

Research Article

Juridical Review of Uncertified Land Rights Transfer (Land Has Not Been Registered)

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Abstract.

Land is a possession with economic, philosophical, moral, and religious value. The substantial value of land necessitates that its ownership status must be appropriately managed through the issuance of a certificate. This study is normative research with a statutory approach. The legal issue in this article is the practice of registering land that has not yet been certified. The research findings indicate that the initial implementation of land registration, namely certification, still involves the village, namely the village head, village secretary, and other civil servants, along with witnesses. The obstacle in practice is the absence of detailed technical provisions regarding costs, procedures, and dispute resolution.

Keywords: land, not registered, transition.

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1. Introduction

Everyone's economic right is the right to land and natural resources [1]. Legal subjects defend economic rights by having proof of ownership through certificates. A certificate is strong evidence, meaning that anyone whose name is written is considered the rightful owner unless it can be proven otherwise. The Minister of ATR/Ka BPN said that the Ministry of ATR/BPN has recorded 79 million certified lands. In contrast, more than 94 million plots of land have been registered out of around 126 million total land ownership [2].

The term uncertified land is the same as unregistered land. Although not expressly stated by the provisions of laws and regulations, the equalization can be seen in products and flows. The certificate is a product of land registration; land that has been registered must get a certificate because the certificate is proof of land ownership that has been measured, recorded, and administrated.

Land has several values [3]: economic value, social value, religious value, and juridical value. Among the wider community, the economic value of land is seen from the amount of land prices in the rupiah. Land value continues to increase at any time and can

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be switched, transferred, used as debt collateral, and used as income/capital to the company (*inbrenng*).

Certified land is a piece of land title that has been registered with the local land office. Land registration activities are subject to several laws and regulations, namely Law Number 5 of 1960 concerning Basic Regulations of Agrarian Principles (after this referred to as UUPA), Government Regulation Number 24 of 1997 concerning Land Registration (after this referred to as PP 24/1997), and Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (for after this referred to as PMA 3/1997).

Land registration is an activity carried out by the government to provide legal certainty to rights owners as mandated by Article 19 paragraph (1) of the UUPA. In this case, the government is the National Land Agency (Article 5 PP 24/1997), a state institution that oversees land aspects in Indonesian territory. In addition to legal certainty, land registration is intended to provide information to all parties and administrative order in the field of administration.

The transfer of land rights consists of the transfer and transfer of land rights. The transfer of land rights occurs for the sake of law due to legal events against the owner, while the transfer of land rights occurs due to legal acts by the owner—transfer of land rights including inheritance. Meanwhile, the transfer of land rights occurs due to buying and selling, exchanging, grants, income in the company, and other legal acts of transfer of rights. The transfer of land rights results in changes in juridical data on certificates and land books related to ownership (subject owners) [4].

The sale and purchase of land rights and the transfer of other land rights must be made by deed of the Land Deed Making Officer (after this referred to as PPAT) based on Article 37 PP 24/1997. If the sale and purchase of land rights and the transfer of other land rights are made without a PPAT deed, the legal act deviates from Article 37.

The problem is that there is often a practice of transferring land rights that is carried out without a PPAT deed or transfer of land rights, but the land has not been certified. The two transfers are not necessarily invalid but cannot be processed administratively. There are still many lands that have not been certified or have not been registered with the local government office. Likewise, buying and selling land rights is carried out without making a PPAT Deed—the sale and purchase of rights to the land using a deed underhand.

Article 19, paragraph (1) of the UUPA is the primary legal basis for implementing land registration in Indonesia. This article ordered that a government regulation specifically regulating aspects of land registration be established, and on July 8, 1997, President

Suharto issued Government Regulation Number 24 of 1997 concerning Land Registration. This PP has not been revoked and is still valid today. In addition, this PP has also not been renewed by the new Land Registration PP (PP that regulates only one thing, namely land registration). However, PP Number 18 of 2021 has been concerning Management Rights, Land Rights, Flats Units, and Land Registration.

The responsibility of implementing land registration is the National Land Agency as stipulated in Article 5 PP 24/1997. BPN already exists in every district/city and province but with a different nomenclature, namely at the provincial level called the BPN regional office, while at the district/city level called the Land Office. As of this writing, there are 33 BPN Regional Offices and 479 Land Offices. Indonesia has 34 provinces (plus three new provinces in 2022), but BPN regional offices only number 33 because the BPN East Kalimantan regional office has two working areas covering East Kalimantan Province and North Kalimantan Province.

2. Methods

This research uses normative juridical research methods, normative juridical research. Normative juridical research examines legal norms, both in the legal sense as written in the books (in-laws and regulations) and the legal sense decided by judges through the judicial process. The relationship between legal theory and practice gathered through literature studies was used to structure this study and present it in a descriptive-analytical format.

Studies that use conceptual and legislative approaches are normative. Law books, journal articles, and various studies on legal topics are examples of secondary legal sources used in addition to primary legal texts such as statutes and regulations. A list of the many legal papers is created to analyze and describe any positive legal standard or norm about the situation under discussion.

3. Result and Discussion

3.1. Result

3.1.1. Buying and Selling Land

The sale and purchase of land according to customary law is carried out based on light, cash, and real. Why should it be based on customary law? Because based on Article 5 of the UUPA, the agrarian law in force in Indonesia is customary law. The

enforceability of customary law does not necessarily mean that it must pay attention to and not deviate from national interests, state interests, religious law, and the UUPA itself. Thus, the enactment of customary law is not *unlimited*.

The principle of light means that the sale and purchase of land must be carried out in the presence of traditional chiefs. What is meant by the traditional head here is the village head/lurah is the leader of the local environment. In the past, if the traditional head was not there, someone considered an elder or traditional elder would also act as the traditional chief. This provision is also adopted by national land law, where the sale and purchase are compulsory to be carried out before the PPAT (Land Deed Making Officer). The difference is that buying and selling in front of the traditional head is carried out for land that has not been registered or certified, while in front of the PPAT, when the land is certified.

The cash principle means that the sale and purchase of land must be carried out in full terms. The payment is paid when the entire price of the land is paid in full by the buyer to the seller without any residue and any debit/credit mechanism. Repayment of payments is made simultaneously with the surrender of land. This provision is also adopted by the national land law, which states that the payment of the land price must be made simultaneously at the time of the sale and purchase contract. Even if the parties want payment in installments/credit, they can use the PJB (Binding Sale and Purchase) mechanism.

The real principle means that the sale and purchase of land is carried out in real and earnest to transfer ownership of land. This principle is an additional principle where many references only mention two principles, namely light and cash. The real thing here is intended so that the land previously owned by the seller passes to the buyer, not to another party who is intended to carry out legal smuggling with a *nominee agreement* mechanism.

The sale and purchase of land that has not been certified is carried out with some practices in the field. First, the parties make a receipt or proof of receipt as a sign that the parties to the sale and purchase of land have not been certified. Second, the parties make their own underhand sale and purchase agreements without involving anyone. Some of these agreements affix the seal, and some without the meter. Third, the parties ask the village civil servant/village head to produce a sale and purchase letter signed by the parties, witnesses, village head, and local sub-district. The sale and purchase letter is also given a register number and register date from the village and sub-district.

Buying and selling in customary law does not guarantee legal certainty, especially what is currently recognized as proof of ownership of land rights is a certificate, not other papers, and changes in land ownership data must also be registered with the

local government. Land Office. Legal protection for the parties to this transaction is also considered fragile because not all sub-districts or village heads are now appointed as Special PPAT, so there is a transfer of rights that is not supported by authentic deeds [5].

The most essential component in obtaining legal protection is the legal certainty of ownership of land rights. Legal certainty is obtained when land ownership is verified through documents showing rights known as land title certificates. Article 19 of the UUPA regulates the basic principles of land registration, further detailed in PP 24 of 1997 [6].

Land Registration is a series of activities carried out by the government in the context of collecting physical and juridical data, as well as bookkeeping of land parcels that already have rights and ownership rights to flats and the imposition of rights that eventually become land registration. A land certificate is a document that verifies rights.

3.1.2. The Soil Has Not Been Certified

A certificate is a piece of paper containing legal and physical information needed to register a property per Government Regulation 24 of 1997. A certificate is a written statement owned by an authorized person used as evidence

The certificate is a solid evidentiary tool stipulated in Article 32, paragraph (1) of PP 24/1997. A solid evidentiary tool means that whoever owns the certificate (the name of the holder of the right to land in the certificate) must be considered correct unless proven otherwise. This provision is in line with the purpose of land registration, namely to realize legal certainty based on PP 24/1997 and Article 19 paragraph (1) of the UUPA.

Therefore, the deed is not absolute evidence because its execution can be considered null and void or has no legal force stated by court determination. So that interested parties can file their cases in court, the court can decide that the title certificate to a particular item has no legal force [7].

Land that has not been certified or land that has not been registered is a land right that has not been registered with the land office and does not have a land certificate. The land registration has not been carried out in the form of Complete Systematic Land Registration (PTSL) or sporadic land registration.

The Complete Systematic Land Registration Program (PTSL) is the first land registration activity carried out simultaneously on all land registration objects in all areas of the Unitary State of the Republic of Indonesia within the scope of villages/kelurahan or at the same level whose activities include collection and collection. Record the correctness of physical data and information—jurisdiction relating to one or several objects of land

registration. The implementation of the PTSL program covers all land registration objects in Indonesia without repeating it, both land parcels that do not yet have land rights and privately owned land parcels that already have the right to improve the quality of land registration data. This program aims to provide security guarantees and legal protection of land rights to increase economic growth and community welfare [8].

Uncertified land means the land has not been issued a land rights certificate. Because the land has not been certified, the book has not been published. As we know, the certificate held and owned by the community is a copy of the land book stored at the local land office. The absence of a land book means no information on land rights, such as rights numbers, measuring letters, field maps, NIB/Field Identification Numbers, or delimitation.

Because the land has not been registered, it does not have a Field Identification Number (*NIB*). The land has also not been measured, so there is no letter of measurement or picture of the situation. The absence of a letter of measurement or picture of the situation means that on the land, a map of the field.

There are two types of land tenure: physical land control and juridical land control. Land that has not been certified is only physically controlled. Physical control is carried out by cultivating the land if the land is agricultural land/rice fields, the benefits of the land are enjoyed by someone routinely/daily, and other actions that manage and manage the land.

Although the land does not yet have a certificate, its ownership can be proven by other documents as stipulated in Article 60 paragraph (2) of the Regulation of the Minister of Agrarian State/ Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (after this referred to as PMA 3/1997). This arrangement is expected to provide legal protection to landowners, especially if there is a dispute in court.

Other documents mentioned above include a grosse deed of eigendom rights, proof of ownership issued based on the Swapraja Regulation, SHM issued based on Agrarian Minister Regulation Number 9 of 1959, Decree granting property rights from authorized officials, Land Tax Petuk / Landrente, girik, pipil, kekitir, and Verponding Indonesia, deed of transfer of rights made under hand, deed of transfer of land rights made by PPAT (the land has not been recorded with a pedestal transferred rights), waqf pledge deed/waqf pledge letter, minutes of the auction made by the Auction Officer, letter of appointment or purchase of land instead of land taken by the Government or Local Government, land history certificate that has been made by the Land and Building Tax Service Office accompanied by the transferred suitable base, or other forms of written evidence under any name as referred to in Article II, VI and VII Conversion Provisions of the UUPA [9].

The non-registration of land or the unissuance of a land certificate does not prevent tax officials from collecting taxes on the land. Tax employees from the Regional Revenue Agency (BAPENDA) or the local Regional Revenue Agency (DISPENDA) based on their authority to issue SPPT PBB (Tax Return Payable Land and Building Tax) for the current year. SPPT PBB is a tax collection letter containing a certain amount of money that must be paid by the owner of the land and building tax object as a taxpayer.

The characteristics of the soil are not yet certified:

a. The land has not been registered with the Land Office

Land that has not been registered with the land is usually like girik land, or petok D. Tanah Girik is a term for customary land or land that does not have a certificate and has not been registered with the local Land Office and does not yet have a specific proper status (Right to Build, Right to Use, Right to Use, Right to Have). Girik land does not have a solid legal status. Therefore, it is essential to look at the girik land to be purchased so there will be no problems in the future.

Before the birth of the UUPA, girik was still recognized as proof of land rights, but after the birth of the UUPA and Government Regulation No. 10 of 1961 as amended by Government Regulation No. 24 of 1997 concerning Land Registration, only certificates of land rights were recognized as proof of ownership of land rights (Government Regulation, 1997).

b. The land does not yet have a Field Identification Number (NIB)

Article 54 paragraph (4) of Perkaban No. 1 of 2016 states that PPAT is not allowed to do a deed on part of a registered plot of land or customary land before it is measured by the Land Office and given a Land Parcel identification number (NIB). This is intended to provide legal certainty regarding the exact location of the transaction object after adjusting between physical and juridical data. Furthermore, in doing a deed, PPAT must include the NIB and/or land rights number, UN Tax Return (SPPT) number, and use and utilization of land following field conditions.

c. The soil has not been measured

In this case, knowing precisely about the object to be transferred is necessary because the land that has not been registered does not have a Letter of Measure.

d. The land does not yet have a letter of measurement or a picture of the situation

A survey letter is a document that contains physical data on a plot of land in the form of a map and description. Complete systematic land plot measurements and mapping are carried out after the village/kelurahan or other name at that level is determined to be the location for the Complete Systematic Land Registration.

e. There is no land book at the local Land Office informing of the existence of the land

A land book is a document in the form of a list that contains juridical data and physical data of a registration object to which rights already exist.

f. On this land, it is still possible to issue SPPT PBB

Uncertified land will be rugged to get legal certainty compared to certified land. There is legal certainty on land that has been certified, namely certainty of land rights, subjects, objects, and locations. Certainty not to be disturbed or sued by other parties

So far, the government's actions in conducting land registration to provide legal clarity and protect ownership of land rights by the community have not been fully implemented. This becomes even more problematic considering that, although many properties have not been recognized, the transfer of ownership rights is quite widespread in the community, primarily through buying and selling. In such a situation, communities are vulnerable to disability if there are differences of opinion regarding the transfer of land rights because proof of ownership is not the most substantial evidence. Common disputes surrounding land include the status of the land, who has the right to the land, and objections to the evidence of acquisition on which the acquisition of property rights is based.

3.1.3. The Validity of Buying and Selling Land Has Not Been Certified

The sale and purchase of land that has not been certified, as evidenced by a letter of sale and purchase, is not prohibited by the provisions of laws and regulations in Indonesia, either in agrarian or civil law. However, the sale and purchase of land that has not been certified is vulnerable to problems and disputes for the parties. The proof of sale and purchase cannot be registered with the local land office to reverse the ownership name because the certificate has not been issued.

An uncertified land sale and purchase letter is a letter of agreement under the hand made by the seller and buyer. This letter is categorized as a deed under hand per Article 1874 BW [10], which may have perfect evidentiary power if the parties do not deny its existence. In practice, the seller and buyer make a letter of sale and purchase in front of the local village head with two witnesses known and corroborated by the sub-district.

Article 37, paragraph (2) of PP 24/1997 allows deeds other than those made by PPAT to prove the transfer of land rights. According to the article's explanation, the deed is made by a temporary PPAT, namely the local sub-district where the land is located. When PP 24/1997 was made, PPAT was still few, and in many areas, there was no PPAT,

so the sub-district head or village head was appointed as an official authorized to make deeds as evidence of the transfer of land rights.

Despite the many disadvantages of the underhand sale and purchase agreement mentioned above, the sale and purchase agreement below can be used as written evidence for the registration of rights derived from the conversion of old rights. This provision is only if the agreement under this hand was made before PP 24/1997 was ratified (July 8, 1997) and made in the witness of the village head as the traditional head. The facts on the ground showed that the agreement under the hands of the majority was made after PP 24/1997 was ratified. Many people do not know the obligation to make land deeds by PPAT.

The allocation of the letter of sale and purchase under the hand (deed of transfer of rights under the hand) is twofold. This sale and purchase letter is only provided if it was made before PP 24/1997 was issued. First, the sale and purchase letter is used for supporting documents for sporadic land registration applications (registering old rights) as stipulated in Article 73 paragraph (2) letter c jo. Article 76 paragraph (1) letter g. Second, it is used for systematic land registration following Article 60 paragraph (2) letter g. So the underhand letter of sale and purchase can be used to register the old rights sporadically or systematically.

The content in the sale and purchase letter in the form of articles must concern the parties because those articles will be binding and must be obeyed. There are no standard rules on what materials must be contained by the parties in the sale and purchase agreement. Unlike the case with the Deed of Sale and Purchase of PPAT, which has been determined by the Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (commonly referred to as *Perkaban 8/2012*).

The writing or mention of the title of the sale and purchase letter in practice is very diverse, including sale and purchase letter, land sale and purchase agreement, sale and purchase (without the word letter), land sale and purchase, sale and purchase agreement, sale and purchase agreement, land sale and purchase agreement, sale and purchase certificate, or other designations. The parties must consider this because the agreement's title reflects the parties' legal acts, lest the title differ from the material of the article or legal act carried out by the parties.

Letters of sale and purchase made by the community rarely contain an affirmation of comparison or the authority of the parties to make agreements. Identity is simple by including full name, residence number, address, place of birth, occupation, and age.

The Notary / PPAT usually contains the comparison in the deed he made by stating the extent of the authority and ability of a person to be a party/face to carry out specific legal acts.

The letter of sale and purchase, in practice, contains the title, identity of the seller and buyer, object of sale and purchase (location, area, designation), land price, land boundaries, place and date of making agreements, signatures of the parties on the seal, signatures of witnesses. Next is whether or not the sale and purchase letter needs to be stamped. Juridically, the sale and purchase agreement must be accompanied by a stamp of 10,000 following Law Number 10 of 2020 concerning Stamp Duty. The law states that stamp duty is a tax on documents. A sale and purchase letter is the object of stamp duty because the sale and purchase letter is intended to be used as evidence regarding acts, facts, or circumstances of a civil nature. The land sale and purchase letter that has been made is a tool to explain an event of a civil nature with the existence of a legal relationship between the seller and the buyer.

The weakness in the substance of the sale and purchase letter is that there is no article on the seller's statement that the land is free from disputes, encumbrances, and guarantees, no article on dispute resolution, and no article on charging fees.

The procedural weakness of the sale and purchase letter is that it is not preceded by payment of taxes, whether BPHTB (Land and Building Rights Acquisition Fee) or PPh (Income Tax); there is no mechanism for checking the certificate first with BPN. There is no guarantee that the seller has paid the PBB (Land and Building Tax).

From the explanation above, land sale and purchase documents are prone to causing disputes because they are not authentic deeds made in the presence of public officials. However, a sale and purchase letter is considered valid if it meets the requirements for the validity of an agreement under Article 1320 BW and customs, namely as follows: (1) there is an agreement between the seller and the buyer; (2) made by competent and authorized sellers and buyers; (3) certain land which is the object of sale and purchase; (4) no legal provisions have been violated; (5) the sale and purchase is carried out in the presence of the village head, witnessed by at least two witnesses, and confirmed by the sub-district head; (6) given the village register number and sub-district register number; and (7) stamped according to applicable regulations.

4. Conclusion

Transferring land rights that have not been legally certified violates the applicable legal provisions. First, every transfer of land rights must be made with a PPAT deed based on Article 37 PP 24/1997 concerning Land Registration. Second, the transfer of land

rights must be accompanied by BPHTB payments based on Law 21/1997 concerning BPHTB. Third, the transfer of land rights must be accompanied by payment of PPh based on PP 34/2016 concerning Income Tax on Income from the Transfer of Land and/or Building Rights and Sale and Purchase Agreements for Land and/or Buildings and their Amendments. Transferring rights to uncertified land is possible using a PPAT deed, provided the local land office permits it. Second, measurements have been carried out. Third, the measurement letter and NIB have been issued. The transfer of rights to uncertified land is carried out with the following provisions: First, it is carried out in the presence of the local village/subdistrict head and confirmed by the sub-district head in the presence of witnesses. Second, add a stamp and wet signature. Third, a register number and village and sub-district registration date are given. Fourth, immediately register the rights transfer in the land letter c in the village/sub-district.

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