Aceh Besar reveals that the effectiveness of this norm is hampered by fundamental issues regarding its legal substance, which directly impact its practical application.

Empirically, PPATs have indicated that the provision lacks clarity regarding implementation, particularly concerning the definition of "underprivileged" and the method of verifying such status. This ambiguity not only creates confusion during implementation but also allows for widely varying interpretations among individual PPATs. In practice, a certificate of indigence is often deemed insufficient grounds for a PPAT to provide free services, as such documents are considered easily obtainable and may not accurately reflect actual economic circumstances. This was highlighted by a respondent who noted that verification of indigence status is merely administrative—relying on the existence of the document without a deeper substantive review.^[19] Consequently, the verification process—which ought to serve as a primary mechanism for ensuring the policy reaches its intended beneficiaries—devolves into an administrative procedure devoid of the essence of justice.

Furthermore, field experience demonstrates that PPATs do not rely solely on legal norms when determining eligibility for free services; they also consider factors such as transaction value, the intended use of funds, and subjective assessments of economic conditions. In certain instances, even when an individual presents a certificate of indigence, the PPAT conducts an additional evaluation based on the value of the land being transferred or the profit derived from the transaction. This indicates that the legal norm lacks sufficient binding force, causing its implementation to hinge on individual discretion.

From the perspective of legal theory, this situation illustrates the existence of normative uncertainty, which undermines legal certainty. Soerjono Soekanto emphasizes that a crucial prerequisite for the success of the law is the existence of clear and certain norms that can serve as a reference for both the public and law enforcement officials.^[20] When norms fail to establish clear boundaries, the law loses its primary role as a mechanism for regulating societal behavior; in this context, the provisions of Article 2 fail to provide consistent norms, resulting in non-uniform implementation among PPAT.

Article 2 also reflects a lack of alignment with the realities of transactional land law practices. In practice, the transfer of land rights almost invariably involves specific economic value, meaning that the parties involved in the transaction generally derive financial gain. This aligns with the views expressed by respondents, who noted that the public does not seek free PPAT services but merely requests a reduction in costs.^[21] This situation demonstrates that the legal norm is not fully aligned with the needs and behaviors of the public, making effective implementation difficult.

Conceptually, this situation indicates that the policy was not formulated in a comprehensive and integrated manner. According to the theory of legislative drafting, a norm must be interconnected and consistent with the broader legal system to be implemented effectively.^[22] This lack of alignment renders the policy piecemeal, preventing it from offering a comprehensive solution to the issues faced by the public.

The provisions of Article 2 also reflect a tendency toward policy oversimplification, wherein complex issues are reduced to inadequate solutions. Policymakers appear to believe that providing free PPAT services will increase access to legal services. In practice, however, the challenges faced by the public extend beyond PPAT service fees to include tax costs, administrative processes, and a lack of information.

Therefore, it can be concluded that, in terms of legal substance, the provisions of Article 2 of Permen ATR/Kepala BPN No.qx33 of 2021 have not been effective due to fundamental weaknesses: ambiguous norms, the absence of operational mechanisms, a lack of alignment with social realities, and insufficient integration with the broader legal system. These shortcomings affect not only technical implementation but also public legal understanding and institutional performance, ultimately hindering the full achievement of the policy's objectives.

b. Effectiveness Based on Law Enforcement Factors

In this context, the law enforcement factor refers to the role of the PPAT as a key party in implementing the provisions of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021. Theoretically, the effectiveness of a legal norm is heavily influenced by the level of compliance and commitment among implementing officials, as the law cannot function without actors to put it into practice.^[23]

Field research reveals that the implementation of provisions regarding the provision of free services by PPATs in Banda Aceh and Aceh Besar is minimal; in fact, it is virtually non-existent in practice. This is reflected in a statement by a PPAT noting that no member of the public has ever requested a free deed; requests are limited to fee reductions.^[24] This statement is supported by findings indicating that actual practice does not involve providing services without compensation, but rather constitutes an exercise of individual discretion in the form of reduced honoraria.

This phenomenon demonstrates that the implementation of the legal norm does not align with the intentions of the policymakers.

Furthermore, interview results reveal rational reasons underlying the PPATs' stance. One interviewee stated that providing services entirely free of charge is unrealistic, given that PPATs face ongoing operational burdens such as office expenses, employee salaries, and long-term professional responsibilities. It was even asserted that if all services were provided for free, it would be impossible for the office to operate.^[25]

A deeper analysis suggests that the behavior of PPATs reflects not merely a violation of the law, but also a rational adaptation to the constraints of the policy system. PPATs face a dilemma between normative responsibilities and professional viability. This dilemma gives rise to what is known in public policy theory as an implementation dilemma—a situation where policy implementers confront a conflict between regulatory demands and operational realities.^[26]

Furthermore, viewed through the lens of institutional theory, the actions of PPATs can be understood as part of the mechanisms ensuring institutional continuity. In other words, as a professional body, PPATs tend to safeguard their organizational survival by adapting existing policies to align with internal interests.^[27] Practices involving cost reductions (rather than full waivers) represent a compromise between regulatory mandates and the organization's economic needs.

This phenomenon also illustrates that the legal norm has not yet undergone a process of institutional internalization. A norm is considered institutionally effective only when it has become an integral part of routine institutional practice. In this instance, however, the norm set forth in Article 2 has not been adopted as a standard operating procedure; instead, it is applied sporadically based on subjective considerations. Moreover, from the perspective of legal consciousness theory, this situation indicates that the level of legal consciousness among PPATs remains at the stage of instrumental compliance—compliance driven by a cost-benefit analysis rather than normative awareness.^[28] This is evident in the fact that PPATs grant fee reductions only in specific situations deemed ethically appropriate, rather than out of a sense of binding legal obligation.

c. Effectiveness Based on Facilities and Infrastructure Factors

From the perspective of legal effectiveness theory, the availability of facilities and infrastructure is a crucial factor determining whether a legal norm can be effectively implemented in practice. Legal facilities encompass not only physical elements but also administrative frameworks, verification systems, oversight mechanisms, and the institutional support necessary for operationalizing the law.^[29] Without adequate facilities, legal norms often remain merely formal rules with little practical impact on social life.

Field research—conducted through interviews with various PPAT and PPATS in Banda Aceh and Aceh Besar—reveals that the implementation of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 faces significant challenges regarding facilities and infrastructure.

This situation indicates that the policy lacks the backing of an objective and standardized administrative system. Soerjono Soekanto has noted that a lack of adequate facilities hinders effective legal implementation, as implementers lack clear technical guidelines. In this context, the absence of verification standards has led to inconsistencies in enforcement, with individual PPATs applying their own subjective criteria. This situation not only creates legal uncertainty but also risks causing injustice for community members entitled to services free of charge.

Another equally critical issue is the lack of effective monitoring and oversight regarding the implementation of these provisions. Interview results reveal that oversight of PPATs in carrying out this duty is virtually non-existent, except in cases where public reports are filed. In practice, however, hardly any reports concerning violations of these provisions have been received.^[31]

Furthermore, interview results revealed that relevant institutions, such as the National Land Agency (BPN), did not actively conduct outreach or oversight regarding the implementation of this policy.^[32]

Research findings also indicated serious issues concerning the lack of government financial support or incentives for the policy's implementation. PPAT generally viewed the obligation to provide services free of charge as a significant economic burden. One respondent stated that if all services were provided for free without government subsidies, it would jeopardize the economic viability of the PPAT offices themselves.^[33]

This view was echoed by other respondents who argued that, while the policy is a government program, it lacks sufficient feedback or support, ultimately causing financial detriment to the PPATs during implementation.^[34]

From a public policy perspective—as explained by Riant Nugroho—successful policy implementation relies heavily on the availability of resources, including financial resources. Policies lacking adequate resource support are difficult to implement effectively, as they fail to motivate implementers to adhere to existing regulations.^[35] Consequently, the absence of incentives in this policy reflects a fundamental flaw in its design, specifically a failure to consider the feasibility of implementation.

d. Effectiveness Based on Community Factors

The societal aspect is a key factor in evaluating the effectiveness of a legal norm, particularly regarding the implementation of service-oriented public policies, such as those stipulated in Article 2 of the Permen ATR/Kepala BPN No.33 of 2021. From the perspective of legal effectiveness theory, the public is viewed not merely as an object of the law but also as a subject that determines whether a norm is internalized and applied in social practice.

Field research findings reveal that public awareness regarding the existence and content of Article 2 remains very low. This is evidenced by the fact that nearly all interviewed PPAT reported that no members of the public had explicitly requested the deed preparation service free of charge, even though this right is normatively guaranteed by the regulation.

Interview results indicate that the public remains willing to pay for PPAT services—despite economic constraints—because they perceive that any service, including legal services, inevitably entails a cost. This perspective reflects a deeply ingrained social mindset wherein legal services are viewed as commodities obtainable only through payment.

Conclusion

The implementation of this Article has proven ineffective, as evidenced by a significant gap between the legal norms mandating free services for the underprivileged and the reality of implementation on the ground. This ineffectiveness stems from several key factors: (1) Legal substance: the regulations contain weaknesses, specifically the lack of clear definitions regarding the criteria for "underprivileged" individuals and the absence of technical implementation mechanisms; (2) Law enforcement/practitioners: compliance levels remain low due to the dominance of economic considerations, a lack of incentives, and weak oversight by relevant agencies; (3) Facilities and infrastructure: there is a lack of adequate support systems—such as standardized verification mechanisms and implementation monitoring systems—preventing the policy from being executed optimally and measurably; and (4) Public awareness: legal awareness

remains low, with the majority of the public unaware of their right to free services, resulting in a lack of social pressure to enforce these provisions.

The factors influencing the effectiveness of the implementation of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 by PPAT in Banda Aceh and Aceh Besar include: (1) Legal substance: existing provisions lack sufficient clarity, particularly regarding criteria for the underprivileged and technical implementation mechanisms. This ambiguity leads to varying interpretations among PPATs, resulting in inconsistent application in the field; (2) Law enforcement/practitioners (PPATs): the most dominant factor affecting effectiveness is the economic orientation of the profession. Most PPATs still rely on deed drafting services as their primary source of income, meaning the obligation to provide free services has not been fully implemented. Furthermore, weak oversight and the absence of strict sanctions contribute to low compliance levels; and (3) Facilities and infrastructure: there is a lack of adequate support systems for verifying the status of the underprivileged, as well as for reporting, monitoring, and enforcing strict sanctions by relevant authorities. The lack of this infrastructure prevents policy implementation from proceeding systematically and makes objective evaluation difficult. (4) Regarding the societal aspect, the level of legal awareness remains relatively low. Many members of the public are unaware of the provisions for free services and, consequently, do not exercise this right. Furthermore, limited access to information and a lack of willingness to assert one's rights also serve as obstacles to policy implementation.

Suggestions and Recommendations

BPN is advised to enhance its supervisory functions and public outreach regarding the implementation of Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 through periodic monitoring and systematic evaluation, thereby ensuring that the obligation to provide services free of charge is consistently fulfilled by PPAT/PPATS. Furthermore, BPN needs to formulate detailed, operational technical guidelines—specifically concerning the verification mechanism for the underprivileged—to prevent divergent interpretations in the field.

PPAT/PPATS are expected to improve compliance with Article 2 of the Permen ATR/Kepala BPN No.33 of 2021 by consistently fulfilling the obligation to provide services free of charge to the underprivileged, as an expression of their professional legal and social responsibility. In this regard, PPAT/PPATS need to internalize the value of social justice within their professional practice, shifting their orientation from a sole focus on economic gain toward a more equitable public service approach.

The public is expected to raise its legal awareness by actively seeking and understanding information regarding their rights, particularly concerning provisions for free services in land deed drafting by PPAT/PPATS. Individuals meeting the criteria for the underprivileged should optimally exercise this right by applying for services free of charge in accordance with applicable regulations. Additionally, the public is expected to play an active role in social oversight by reporting any instances of policy implementation that do not comply with the rules, thereby fostering accountability and transparency in land services.

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