



## The Principle of Prudence in Land Rights Acquisition

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### Article Info

**ISSN (online):** 2583-6536

**Volume:** 05

**Issue:** 03

**May-June 2026**

**Received:** 25-02-2026

**Accepted:** 27-03-2026

**Published:** 29-04-2026

**Page No:** 13-19

### Abstract

This study aims to analyze the legal standing of the principle of prudence (due diligence) as an inherent legal obligation for Notaries and Land Deed Officials (*Pejabat Pembuat Akta Tanah / PPAT*), and to examine the legal implications arising from negligence in applying this principle in the practice of drafting authentic deeds. Furthermore, this research aims to formulate recommendations for strengthening operational standards and supervision of Notaries/PPAT within the Indonesian legal system. The research method employed is normative legal research using a statutory approach, a conceptual approach, and a case approach. The results indicate that the principle of prudence is a substantive legal obligation inherently attached to the office of Notaries and PPAT. This principle is reflected in statutory regulations, professional codes of ethics, and civil law provisions regarding the validity of authentic deeds. Negligence in applying this principle particularly in verifying identity, the legal intent of the parties, and the fulfillment of formal requirements can lead to a deed losing its authentic nature, resulting in civil, administrative, ethical, and even criminal liability. The West Jakarta District Court Decision Number 248/Pid.B/2022/PN.Jkt.Brt reaffirms that the office of Notary/PPAT does not grant legal immunity, but rather demands a high level of professional prudence and accountability. The study recommends the reinforcement of operational standards for due diligence and the enhancement of integrated supervision to prevent the abuse of authority.

**DOI:** <https://doi.org/10.54660/IJLL.2026.5.3.13-19>

**Keywords:** Principle of Prudence, Land Deed Official (PPAT), Land Rights

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### Introduction

Legal certainty in property transactions, particularly in land sale and purchase, is a primary pillar of the land law system in Indonesia. Land holds high strategic value from economic, social, and legal perspectives. Therefore, every transfer of land rights must be carried out based on clear, written legal provisions that can be legally accounted for.<sup>[1]</sup>

In the Indonesian land law system, the Sale and Purchase Deed (*Akta Jual Beli* or AJB), which must be drafted by a Notary or a Land Deed Official (*Pejabat Pembuat Akta Tanah* or PPAT), serves as a crucial instrument in providing a guarantee of legal certainty for the transfer of land rights. The obligation to draft an AJB aims to ensure that every transfer of land rights possesses valid legal force. As emphasized by Subekti, land is an object that must be bound by a PPAT deed to guarantee legal certainty for the interested parties.<sup>[2]</sup>

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<sup>1</sup>Soedharyo Soimin, *Status Hak dan Pembebasan Tanah*, Sinar Grafika, Jakarta, 2004, p. 89.

<sup>2</sup>[2] Subekti, *Hukum Perjanjian*, Intermasa, Jakarta, 2005, p. 41.

Notaries/PPATs are public officials authorized by the state to create authentic deeds as valid evidence for parties engaging in legal acts. This authority is granted so that every legal transaction, especially those related to land, possesses strong legal legitimacy and protects the rights of the parties. Consequently, Notaries/PPATs occupy a strategic position as guardians of the validity of legal documents and protectors of public interests, as well as the vanguard in realizing legal certainty in the land sector.

One of the ethical and professional principles that form the main foundation in the execution of the Notary/PPAT office is the principle of prudence (prudential principle or precautionary principle). This principle implies that every action in drafting a deed must be carried out with mature consideration, thoroughness, and attention to all possibilities that may result in legal consequences in the future. The principle of prudence demands that public officials not only adhere to the formal aspects of the law but also assess the substance and material truth of the legal acts set forth in the deed.

Legal regulations regarding the principle of prudence are reflected both explicitly and implicitly in various statutes governing the office of Notaries and PPATs. These provisions are contained, among others, in Law Number 2 of 2014 concerning the Amendment to Law Number 30 of 2004 concerning the Notary Office (hereinafter referred to as UUJN) and Government Regulation Number 24 of 2016 concerning the Amendment to Government Regulation Number 37 of 1998 concerning the Regulations for the Office of Land Deed Officials (hereinafter referred to as PP Jabatan PPAT). These regulations substantially provide a normative basis for applying the principle of prudence in every drafting of an authentic deed to guarantee legal certainty and protect interested parties.

In the provisions of the UUJN, at least three articles emphasize the principle of prudence that must be applied by Notaries. First, Article 16 paragraph (1) letter a of the UUJN states that "A Notary is obliged to act trustworthily, honestly, thoroughly, independently, impartially, and safeguard the interests of the parties involved in a legal act." The term "thoroughly" (*saksama*) encompasses the meaning of prudence, requiring the Notary to work meticulously and responsibly to ensure both the formal and material truth of a deed.

Second, Article 16 paragraph (1) letter d of the UUJN stipulates that "A Notary is obliged to read the Deed in the presence of the parties and witnesses and explain its contents." This provision is a concrete manifestation of the principle of prudence, ensuring the parties understand the content, intent, and legal consequences of the signed deed to prevent misunderstandings or disputes. Third, Article 65 of the UUJN emphasizes that "A Notary is responsible for every deed they make even if the notary protocol has been surrendered or transferred to another party." This reinforces the personal legal liability attached to the Notary, strengthening the necessity of applying the principle of prudence.

In addition to the UUJN, the principle of prudence is also emphasized in at least three articles within the PP Jabatan PPAT. Article 1 number 1 of the PP Jabatan PPAT affirms that a PPAT is authorized to create authentic deeds regarding

certain legal acts related to land rights or ownership rights of apartment units. This authority carries a significant responsibility to ensure that every deed meets formal requirements and guarantees the material validity of the legal act.

Furthermore, Article 22 of the PP Jabatan PPAT states that "A PPAT deed must be read or explained to the parties in the presence of at least two witnesses before being signed immediately by the parties, the witnesses, and the PPAT." This confirms the PPAT's obligation to ensure the parties fully comprehend the deed's contents. Moreover, there is an obligation for a PPAT before taking office to take an oath of office before the Head of the Land Office, as regulated in Article 15 paragraph (1) of the PP Jabatan PPAT. The oath includes the commitment to perform duties "thoroughly" (*saksama*), which serves as the moral core of the principle of prudence.

The application of the principle of prudence is also manifested in PPAT administrative practices, such as verifying the identity of the parties, examining document validity, tracing the legal status of the land, ensuring the absence of disputes or seizures, and verifying the settlement of tax obligations (BPHTB and PPh).<sup>[3]</sup> PPATs even have the obligation to refuse the drafting of a deed if there are doubts or insufficient data that could pose legal risks.

Despite these regulations, in practice, various legal facts show that the principle of prudence is often ignored or not optimally applied by Notaries and PPATs. Negligence or violations of this principle can lead to serious legal consequences for the public and the officials involved. One case reflecting the weak application of this principle is the case involving actress Nirina Zubir and her family, which drew widespread public attention. The case involved land certificate forgery and embezzlement involving a rogue PPAT, as decided in the West Jakarta District Court Decision Number 248/Pid.B/2022/PN.Jkt.Br. This case demonstrates the PPAT's negligence in verifying identities and ensuring document validity.

Whether intentional or negligent, this case clearly illustrates a violation of the principle of prudence, highlighting the gap between legal norms and field practice. Consequently, the legal objectives of certainty, justice, and utility are neglected. Based on this, a deeper study is required. This research formulates the following problems: How is the Notary/PPAT's principle of prudence positioned as an official authorized to create authentic deeds based on Positive Law and the Code of Ethics? And what are the legal implications of Notary/PPAT negligence in applying the principle of prudence in the drafting of Land Sale and Purchase Deeds (Case Study of West Jakarta District Court Decision No. 248/Pid.B/2022/PN.Jkt.Br)?

### Research Method

This study is a type of normative legal research. Normative legal research focuses on analyzing the legal aspects of a particular issue by examining primary and secondary legal materials, which are then correlated with the problem under discussion.<sup>[4]</sup> This normative study examines the application of the principle of prudence by Notaries/PPATs as public officials authorized to draft authentic deeds based on positive legal provisions and professional codes of ethics.

<sup>3</sup> [7] M. Luthfan Hadi Darus, *Hukum Notariat dan Tanggung Jawab Jabatan Notaris*, FH UII Press, Yogyakarta, 2017, p. 28.

<sup>4</sup> C.G.G. Hartono Sunaryati, *Penelitian Hukum Di Indonesia Pada Akhir Abad Ke-20*, Alumni, Bandung, 2006, p. 140.

Furthermore, it analyzes the legal implications resulting from negligence in applying this principle, specifically in the drafting of Land Sale and Purchase Deeds (AJB), through a case study of the West Jakarta District Court Decision Number 248/Pid.B/2022/PN.Jkt.Brt.

The approach methods used in this research consist of 3 (three) types:

1. Statutory Approach, which is conducted by reviewing all laws and regulations relevant to the legal issues being researched.<sup>[5]</sup>
2. Conceptual Approach, which examines evolving views and doctrines within legal science. By studying these doctrines, the researcher identifies ideas that give rise to legal definitions, concepts, and principles relevant to the issue at hand.<sup>[6]</sup>
3. Case Approach, which involves reviewing cases related to the legal issues being addressed that have resulted in decisions with permanent legal force (*inkracht*).

In this normative legal research, legal materials are collected using library research techniques, namely by reviewing, tracing, reading, and studying various literatures such as statutory regulations, books, and expert legal opinions related to the subject matter.

The analysis of legal materials is the most critical stage of the research, as the acquired materials are processed and utilized to reach a conclusion that serves as the final result. The technique used by the author in this study is qualitative legal analysis. In qualitative analysis, after understanding and categorizing the collected legal materials, the data is aligned with the raised issues and presented systematically from general to specific (deductive reasoning) to provide a logical overview and answer to the researched problem.

## Discussion

### The Principle of Prudence for Notaries/PPATs as Officials Authorized to Create Authentic Deeds Based on Positive Law and Codes of Ethics

#### • The Principle of Prudence for Notaries and PPATs from the Perspective of Positive Law

The principle of prudence (*due diligence*) that must be applied by Notaries and Land Deed Officials (*Pejabat Pembuat Akta Tanah / PPAT*) within the Indonesian positive law system is a legal consequence of their status as public officials exercising state authority in the fields of civil and land law.<sup>[7]</sup> This position places Notaries and PPATs as an extension of the state in creating legal certainty through authentic deeds; thus, every official act performed must adhere to high standards of professionalism, precision, and prudence.<sup>[8]</sup>

The normative basis for the Notary's principle of prudence is explicitly stated in Law Number 30 of 2004 concerning the Notary Office, as amended by Law Number 2 of 2014. Article 16, paragraph (1), letter a of the Notary Office Law

stipulates that in exercising their office, a Notary is obliged to act trustworthily, honestly, thoroughly (*seksama*), independently, and impartially, while safeguarding the interests of the parties involved in legal acts. This norm does not merely contain professional ethics but also constitutes a binding legal obligation that may result in legal consequences if violated.

The term "thoroughly" (*seksama*) in this provision must be understood as an obligation to act with a high degree of precision and care throughout all stages of deed preparation. Notarial prudence encompasses examining the identity and authority of the appearers (*para penghadap*), verifying the validity of supporting documents, assessing the legal intent of the parties, and ensuring the proposed legal act complies with statutory regulations. This obligation positions the Notary not merely as a recorder of the parties' wishes, but as an official responsible for ensuring the legality of the legal acts set forth in the authentic deed.<sup>[9]</sup>

The principle of prudence is directly linked to the function of an authentic deed as an instrument of evidence with "perfect" evidentiary power (*volledig bewijskracht*). An authentic deed serves not only as written proof but also as an instrument for creating legal certainty that binds the parties and third parties. Negligence in applying the principle of prudence potentially strips the deed of its authentic nature, causing it to lose its primary function within the civil evidence system.<sup>[10]</sup>

The normative foundation of this principle is also reflected in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata / KUHPerdata*). Article 1868 of the Civil Code defines an authentic deed as a deed made in the form prescribed by law by or before authorized public officials. This definition emphasizes that authenticity depends on two main elements: the authority of the official and the fulfillment of formal procedures determined by law. The application of the principle of prudence is key to ensuring both elements are met.

Furthermore, Article 1869 of the Civil Code asserts that a deed made by an unauthorized official or one with formal defects lacks the strength of an authentic deed and merely holds the status of a private deed (*akta di bawah tangan*). This consequence demonstrates that prudence is not just a moral or administrative demand but a legal requirement determining the quality and evidentiary strength of a deed. A deed resulting from an imprecise process loses its legal legitimacy, even if it formally appears to meet the requirements of an authentic deed.

The principle of prudence also functions as a preventive mechanism to discourage the misuse of authentic deeds for unlawful acts. In legal practice, authentic deeds possess high legitimacy, making them susceptible to abuse if the Notary does not optimize the prudential function.<sup>[11]</sup> In this context, prudence serves as an internal control to ensure that the deed does not become a tool for forgery, fraud, or other crimes detrimental to interested parties.

<sup>5</sup> Amiruddin & Zainal Asikin, *Pengantar Metode Penelitian Hukum*, 1st Ed., 8th Printing, PT Raja Grafindo Persada, Jakarta, 2020, p. 164.

<sup>6</sup> Ibid., p. 164.

<sup>7</sup> Brilian Pratama, Happy Warsito, Herman Adriansyah, and Habib Adjie, "Prinsip Kehati-hatian dalam Membuat Akta oleh Notaris," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 1 (2022), p. 30.

<sup>8</sup> Supriadi, *Etika & Tanggung Jawab Profesi Hukum di Indonesia*, Sinar Grafika, Jakarta, 2008, p. 29.

<sup>9</sup> Muhammad Aldhi Rahmadi, "Penerapan Asas Kehati-hatian Notaris dalam Pembuatan Akta Autentik untuk Meminimalisir Terjadinya Keterangan Palsu Hak Waris Sesuai dengan Kewenangannya," *JIHHP (Jurnal Ilmu Hukum, Humaniora dan Politik)* 5, no. 5 (2025), p. 18

<sup>10</sup> Amanda Bella Okladea, "Prinsip Kehati-Hatian Notaris di dalam Pembuatan Akta yang Sempurna," *Recital Review: Jurnal Hukum* 4, no. 1 (2022), p. 231.

<sup>11</sup> Pratama, Brilian, et al., "Prinsip Kehati-Hatian dalam Membuat Akta oleh Notaris," *Repertorium: Jurnal Ilmiah Hukum Kenotariatan* 11, no. 1 (May 2022), p. 31.

For Land Deed Officials (PPAT), the obligation of prudence has a strong normative basis in the national agrarian legal system. Law Number 5 of 1960 concerning the Basic Agrarian Principles (UUPA) identifies land registration as the primary means of creating legal certainty regarding land rights, as regulated in Article 19. The registration of land rights transfers can only be performed based on valid evidence, such as a deed made by a PPAT. The PPAT's role is strategic because their deed becomes the basis for changing the legal status of land rights.

Government Regulation Number 37 of 1998 concerning PPAT Office Regulations, as amended by Government Regulation Number 24 of 2016, governs the responsibilities of a PPAT in the creation and management of deeds. Article 21, paragraph (3) stipulates that a PPAT deed is made in two original counterparts, with the first copy stored by the PPAT as part of the protocol. This storage obligation carries legal consequences, making the PPAT responsible for the existence, integrity, and security of the deed documents.

The obligation to maintain protocols is inseparable from the principle of prudence. Loss, damage, or manipulation of a deed may trigger legal disputes and harm the parties involved. A deed whose authenticity cannot be proven loses its authentic power and can no longer serve as a valid basis for the transfer of land rights. Thus, PPAT prudence must integrate administrative, technical, and substantive aspects.

The PPAT's principle of prudence is also reflected in the obligation to ensure the presence of the parties, the accuracy of identities, the validity of land certificates, and the alignment of physical and legal data of the land object. Negligence in this verification process may result in a materially flawed deed. A Sale and Purchase Deed (AJB) resulting from an imprecise process can be used as a basis for unlawful registration of transfers, creating ownership conflicts and disrupting land law certainty.<sup>[12]</sup>

The provisions of Article 16, paragraph (9) of the Notary Office Law provide a clear illustration of the consequences of neglecting the principle of prudence. A deed that is not legally signed by the parties and the Notary only possesses the evidentiary strength of a private deed (*underhanded deed*). This norm demonstrates that every procedural element in the drafting of a deed carries legal significance that determines its authentic status.

The principle of prudence for Notaries and PPATs is inseparable from the concept of official responsibility as public officials. The offices of Notary and PPAT are granted by the state through a mechanism of attribution of authority; therefore, every official act must be performed in accordance with the purpose for which that authority was granted. Prudence serves as the benchmark for assessing whether official authority is exercised lawfully and accountably.

Negligence in applying the principle of prudence carries implications for various forms of legal liability, ranging from administrative and ethical sanctions to civil and criminal liability if the act meets the elements of an offense (*delict*). This indicates that the principle of prudence holds a central

position in the legal accountability system of Notaries and PPATs. Sanctions imposed on Notaries to hold them accountable for their actions cover several aspects, including:

#### Aspect of Civil Liability

Civil sanctions are imposed for errors arising from breach of contract (*wanprestatie*) or unlawful acts (*onrechtmatige daad*). These sanctions take the form of reimbursement of costs and compensation to be received by the applicant from the Notary if the authentic deed drafted becomes null and void by law, or in essence, is downgraded to a private deed due to the Notary's errors or negligence that cause loss.<sup>[13]</sup>

#### Aspect of Administrative and Ethical Liability

In performing their duties, Notaries must not violate the Code of Ethics established by the Indonesian Notaries Association (*Ikatan Notaris Indonesia / INI*), as regulated in Article 9 of Law No. 2 of 2014 concerning the Amendment to Law No. 30 of 2004 concerning the Notary Office. The INI is the umbrella organization for all Notaries in Indonesia. To maintain the honor and dignity of the Notary office, the INI possesses a Notary Code of Ethics adopted by the Congress. This code serves as a moral guide that must be obeyed by every member of the INI and anyone exercising the duties of a Notary, including Interim Notaries, Substitute Notaries, and Special Substitute Notaries. This Code of Ethics applies to all members and individuals holding the office of Notary, both in the performance of their duties and in their daily lives.

One of the obligations of a Notary stipulated in Article 3 of the INI Code of Ethics is that a Notary must act honestly, independently, and impartially. If a Notary intentionally violates these provisions to gain profit or favor one party, the Notary may be subject to sanctions. For Notaries who violate the Code of Ethics, the Honor Council (*Dewan Kehormatan*), in coordination with the Supervisory Council (*Majelis Pengawas*), conducts an examination. If proven, administrative sanctions may be imposed on members of the INI, which may include:

- Admonition
- Warning
- Suspension (*Schorsing*) from association membership
- Honorable discharge (*Onzetting*) from association membership
- Dishonorable discharge from association membership.<sup>[14]</sup>

#### The Principle of Prudence from the Perspective of the Notary and PPAT Code of Ethics

The principle of prudence in the exercise of the Notary and Land Deed Official (*Pejabat Pembuat Akta Tanah / PPAT*) offices does not solely originate from statutory regulations but is also systematically reinforced within the norms of professional codes of ethics. The Notary Code of Ethics and the PPAT Code of Ethics function as internal normative instruments governing behavioral standards, professional conduct, and the ethical boundaries in exercising official

<sup>12</sup> [6] Arsiendy Aulia, "Prinsip Kehati-hatian PPAT dalam Proses Pengikatan Jual Beli Tanah sebagai Perwujudan Kepastian Hukum," *Recital Review* 4, no. 1 (2022), p. 250.

<sup>13</sup> Sjaifurrachman, *Aspek Pertanggungjawaban Notaris dalam Pembuatan Akta*, Mandar Maju, Bandung, 2011, pp. 195-196.

<sup>14</sup> Philipus M. Hadjon, *Pengantar Hukum Administrasi Indonesia (Introduction to the Indonesian Administrative Law)*, Gadjah Mada University Press, Yogyakarta, 2005, p. 254.

authority.<sup>[15]</sup> The existence of these codes indicates that the offices of Notary and PPAT are positions of public trust, demanding a high degree of prudence in every legal action ranging from the examination and formulation to the legalization of deeds.

The code of ethics positions the principle of prudence as a moral foundation that complements legal obligations. Ethical norms serve not only as internal professional guidelines but also as regulatory tools to ensure that official authority is exercised responsibly and does not deviate from legal objectives.<sup>[16]</sup> Thus, from an ethical perspective, prudence is not an optional stance but an inherent obligation that determines the quality and legitimacy of the resulting authentic deeds.

In the Notary Code of Ethics, the principle of prudence is clearly reflected in Article 3, which outlines the obligations of a Notary. The duty to respect and uphold the dignity of the Notary office requires a normative awareness that every deed drafted impacts not only the parties involved but also carries broad legal and social consequences. The dignity of the office is inseparable from the quality of prudence; an authentic deed arising from a careless or imprecise process risks damaging public trust in the notarial institution as a whole.

The obligation to protect and defend the honor of the professional association strengthens the collective dimension of the principle of prudence. Any failure of prudence by an individual Notary does not remain a private matter but directly impacts the institutional image of the profession. Therefore, the code of ethics establishes prudence as a preventive moral obligation to forestall the abuse of authority, unprofessional practices, and official misconduct that could diminish the profession's prestige in the eyes of the public.<sup>[17]</sup>

The Notary Code of Ethics explicitly mandates Notaries to act honestly, independently, impartially, and with a full sense of responsibility based on statutory regulations and their oath of office. The elements of honesty and independence require Notaries to conduct an objective examination of the appearers' identities, the validity of supporting documents, and the underlying legal acts to be set forth in the deed.

<sup>[18]</sup>Impartiality requires the Notary to maintain a balance between the interests of the parties and prevent the dominance of one party in formulating the deed's content. The element of responsibility demands an awareness that any negligence in the deed-making process potentially triggers legal consequences for which they may be held accountable in the future.<sup>[19]</sup>

The obligation to continuously improve professional knowledge, as regulated in Article 3, is directly linked to the principle of prudence. Prudence cannot be separated from professional competence. A Notary who fails to keep pace with legal developments particularly in land law, contracts, and administrative law risks committing errors in applying legal norms. Such errors, even if not driven by malicious

intent, are classified as professional negligence that contradicts the principle of prudence and harms the legal interests of the parties.

The obligation to prioritize service to the interests of the community and the state indicates that a Notary's prudence is not solely oriented toward the interests of individual clients. Authentic deeds serve a public function as instruments of evidence with "perfect" evidentiary power relied upon within the judicial system. Therefore, a Notary must ensure that the deed does not become a vehicle for legal evasion (*legal smuggling*), forgery, or the disguise of unlawful acts. Prudence in this context functions to preserve the integrity of the social function of authentic deeds.<sup>[20]</sup>

Provisions requiring the exercise of the Notary office at their registered office and the prohibition against sending *minuta* (original deeds) to clients for signing outside the office reinforce procedural prudence. The physical presence of the parties, the direct reading of the deed, and the signing before the Notary are control mechanisms designed to ensure that the parties' intent aligns with the deed's content. Violations of these provisions reflect a fundamental disregard for prudence, as they open opportunities for identity theft, manipulation of intent, and document abuse.<sup>[21]</sup>

The prohibitions in Article 4 of the Notary Code of Ethics correlate directly with the principle of prudence. Prohibitions against signing deeds whose *minuta* were prepared by other parties, collaborating with "client-seekers" (middlemen), and coercing clients aim to safeguard independence and the quality of legal examination. A Notary who merely acts as a signatory without performing substantive verification has abandoned the duty of prudence and reduced the office to a mere administrative formality.

Furthermore, the obligation to notify colleagues of serious errors in deeds they have drafted demonstrates that the principle of prudence also possesses a corrective dimension. A Notary is not justified in remaining passive when discovering errors that could harm a client or result in serious legal consequences. This proactive stance aims to prevent greater losses while maintaining the collective integrity of the profession.

From the PPAT perspective, the PPAT Code of Ethics reinforces the principle of prudence through the obligation to maintain good character, uphold the dignity of the office, and act in accordance with the oath of office and applicable laws. The duties to work responsibly, independently, honestly, and impartially are direct manifestations of prudence in drafting land rights transfer deeds. PPAT deeds have a significant juridical impact on land law certainty; thus, any negligence in verifying the physical and legal data of a land object can lead to prolonged disputes.<sup>[22]</sup>

Prohibitions within the PPAT Code of Ethics such as using middlemen, sending *minuta* to clients for signing, and placing staff outside the office to process deeds show that prudence is understood as a structural obligation inherent in all stages

<sup>15</sup> T. N. S. Paranna, "Kode Etik Notaris dalam Mempromosikan Diri melalui Media Elektronik," *Jurnal Hukum Lex Generalis* 6, no. 4 (2025), p. 5.

<sup>16</sup> *Ibid.*.

<sup>17</sup> Astri Dewi Setyarini and Kayus Kayowuan, "Pentingnya Penerapan Kode Etik atas Etika Profesi Hukum pada Profesi Notaris," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 1, no. 5 (2023), p. 65.

<sup>18</sup> *Ibid.*.

<sup>19</sup> Agnes Tori Yolanda Silalahi, "Implementasi Hukum terhadap Pelanggaran Kode Etik Notaris Terkait dengan Pelaksanaan Jabatannya terhadap Akta-Akta yang Dibuatnya," *JHHP (Jurnal Ilmu Hukum, Humaniora dan Politik)* 5, no. 3 (2025), p. 29.

<sup>20</sup> Ahmad Farich Sulthonin, "Batas Pertanggungjawaban Notaris atas Pembuatan Akta Autentik," *Jurnal Ilmu Kenotariatan* 2, no. 1 (June 2021), pp. 85–86.

<sup>21</sup> *Ibid.*.

<sup>22</sup> Samsaimun, *Pengantar Peraturan Jabatan Pembuat Akta Tanah (PPAT) dalam Peralihan Hak atas Tanah di Indonesia*, Pustaka Reka Cipta, Bandung, 2018, p. 18.

of deed preparation. The requirement to notify colleagues of serious errors further strengthens the preventive function of the code in maintaining land administration order.

In conclusion, based on the comprehensive provisions of both the Notary and PPAT codes of ethics, the principle of prudence is understood as a core value integrating moral, professional, and juridical obligations. This principle functions to safeguard legal certainty through valid and trustworthy authentic deeds while controlling the exercise of authority to ensure it remains aligned with legal objectives. A violation of the principle of prudence is not only an ethical breach but also a potential basis for broader legal liability.

### **Legal Implications of Notary/PPAT Negligence in Applying the Principle of Prudence in Land Sale and Purchase Deeds (Case Study: West Jakarta District Court Decision No. 248/Pid.B/2022/PN.Jkt.Brt)**

Notaries and Land Deed Officials (PPAT) are public officials who exercise state functions in the fields of legal evidence and land administration.<sup>[23]</sup> The authentic deeds they produce possess "perfect" evidentiary power (*volledig bewijs*); thus, the contents therein are presumed true until proven otherwise. The consequence of such evidentiary power is a demand for high professionalism and prudence.<sup>[24]</sup>

The principle of prudence in the office of Notary/PPAT functions as a risk control mechanism. This principle requires Notaries/PPATs to go beyond merely following formal procedures and to perform professional assessments of every legal act facilitated through their deeds.<sup>[3]</sup> In the context of land rights transfer, prudence is paramount because the objects transferred hold high economic value and are directly linked to the constitutional right of ownership.

In the West Jakarta District Court Decision No. 248/Pid.B/2022/PN.Jkt.Brt, the Panel of Judges indirectly positioned the principle of prudence as an evaluative standard in assessing the actions of the Defendants as Notaries/PPATs. The series of actions deemed as forgery of authentic deeds and money laundering originated from systematic negligence in ensuring the presence of the parties, the validity of documents, and the free will of the parties named in the Sale and Purchase Deed (AJB).

This court decision sets an important precedent in Indonesian notarial and PPAT practice, specifically regarding the legal implications of negligence. This case demonstrates that disregarding the principle of prudence does not only affect the civil and administrative validity of a deed but can also escalate into criminal liability if such negligence contributes to the commission of a crime.

The legal implications in this case are analyzed through several aspects:

- **Legal Implications for the Validity of Land Sale and Purchase Deeds**

The most fundamental legal implication of Notary/PPAT negligence is the compromised validity of the deed. In land law, the AJB made by a PPAT is a formal requirement for the registration of land rights transfer. Therefore, defects in the AJB drafting process potentially invalidate the entire chain of

transfer.

In the *a quo* case, the Panel of Judges found that the parties listed as seller and buyer never appeared before the PPAT. This constitutes a serious violation of Articles 97 and 98 of the Minister of ATR/BPN Regulation No. 3 of 1997, which mandates the PPAT to ensure parties are present and sign the deed in their presence. Such negligence causes the AJB to lose its authentic nature. Consequently, the deed becomes formally and materially flawed, leading to legal uncertainty for the rightful owner and the potential annulment of the deed.

- **Administrative and Ethical Implications for Notaries/PPATs**

Negligence also carries administrative and ethical consequences. Under the supervisory system, violations of the duty of prudence are subject to sanctions ranging from admonitions and written warnings to temporary or permanent dismissal.

The West Jakarta District Court Decision shows that the Defendants' actions were not merely ordinary administrative errors. Their negligence was systematic and recurring, indicating an abuse of official authority rather than a mere technical mistake. Ethically, such conduct violates the professional codes that demand independence and honesty.

#### **Theoretical Analysis: Legal Certainty and Accountability**

The systemic nature of these implications can be explained through the Theory of Legal Certainty and the Theory of Legal Liability.

#### **Legal Certainty Theory (*Rechtszekerheid*):**

As proposed by Gustav Radbruch, law must provide clarity, order, and protection of rights. In Indonesian land law, the PPAT deed is the primary instrument for establishing legal certainty. Deviation in its creation creates "pseudo-legal certainty" (*kepastian hukum semu*). In a *quo* case, the deed appeared valid administratively, but because it lacked substantive truth (no actual presence or intent), it transformed from a tool of certainty into an instrument for legitimizing unlawful acts.

#### **Legal Liability Theory**

This theory posits that any legal subject who violates a legal obligation or commits an unlawful act (*onrechtmatige daad*) must be held accountable proportional to their level of fault (*schuld*). For Notaries and PPATs, this includes Official Liability (*ex officio responsibility*).

The West Jakarta District Court Decision No. 248/Pid.B/2022/PN.Jkt.Brt demonstrated that the Defendants knew or should have known (*patut menduga*) about the irregularities in the deed process yet proceeded for economic gain. This transformed their negligence from simple fault (*culpa*) into conscious professional misconduct (*bewuste schuld*). The "should have known" standard applied by the judges is a manifestation of the objective professional standard the level of prudence expected of any official in their position.

The argument that Notaries/PPATs should only face administrative or ethical sanctions becomes irrelevant when

<sup>23</sup> Febrianty Yenny, *Keberadaan Hukum Kenotariatan di Indonesia*, CV. Green Publisher Indonesia, Jakarta, 2023, p. 6.

<sup>24</sup> Agus Toni Purnayasa, "Akibat Hukum Terdegradasinya Akta Notaris yang Tidak Memenuhi Syarat Pembuatan Akta Autentik," *Acta Comitatus: Jurnal Hukum Kenotariatan* 3, no. 3 (2019), p. 398.

the negligence is systematic and facilitates criminal acts. Criminal liability in such cases is a logical and legally valid consequence.

In conclusion, legal certainty without prudence is a fallacy. The office of Notary/PPAT carries the weight of legal accountability rather than legal immunity.

### Conclusion

Based on the analysis and discussion presented, the following conclusions can be drawn:

First, the principle of prudence (*prudential principle*) is a fundamental legal obligation that is inherently and substantively attached to the office of Notaries and Land Deed Officials (PPAT). Within the Indonesian positive law system, this principle is not merely a moral or ethical guideline but is explicitly mandated by the Notary Office Law (UUJN) and the PPAT Office Regulations (PP Jabatan PPAT). It requires officials to exercise meticulousness (*seksama*) in verifying the formal and material truth of every deed, ensuring the presence of the parties, and validating the legitimacy of supporting documents. In the perspective of professional codes of ethics, this principle serves as the moral core of public trust, ensuring that the authority granted by the state is not misused or reduced to a mere administrative formality.

Second, the legal implications arising from negligence in applying the principle of prudence are systemic and multi-layered. In the *a quo* case (West Jakarta District Court Decision No. 248/Pid.B/2022/PN.Jkt.Brt), it is evident that such negligence leads to the degradation of the deed's authentic status into a private deed, thereby stripping it of its "perfect" evidentiary power and creating "pseudo-legal certainty." Beyond civil and administrative sanctions, systematic and conscious professional negligence (*bewuste schuld*) that facilitates unlawful acts can lead to criminal liability. This case serves as a landmark precedent that the office of Notary/PPAT does not grant legal immunity; rather, it demands a high objective professional standard. Legal certainty can only be achieved when procedural formalities are balanced with substantive prudence.

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### How to Cite This Article

Ristomoyo, Amiruddin, Putro WD. The principle of prudence in land rights acquisition. *Int J Judic Law*. 2026;5(3):13–19. doi:10.54660/IJLL.2026.5.3.13-19

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