



## **ANALYSIS OF THE APPLICATION OF THE PRINCIPLE OF LEGAL CERTAINTY IN THE SALE AND PURCHASE OF LAND IN PALOPO**

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### ***Abstract***

*This research aims to identify and analyze legal certainty transitional land rights for the sale and purchase made by land deed officials who carried out the existence obtained can ensure legal certainty in accordance with Article 37 of Government Regulation No. 24 of 1997 a purchase agreement of land rights can only be registered the land office if proven by deed made by a land deed officials. This type of research is a kind of normative legal research and empirical sociological (Socio Legal Research) using the approach of the legal regulation and application of the law in the context of reality in society. Then assisted with legal materials will be described, and analyzed in relation to one another. The transition of land rights for the sale and purchase as evidenced by a deed of sale made by the official land deed is the only engagement of the parties and their heirs, basically get legal protection material to master object. To obtain proof of a stronger and wider power of proof transfer of rights registered at the land office, to be recorded in the land book and certificated rights are concerned, because of the presence of land title certificates from the transfer of land rights is the recognition of the State in which the function of the certificate itself is essentially the Basic Agrarian Law (UUPA).*

*Keywords: Sale and Purchase; Transitional Land Rights; Registration of Land Rights*

### **Introduction**

Land rights are rights that authorize rightsholders (both in its own individual, groups of people together as well as legal entities) to wear in the sense of controlled, using and or benefit from plots of land tertentu<sup>1</sup>. Basically all rights over land can be switched or routed. Switch is much land rights because the law, by itself, there is no legal deeds stumbled to assign it to another party. Much of this land rights happens due to inheritance. While the redirected meaning that much of that land rights to another party due to any act of intentional law so that land rights were moved to another party, such as a sale, grant, Exchange, and others. So the transition of land rights is much land rights from one party to another party,

both because of the deeds of the law of intentional or not because of the deeds of the law sengaja<sup>2</sup>.

Inbetween land rights due to a legal deed done by deed of passage rights to the land created by the land deed official other than other officials designated by law, such as the auction Officials. Land deed official (PPAT) public officials are given the authority to make an authentic deed-a deed concerning specific legal deeds about land rights or property rights Over units of Home Susun<sup>3</sup>. The importance of making transitional land rights deed by PPAT relating to land registration activities are performed to obtain a guarantee of legal certainty and guarantee the certainty of land rights in the form of a certificate of entitlement to the land that serves as a strong evidentiary tool over the ownership rights to the land.

Land registry is a series of activities conducted by the Government continuously, sustained and regular basis, includes the collection, processing and presentation of bookkeeping, as well as the maintenance of the physical and juridical data data, in the form of a map and a list of about of land areas and high-rise units, including the granting of a certificate as evidence of his right to sign letters for the fields of an existing land rights and ownership rights Over

stacking, including certification as proof of his right to sign letters for the fields of an existing land rights and ownership rights Over units of Flats as well as certain rights membebaninya<sup>4</sup>. The purpose of the unsettled land registry based on the Government Regulation Number 24 of 1997 On Land Registration (hereinafter referred to as the PP Number 24 of 1997), among others, article 3 :

- a. To provide legal certainty and legal protection to the rights of a holder of land, units, flats and other rights listed in order to easily be able to prove himself as the holder of the right in question;
- b. To provide information to the parties concerned including the Government so that it can easily obtain data required in legal deeds held concerning fields of land and flats units that are already registered;

For in this orderly administration of land. Further activities relating to the registration of land in section 37 PP Number 24 in 1997 determined that:The transition of land rights and ownership rights over units of flats through sale, Exchange, grants, income in the corporate and legal deeds of assignment to another, unless the transfer of rights via auction, may only be

registered if evidenced by deed made by a CONVEYANCER who is authorized under the terms of the applicable legislation.

Based on the foregoing and in line with the objectives of the annual registration of land in Indonesia, the CONVEYANCER was given the task and powers so that its presence to serve communities that do the deeds of the law by making the transition right deed or deed of the imposition of a right over land. The existence of the CONVEYANCER as above can also be seen in article 6 paragraph (2) PP Number 24 in 1997 that specifies: "in implementing the land registry, the Head Office of the Land Commission assisted by the CONVEYANCER and other officials who are assigned to perform specific activities according to government legislation and regulations are concerned". Other officials in question is the Auction Officials on duty to make quote treatise auction.

In article 1 point 1 the Government Regulation Number 37 in 1998 about the rules of the Office of the land deed official (hereinafter the PP Number 37 in 1998) determines there are three kinds of conveyancer i.e. :

1. Land deed official public officials are given the authority to make an authentic deed-a deed concerning specific legal deeds about land rights or property rights Over units of Flats.
2. conveyancer while is the designated government officials because of his position duties conveyancer by making the deed conveyancer in an area that is not enough there is a conveyancer.
3. ppat officials body was designated because the national land office to perform the conveyancer by making certain specialised conveyancer deed in order the execution of the program or specific government duties.
  - a. Berkewarganegaraan Indonesia;
  - b. Aged at least 30 (thirty) years;
  - c. Being of good character expressed with affidavits made by local police Agencies;
  - d. Have never been sentenced to prison for committing a crime based on a court ruling that has acquired force of law remain;
  - e. Healthy physical and spiritual;
  - f. Graduate education program specialist special education programs or notariat organised by higher education institution;
  - g. Passed the examination conducted by the Office of the State Minister of Agrarian Affairs/National Land Agency

The conditions that must be met in order to be designated as a CONVEYANCER is concerned with the competency of the CONVEYANCER in the performance of tasks that require precision and accuracy in pouring the intention of the parties in a deed that is later used to proceed to the land registration process in order to obtain a certificate of entitlement to the land as proof of ownership rights over the land. Basic tasks is carrying out some activities CONVEYANCER land registry by creating a certificate as proof he has done deeds of certain laws concerning land rights or property rights Over units of Flats, which will be the basis for the registration of land registration data changes caused by the deeds of the hukum<sup>5</sup>. The deeds of the law in question is ;

- a. Buy sell,
- b. Change change.
- c. Grants,
- d. Revenue in the company's ( inbreng ),
- e. The Division Of Rights Together
- f. The granting of Building use rights/usage rights over property rights,
- g. Dependent Rights,
- h. Authorisation will burden the rights of Dependant.

Before carrying out the making of the Act regarding the transition as well as the imposition of land rights or property rights over units of flats, PPAT, bypassing the mandatory checks on a certificate of conformity concerning the Land Office land rights or property rights over units of flats is concerned with the list-a list that is in the local Land Office by showing the original certificate. Deed of CONVEYANCER should be made in such a way that it can be used as a strong base for the registration of transition of land rights and the imposition of the corresponding rights. Therefore, the CONVEYANCER is responsible for inspecting the conditions to legitimate legal deeds is concerned with, among others, match the data contained in the certificate with the list-a list that is in the Land Office.

Command or the land registry must also apply in case of transition of land rights. The transition of land rights can occur due to sale and purchase, inheritance, grants, Exchange and others. Regarding property rights, under article 23 BAL transition of property rights over land are obligated to be registered, this article is complete speak, i.e.:

- a. Property rights, as well as every transition, hapusnya and pembebanannyadengan other rights must be registered according to the provisions referred to in article 19 BAL.

- b. The said registration under subsection (1) is a powerful tool of proof about hapusnya property rights as well as transitional and legitimate the imposition of those rights.

The transition of those rights, it is possible, as mentioned in article 8 paragraph (2) which States that the BAL: property rights over land can be switched and transferred to another party. In this case the beneficiary rights to the new compulsory to register land ownership rights of passage that he received in order to provide protection to the holders of the new land rights for the sake of order the land registry.

But the fact that currently there are found a society that does not register the land inbetween the selling rights to purchase. From 5 people of the community that is found by the authors, among them 4 people who haven't registered the rights to the tanahnyaPadahal registration of transition of land rights because selling is very important. This is due to that land has been registered will get Letter Proof Landholdings called certificate.

- a. This certificate is the certificate evidence of land rights that have the power and legal certainty. Certificate of land which will give meaning and crucial role for the respective rights holder which serve as evidence on the ground, especially if the dispute occurs against the ground. Thus it can be seen some of the things he did not cause the registration of, among others:
  - b. Lack of understanding of the people towards the transition of land rights because selling via a conveyancer, so it doesn't register on the Office of the land. This is because the lack of socialization about the transition of land rights because of selling to the public,
  - c. Lack of funds or the cost of community-owned to finance all the registration arrangements inbetween land rights due to selling. This is because the costs are too high to do the required management of registration of passage rights to the ground because selling at land Office.

But one of the purposes of the registration of the land according to the Government Regulation Number 24 in 1997 is to provide legal certainty and legal protection to the holders of land rights.

In the preparation of legislation either by the legislature or the Executive in fact requires a long time, so that by the time the legislation was declared valid then things or circumstances shall be governed by the rules had changed. In addition the haze of the norm can happen because things or circumstances occur have been arranged in a legislation but not obvious or even incomplete.

The result brought about by the presence of the haze of the norm against things or circumstances that have or have not been regulated that legal uncertainty can occur (rechtsonzekerheid) or uncertainty in the Community legislation which furthermore will result in legal turmoil (rechtsverwarring), in the sense that as long as not set meaning may be, as long as there has been no clear procedures and regulated meaning rather than not to be. This causes confusion (chaos) in society regarding the rules of what to wear or applied. In the community there is no certainty of the rules being applied to organize things or circumstances occur.

Based on the description-the description above, the problems raised in the writing of this journal is ;

1. How is the application of the principle of legal certainty in land purchase agreement in Palopo ?
2. How is the practice of land purchase agreement that can meet the legal certainty in Palopo ?

With a purpose. 1.) to know and understand the application of the principle of legal certainty in the sale and purchase agreement in palopo; 2.) to understand and know the practice purchase agreement in Palopo

This type of research is the Juridical Normative research (Normative Legal Research) which has an approach by examining the implementation description positive law (legislation) between one Article with another Article. "The normative legal research legal research is conducted by means of researching library materials, legal research includes the normative principles of law, the systematic examination of the law, an examination of the extent of vertical and horizontal sync, comparative law and legal history. 6"

Juridical normative research done to describe and analyze problems related to setting up and application of the law of the land rights of passage due to selling in the context of reality in society.

The type of data needed in this study i.e., primary data and secondary data. This primary data using interviews (Interview Guide) against the respondent, while secondary data by performing a study document or official archives at the offices of the notary and the BPN especially Palopo

The location of the Research done in Palopo, among others; one of the offices of the CONVEYANCER has the authority in the region in action and in the Office of ' Land Palopo.

## **Discussion**

### **A. The application of the principle of legal certainty In Land purchase agreement in Palopo**

Although in practice the binding sale and purchase Agreements have often used but it turns out that the binding Agreements against Selling just used basic general agreement that set forth in the book of the law of civil law or in other words has never been regulated in legislation relating to land rights.

As has already been explained earlier that the binding of Selling (PJB) is a groundbreaking law that was used by the parties who will do the buying and selling land rights. The binding of Selling (PJB) is used to facilitate the parties will conduct the sale and land rights, because if follow all rules set forth in doing sale and land rights, not all parties can fill in once upon a time, like paying the agreed purchase price.

In the regulations concerning land rights, among which are the Staple of agrarian legislation REGULATION No. 40 of 1996 about use rights efforts, Building use rights and usage rights over land, Agrarian Countries Ministerial Regulation No. 3 of 1997 concerning the implementation of the provisions of the Government Regulation Number 24 in 1997 and others, set any legal deeds relating to land rights. Every person who will do the perbutan berikaitan law with compulsory land rights is subject to all regulations pertaining to land rights.

For example in terms of buying and selling land rights, where in the Government Regulation Number 24 in 1997 about the land registry and the Government Regulation Number 37 in 1998 about the Regulatory position of the maker of the deed of the land (PPAT), arranged that in doing sale and land rights should be done in the presence of the competent authority, in which case the land is land deed official (PPAT), which is the area of his work include the area where the land of dollars traded. In addition the deed of transfer of rights (deed of sale and purchase) is also created by the land deed official (PPAT) and the deed of sale is an authentic deed, where form and content has been determined by the legislation in force.

Before you can do business transactions before the competent authority, in which case the land is land deed official (PPAT), the parties will conduct the sale and land rights must meet all the requirements that are set in the execution of the sale-purchase of land. Requirements of the object of sale and purchase, e.g. land rights that would sell traded is a legitimate land rights owned by seller that is evidenced by the existence of a land certificate or

other valid evidence of those rights, and the land of dollars traded are not in dispute with other parties, and so on.

The sale has been paid in full and all tax-related business transactions such as tax a seller (CNS) and tax the buyer (the Bea acquisition of rights to the land and building/BPHTB) also have been repaid by the party will conduct business transactions. Furthermore, according to Ida Mahwati as a CONVEYANCER at Palopo (interview 17 July 2015) that "with the dilakukanya of buying and selling before the CONVEYANCER, fulfilled the terms light (not the deeds of the law, which is done in stealth). Deed of sale signed by the parties prove to have been going on assignment from the seller to the buyer with the price, have been eligible for cash and showed significantly or real legal deeds concerned has implemented "it comes or is met, then the parties will conduct the sale-purchase of land can do the sale and manufacture of land rights deed of sale-purchase of land before the land deed official (PPAT) as well as the subsequent registration of land for transfer of rights. The certificate proves that you have the correct legal deeds done in question. Because of the legal deed done is the law of assignment, then the certificate implicitly also proves that the recipient rights have become the rightsholders.

To carry out the duties and obligations as a notary public shall be mempertanggung well as any act or deed done, it not only was implemented to keep his good name but also keep. the honour and good name of the institution of notary public as a container from the Notary-Notary throughout Indonesia. Thus in making the authentic deed of sale and purchase land rights Notarized (PPAT) must be filled with precision with the precautionary-hatian by giving the validity or keontetikan of a deed did he nor in itself which can be penalized due to his actions.

In giving the assurance of community interests to give the basic application and create legal certainty the result of authentic deed inbetween those rights is the right base as proof that can be registered right in the Office of land especially in the Palopo either activity or activity name registration feedback first (PP No. 24 of 1997) and the results of interview July 9 according to Kasubsi Certification Pustikawati Indriani ground at BPN Palopo) stated that;

"Selling land that is not accompanied by the deed of sale and purchase made by PPAT, cannot be transferred and listed his due in the Office of land"

The above statement is proof of the deed of sale and purchase of land made by a CONVEYANCER as land registry requirement applies to the registration of land rights of passage that has been registered in the land Office as well as for the first time, the land registry for registration of land must first proved by deed of sale and purchase made before



the CONVEYANCER. From the authentic deed be certificates of land rights as the strongest evidence.

But the fact that currently there are found a society that does not register the land inbetween the selling rights to purchase. From 5 people of the community that is found by the authors, among them 4 people who have yet to register their rights over their land due to the reason community, among others;

1. Because the land registry is only an intervention for orderly payment of taxes;
2. Because in addition to paying the registration fee of the land also charged to pay for purchases above BPHTB from 60 million rupiah;
3. Apart from these costs over there are still other costs such as land use allocation permission (MY IPPT) and IPPH
4. Due to the fact there are still plenty of land which already have land rights are still in dispute in the courts in the losing side there is no payment of compensation for the holders of certificates from State

Of all the reasons the public is a holder of the certificate and the deed of sale and purchase (AJB) but have not registered their land rights to the Land Office in activities behind the name.

To answer the reason of all the reasons the Community Government in this national land Agency (BPN), which has a role in regulate land ownership which the parties are assisted by a notary always work together on information also provide solutions in case of problems in the field of land in certain areas and have always held a socializing down that Ownership Rights over the land which is accompanied by a certificate of such rights was very important to their owners , Because;

1. Implementation of the land register is a manifestation of the principle of legal certainty for each individual holder of rights over land;
2. Implementation of the land register is the basis of good faith from the holders of land rights;
3. Certificate of results of pendftaran land is Government efforts to increase the rate of the economy of the community; not only embody legal certainty only as means of proof;
4. The third point of intended that a certificate that has a function for objects (land) itself for the holder in addition to increase the power and selling the object can also be used as collateral in the bank/agungan to supplement capital.

#### **B. The practice of the agreement and selling land rights that meets the legal certainty**

*The transition of land rights because the sale had to be done before the land deed official attended by the seller or buyer, the party or its power, by attended by the two witnesses. In*

*practice the Treaty selling rights on land that is already certified land deed official (CONVEYANCER). before the selling is done, should be checked in advance of certificate rights over the land in question at the Office Land Kabupaten/Kota, after checking by Office held of land in accordance with the data that is in the Office of the land then the Office of land making notes in sheet redirect that has held the checking , that the data as it is in the Office of the Land. Based on the results of the checking of land deed official made a deed of sale and purchase of land in question are signed by the parties (seller-buyer) and witnesses as well as the land deed official (PPAT) is concerned, is made in double. The sale of land must be done before the land deed official (PPAT) where the lay of the land in question is located, with witnessed by two witnesses. the existence of legal certainty in land purchase agreement according to Mother Ida Mahwati, sh., d. Kn one land deed official (PPAT) in Palopo " Should purchase agreement should be made authentic certificate that can be used as a legitimate instrument of evidence that the law be it in the form of evidence; evidence by witnesses; persangkaan-persangkaan; recognition and vows A deed can be said to have the power as the authentic deed in deed made by officials appointed by authorities, so for the existence of legal certainty in land purchase agreement must be accompanied by an authentic deed that we know with the deed of sale and purchase (AJB) as evidence that provide Legal proof functions in the practice of buying and selling land that makes it easier to be listed right on the land Office in providing legal certainty stronger''.*

In the sale and purchase of land there are two things to note, namely:

1. The subject the  
The subject that is the seller and the buyer. Who is acting as a salesperson and who acts as the buyer. In this case there are several questions that should be retrieved the answer clearly about the subject of the sale and purchase of land
2. Object  
The object of buying and selling that is the right to land, covering:
  1. Property Rights
  2. Building Use Rights
  3. Business Use Rights
  4. Rights Adopted
  5. The rights to the units of Flats.

But not if the object of the sale to purchase land which has not been published yet so there is a certificate of ownership rights over the land. Then, instead of than the certificate must be completed with the other supporting letters. According to the description of IndriPustika Kasubsi Soil Certification as the Cider on the BPN Palopo (interview 8 July 2015), that "the land that does not yet have a certificate procedure must first complete warkah – warkah (object)". as referred to in article 24 PP No. 24 of 1997, documents the subject, the payment of taxes. Then before the CONVEYANCER, the parties (seller-buyer) signed the AJB (deed of sale), an act which was later registered in the Land Office for the certificate creation process. However, in practice now in Palopo and selling land that has not been certified new could be done after the land was certified. From the explanation above, that the transition of land rights through sale and purchase where the object of the sale and purchase is land that has not been certified, on its implementation in Palopo i.e. preceded by registration or assertion of rights (conversion) towards the ground until the publication of a certificate of ownership rights over the land, and then can do the process of buying and selling of land and the creation of the deed of sale and purchase is done before and by a CONVEYANCER. Next the Land Office by Palopo, published a new title certificate in the name of the new owner (buyer).

In any legal deeds committed by the subject of the law certainly will cause the occurrence of a legal consequences. According to IndriPustika Sari As Kasubsi Land Certification at BPN Palopo (interview 8 July 2015) that "due to the law in the sale of land that has not been certified if the completeness of legal documents required have been right about the subject and the object of buying and selling land, then in selling the land was the legitimate land rights switched from the seller to the buyer".

Therefore, the legal consequences of selling land that has not been certified in the form of the submission of an object i.e. buy and sell land to the buyer as well as the submission of the payment of the purchase price to the seller.

## **CONCLUSION**

1. In providing the basic legal certainty in the application of the agreement and selling Land in the town of Palopo in advance what to look for in the agreement, i.e., agree to certain things, skills, and an object that is lawful as defined in article 1320 Civil KUH. With the fulfillment of the agreement's terms four legitimately, then an agreement to be valid and legally binding

for the parties that make it before the land deed official (PPAT) who has the authority to make a deed which can prove that the right has done deeds of law concerned in particular the Act of buying and selling land rights, obligations of land deed official (PPAT) is making an authentic deed called the deed of sale (AJB) , after the making of the deed of sale and purchase is completed you can register right on the Office of the Land registration activities be it first (SK) and behind the name to gain recognition from the country through land rights certificate, where the function of the certificate itself essentially in the Principal Agrarian laws (BAL) subsection (1) and paragraph (2).

2. The practice of land purchase agreement that meets the principle of legal certainty Procedural inbetween land rights due to the buying and selling is done before the land deed official attended by the seller or buyer, the party or its power, by attended by the two witnesses. Land deed official (CONVEYANCER). before the selling is done, should be checked in advance of certificate rights over the land in question at the Office Land Kabupaten/Kota. After checking by Office held of land in accordance with the data that is in the Office of the land then the Office of land making notes in sheet redirect that has been held, checking that the data that is in accordance with the Land Office. Based on the results of the checking of land deed official made a deed of sale and purchase of land in question are signed by the parties (seller-buyer) and witnesses as well as the land deed official (PPAT) is concerned, is made in double. The sale of land must be done before the land deed official (PPAT) where the lay of the land in question is located, with witnessed by two witnesses.

### **Advice**

1. In order for an integrated understanding of the given society by national land Agency regarding the significance of the base land rights as the basis of the filing of the petition of rights based on the applicable legislation, so that the base can serve as a tool of the right evidence is absolute. Although the legal consequences of the Act that is made before a notary is a legal (lawful) but it's good to always act professionally by using the principle of circumspection in accepting the entire transitional activities rights and evidence provided by the parties/penghadap so that the notary deed irrespective of which can be detrimental to all parties and should be Notarized in running his Office as the maker of the deed of the transition of land rights that have not been certified in order to suggest to the parties to immediately conduct a solicitation certificate over their land to the BPN and pay pajak-pajaknya for the sake of the common good as mentioned in the Constitution Article 33 paragraph (3) parent of

all regulations in the areas of land which reads "the Earth and water and natural resources contained therein are controlled by the State and used to sebesar-besar people's prosperity". The intent of the master is to organize and manage as well as distributed people's prosperity sebesar-besar.

2. Preferably on the binding of selling further regulated in the regulations especially with regard to the issue of land, so that the parties who wears a binding sale and purchase as a preliminary agreement in selling more land rights are protected well. And to the notary public in making Binding deed of sale and Purchase must be expressly

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