LEGAL ANALYSIS OF THE CONSEQUENCES OF LAND TITLE TRANSFER THROUGH SALE AND PURCHASE THAT BECOMES THE SUBJECT OF DISPUTE

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ABSTRACT

Disputes over land rights transfer can arise from administrative land issues that are subject to administrative or civil compensation laws and criminal aspects. Administrative disputes can be resolved through mediation by the National Land Agency, while civil and criminal matters may proceed through the courts. The current agrarian conflicts highlight that Indonesia's land administration system requires improvement to ensure legal certainty over land rights. One root cause lies within the land registration system itself. Therefore, to provide legal certainty and protection, landholders are issued a certificate. A certificate is "a proof of ownership document that serves as strong evidence of the physical and legal data contained therein, provided that the physical and legal data align with the data in the measurement records and land books.

Keywords: Legal Analysis, Land Rights, Sale and Purchase, Dispute

INTRODUCTION

Indonesia is an agrarian country, with the majority of its population engaged in agriculture. This is largely due to its tropical climate, which supports extensive agricultural activity across much of the nation. Indonesia's land comprises diverse landscapes of both land and sea, alongside various other natural resources within its soil.

Soil is a vital natural resource, essential for human life as it supports various needs such as housing, agriculture, and economic ventures. Additionally, soil plays an important role in natural vegetation, especially forests, which provide resources for both humans and wildlife. Moreover, Indonesian soil is rich in elements like minerals and other extractive resources crucial to human life. Due to its high nutrient content, Indonesian soil is highly fertile, making it ideal for agricultural activities.

In agrarian law, land refers to a part of the earth's surface, as outlined in Article 4, Paragraph 1 of the Basic Agrarian Law (UUPA), which states: "Based on the state's right to control, as referred to in Article 2, various rights over the earth's surface, known as land, may be granted to and owned by individuals, either personally or collectively, as well as by legal entities."

A significant portion of land disputes in Indonesia arises from issues related to the transfer of land rights. The high number of such cases indicates a lack of comprehensive understanding among the public, authorized officials, and other stakeholders involved in the transfer process, often leading to conflicts, disputes, and even court cases. This situation stems from a lack of alignment among regulations, public awareness, and the competence of the authorities responsible for overseeing land transfer processes. Land policy development in Indonesia is fundamentally grounded in Article 33, Paragraph (3) of the 1945 Constitution, which states, "The land, waters, and natural resources within them are controlled by the state and utilized to the greatest extent for the people's welfare."

This principle aligns with one of the objectives of the enactment of Law No. 5 of 1960 on Basic Agrarian Principles (UUPA), which is to establish a foundation to ensure legal certainty regarding land rights for all Indonesian people. Legal certainty of land rights for the public is realized through land registration conducted nationwide by the government, as stipulated in Article 19, Paragraph (1) of the UUPA, which states: "To ensure legal certainty, the government conducts land registration across the Republic of Indonesia in accordance with regulations established by government regulations."

The legal object of land includes rights to control land, comprising authorities, obligations, and/or prohibitions for landowners regarding their property. Land ownership rights may be transferred to others through transactions such as sales, gifts, exchanges, wills, and other actions intended to transfer ownership. Ideally, land ownership transfer would not result in disputes if landowners actively protected their ownership, both physically and legally. This process also relies on the role of land officials (PPAT) and the Land Office, who have the authority to maintain and protect the authenticity of such records, which are special archives that must be carefully preserved. The sale and purchase of land rights adhere to the principles of contract law, while the transfer process itself is governed by administrative law.

Disputes over land title transfers may arise due to issues in land administration, which are subject to administrative, civil (compensation), and criminal laws. In cases of administrative issues, mediation through the National Land Agency (BPN) can be pursued, while civil and criminal disputes are typically resolved through the courts. Current agrarian conflicts indicate that land administration in Indonesia requires improvements to ensure legal certainty over land rights. One root cause is the land registration system itself. Therefore, to provide legal certainty and protection, land rights holders are granted a Certificate, which serves as "a valid document of proof providing strong evidence regarding the physical and legal data it contains, as long as the data aligns with that in the land map and title register."

The transfer of land rights falls within the authority of the Land Deed Official (PPAT), an official responsible for preparing legal land deeds. During the land rights transfer process, the PPAT deed is fundamental for issuing a certificate as evidence of ownership. The certificate must accurately reflect the information recorded in the title register and land map, as stipulated in Article 32, paragraph (1) of Government Regulation No. 24 of 1997. This regulation holds a strategic role, not only as an implementing provision of Article 19 of the Basic Agrarian Law but also as a guideline to support effective land administration and land law in Indonesia. Consequently, PPAT deeds must comply with PPAT regulations to serve as a solid basis for registering transfers and encumbrances of rights, thereby establishing legal certainty over an individual's land ownership to support legal resolution in land disputes.

There are two legal consequences of land title transfers that are subject to dispute: 1) Null and void by law, and 2) Voidable. A transfer is considered null and void if it fails to meet the objective requirements of a valid contract (a specific object and lawful cause) as regulated by Article 1230 of the Civil Code. A voidable transfer, however, may be annulled by a judge if it does not fulfill the subjective requirements of a valid contract (the parties' consent and competence).

The above legal implications highlight that disputed land rights transfers often stem from preliminary processes under PPAT authority. Amendments to Government Regulation No. 37 of 1998 on the Regulations Governing Land Deed Officials outline the primary duties and responsibilities of the PPAT, which include executing part of the land registration process by drafting a deed as evidence of specific legal actions regarding land rights or ownership of apartment units. This deed then serves as the basis for registering changes in land registration data due to these legal actions.

Among such legal actions is sale and purchase. According to M. Yahya Harahap, a sale and purchase agreement is a contract binding the seller to deliver a specific item and the buyer to pay the agreed price. Sales transactions are also regulated under Book III of the Civil Code on Obligations. Article 1457 of the Civil Code defines sale and purchase as an agreement wherein one party commits to deliver an item and the other party commits to pay the agreed price. Article 1458 of the Civil Code further stipulates that a sale is considered binding upon both parties once they agree on the item sold and the price, even if the item has not yet been delivered or the price paid.

In addition to the sale and purchase deed issued by the Land Deed Official, the sale must be conducted in the presence of the PPAT to ensure the transaction is clear, final, and tangible. Here, "clear" means the sale is conducted before an authorized official, specifically the PPAT. The deed of land rights transfer, particularly due to sale and purchase, must be signed in the presence of both the buyer and seller. This procedure aims to establish legal certainty and transparency between the seller, who relinquishes land rights, and the buyer, who pays a specified price to acquire those rights. Legal certainty and transparency are essential to protect the parties involved in good-faith land sales.

Good faith must be present in any agreement, including sales transactions, as stipulated by Article 1338(3) of the Indonesian Civil Code, which states that an agreement must be carried out in good faith. The purpose of requiring good faith is to prevent improper conduct in the execution of the sale. Furthermore, good faith is a condition for the validity of an agreement, as outlined in Article 1320 of the Indonesian Civil Code, which includes:

a. Agreement between the parties;
b. Competency to engage in a binding contract;
c. A specific subject matter;
d. A lawful cause.

What happens if individuals engage in a legal transaction to transfer land rights with only a simple receipt as proof of the sale from seller to buyer, without a deed of sale executed before an official land deed officer (PPAT)? Such an act can be highly disadvantageous for the buyer, as they have no legal certainty over the transferred land rights, despite having paid the seller a sum of money. Normatively, the certificate of ownership acquired by the buyer lacks proof of the transfer of land rights, and the certificate remains in the seller's name, even if it has been handed over to the buyer.

In the short term, using only a purchase receipt may not present immediate legal issues for the buyer, as they can still contact the seller if needed. However, in the long term, this practice may lead to disputes. Such situations are still commonly found in Indonesian society, both in urban and rural areas.

RESEARCH METHOD

The approach used in this study is an empirical juridical approach, also known as field research. This approach involves examining the applicable legal provisions and their implementation in real-world situations within society.

DUSCUSSION

Legal Analysis of Land Ownership Transfer Based on Disputed Sale and Purchase Transactions

According to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 on Procedures for the Granting and Revocation of State Land Rights and Land Management Rights, Article 4, paragraph (1), states, "Before applying for rights, the applicant must possess the land applied for, as evidenced by legal data and physical data in accordance with the applicable laws and regulations." This means that all rights a person has over a piece of land are part of their rights and obligations. If an individual sells their land, it is based on their entitlement to do so.

In resolving disputes, especially land-related conflicts—which are among the most complex due to the high number of complaints across varied cases—achieving a "win-win solution" is the public's hope for fair outcomes without disadvantaging any party. In cases where land becomes the subject of dispute, a comprehensive review based on applicable legal frameworks is necessary to ensure that the transfer of ownership can be conducted fairly and in accordance with the law, thereby legitimizing any sale and purchase transaction.

Regarding the procedure for land ownership transfer, the transfer to a third party, including the granting of building rights and usage rights derived from land management rights, is governed by the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia No. 18 of 2021 on Procedures for the Determination of Management Rights and Land Rights. Article 1, paragraph (3), clarifies, "Land rights are rights acquired from a legal relationship between the rights holder and the land, including the space above and/or below the land, to possess, own, use, utilize, and maintain the land, the space above, and/or below it."

In transferring land ownership to another party, there must be a legal relationship and legal standing between the rights holder and the land to be transferred, including any associated facilities. Without such a legal relationship, the transfer is invalid, often resulting in land disputes because all involved parties may believe they hold equal rights to the land in question.
The Basic Agrarian Law (UUPA) No. 5 of 1960, Article 6, stipulates:

1. Sale and purchase, exchange, grant, bequest, and other acts intended to transfer ownership rights and their supervision shall be regulated by Government Regulation.
2. Any sale and purchase, exchange, grant, bequest, or other acts intended to directly or indirectly transfer ownership to a foreigner, a dual-national Indonesian, or a legal entity not specified by the Government as per Article 21, paragraph (2), is legally null and void, and the land reverts to the State. However, third-party rights remain valid, and any payments received by the previous owner are non-refundable.

Unfortunately, land disputes over ownership transfers continue to occur frequently, causing significant harm to the involved parties. A common case in ownership transfer through land sale and purchase, as governed by the above law, seems to clearly regulate land sale transactions. However, if the sold land is found to be disputed, the legality of the ownership transfer becomes invalid.

Although national laws establish a general legal system, to ensure legal certainty, Government Regulation No. 24 of 1997 concerning Land Registration stipulates that land transactions must be conducted by an authorized official, specifically the Land Deed Official (PPAT) appointed by the state.

The foundational concept of the Basic Agrarian Law is based on Indonesia's constitutional law principles. Article 5 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9 of 1999 on Procedures for the Granting and Revocation of State Land Rights and Management Rights stipulates that: "In granting land rights or management rights, land examination shall be carried out by the Land Examination Committee or Land Research Team or appointed officials."

In contrast, during the colonial period, land sales followed a dual legal system comprising two actions: a sale-purchase agreement, where the seller and buyer mutually agree to transact, observing contractual and transactional regulations derived from Book III of the Indonesian Civil Code. If legal provisions on the transfer of ownership from seller to buyer are necessary, the provisions of Book II of the Civil Code on Property apply. In land transactions, ownership is formalized through the registration of the title deed with the Land Deed Official (PPAT). Among customary law communities who do not adhere to written law, land transfer also occurs within the framework of customary legal concepts.

This implies that only certified land can be registered for ownership transfer if supported by PPAT documentation. This requirement is reinforced by Government Regulation No. 37 of 1998 on the Regulations for Land Deed Officials (PPAT), Article 2(1), which states: "The main duty of PPAT is to carry out specific activities in the field of land registration by preparing documents that demonstrate that ownership of land or property is transferred based on a particular legal act, whereby changes to the land are made according to the registered data of the legal act."

Legitimate land ownership transfers may only be conducted through deeds made at the Land Registration Office (PPAT) and registered with the National Land Agency (BPN), as emphasized in Article 37(1) of Government Regulation No. 24 of 1997: "The transfer of land rights and ownership rights to an apartment unit through sale and purchase, exchange, donation, foundation, and other legal acts related to the transfer of rights, except transfers by auction, may only be registered if verified through documentation prepared by the authorized PPAT according to prevailing laws and regulations."

PPAT officials are required to conduct thorough inspections of the physical and legal status of the property, including verifying that the land is not in dispute or subject to ongoing litigation. If the land is under dispute, PPAT must decline to process the transfer. Additionally, if the property is involved in a pending court case, the BPN, through the PPAT, must reject the issuance of any title transfer deed, providing valid reasons for the refusal.

Land dispute resolution can be pursued through the National Land Agency (BPN), a process arising from genuine claims, complaints, or objections from the public (individuals or legal entities) that require decisions from BPN as an administrative state authority. Public objections concerning specific land areas are directed to the land office, and the decisions of appointed government officials are considered as infringements upon the claimant's land rights.

Dispute resolution through mediation is essentially “a negotiation process assisted by a third party who helps the parties in the process to find a mutually satisfactory conflict resolution.” As an alternative dispute resolution method, mediation is characterized by a short-term, structured, task-oriented approach with interventions where the negotiators and parties are actively engaged. The success of mediation depends on the good faith of both parties involved.

The dispute resolution process by the judiciary occurs when the involved parties fail to reach an agreement through deliberation, and when the disputing parties do not accept a unilateral settlement from the leadership of the state institution, thus requiring judicial intervention. If, after an examination, the decision made by the provincial service official is found to be in accordance with the law and applicable procedures, the head of the provincial service may also issue a decision rejecting the lawsuit filed by a third party. The party opposing the administrative decision made by a state official will be involved in this process.

As a result of the rejection, the administrative decision remains valid and binding, even if other parties bring the case to the district court. In anticipation of a final and binding court ruling, the relevant administrative authority cannot transfer the disputed property (status quo). Therefore, officials responsible for land matters must adhere to the principles of good governance, protecting all parties involved to avoid future problems that could result in harm to the parties or third parties involved.

This policy is outlined in the Circular Letter of the Head of the National Agency Number 110-150 dated November 14, 1992, which revoked the Minister of Home Affairs Decree Number 16 of 1984, stating that when sufficient data is available, the proposed issue must undergo a re-examination, including procedural, judicial, and legal considerations. To ensure the protection of the rights of individuals or legal entities who are entitled to the land in question, and if deemed necessary after review by the regional head, the status quo of the disputed land may be blocked.

If the court decision becomes final and binding, the Head of the Land Office of the city/town shall request through the Head of the Provincial Land Office to annul the administrative decision regarding the land plot in question. Such a request must be accompanied by an explanation of all relevant information regarding property burdens and existing issues. The administrative

authority may request the issuance of a land title certificate or the revocation of the decision regarding land rights, including policy measures, if the court decision is deemed unenforceable.

Obstacles Encountered in Legal Analysis Due to the Transfer of Land Rights through Sale-Purchase Transactions as the Object of Disputes

According to the *Kamus Besar Bahasa Indonesia* (KBBI), the term "kendala" (obstacle) is defined as: 1) a hindrance; a barrier; an impediment; 2) a factor or condition that limits, obstructs, or prevents the achievement of a goal; a force that causes the cancellation of an execution; 3) a condition (especially a geometric form in the environment) that restricts the movement of an object or a system. From this definition, we can conclude that an obstacle is a factor that hinders or restricts an individual's ability to achieve a goal by forcing a limitation, sometimes even resulting in the cancellation of the attempt.

Similar to both academic and non-academic settings, social issues often arise in our surroundings and become obstacles in resolving problems. The following are common obstacles encountered in legal analysis related to the transfer of land rights based on land sale transactions that become objects of dispute:

1. Lack of Knowledge Regarding the Law of Land Rights Transfer Land plays a crucial role in human life, fulfilling two essential functions: as a social resource and as a capital asset. As a social resource, land serves as a means to bind the unity of the Indonesian people in social, national, and state life, while as a capital asset, it serves as a factor in development and must be utilized to achieve the welfare of the people in a just and equitable manner while maintaining its sustainability.
   The transfer of land rights is governed by Government Regulation No. 10 of 1961 on Land Registration (PP No. 10 of 1961), as amended by Government Regulation No. 24 of 1997 on Land Registration (PP No. 24 of 1997). A Land Deed Official (PPAT) is a public official authorized to create authentic documents for the transfer of land rights. Legislation requires the drafting of such authentic deeds to ensure legal certainty, order, and protection. These authentic documents not only fulfill legal requirements but also serve to guarantee the rights and obligations of the parties involved, ensuring security, order, and legal protection.
   The transfer of land rights from one party to another is supported by legal documents such as land certificates that confirm the seller's ownership. It is crucial for buyers to verify the completeness and legal status of the land before making a purchase. Often, individuals are unaware of the legal status of the land they wish to buy, leading to incomplete or legally invalid transfers.
   In disputes over land, such as inheritance cases, the land may not have a certificate, complicating the situation. Land disputes are common in Indonesia due to the lack of land certificates as proof of ownership. When an owner wishes to sell land, they face obstacles unless they first complete the certification process to legally validate the ownership before transferring the title to the buyer.
2. Lack of Knowledge Regarding the Legality of Land Sale-Purchase Transactions A sale-purchase agreement is a contract in which one party agrees to transfer ownership of a property to another party, who agrees to pay the agreed-upon price, as stated in Article 1457 of the Civil Code (KUH Perdata) on Sale and Purchase.
   The transfer of land rights involves the movement of property ownership from one individual or entity to another. This can occur as a result of litigation or legal events such as inheritance or voluntary transactions like sales and exchanges.
   There are three common practices in land sale transactions: first, a verbal agreement; second, a sale documented with an underhand deed; and third, a formal sale recorded by a PPAT through an official deed and the registration of the title transfer with the state office.
   Verbal agreements between neighbors, where one party pays for the property and receives a bank-issued certificate of ownership, may lead to future disputes due to the absence of written evidence. This often occurs because the parties involved trust each other, believing that no conflict will arise. However, the lack of written documentation and bank certification may cause legal problems later.
   The practice of underhand sale-purchase agreements means that people are becoming more aware of the importance of having a formal, written agreement as concrete evidence between the seller and buyer. Village governments sometimes issue land sale certificates when the parties involved lack knowledge about the proper procedures for transferring certified land rights. The legal validity of a land sale transaction hinges on fulfilling the necessary requirements set by applicable laws. If these requirements are not met, it can affect the legality of the transfer and ownership rights obtained through the sale.

This translation and refinement aim to present the content in a clear and academic tone, making it more accessible for an English-speaking audience while retaining the original meaning and structure.

CONCLUSION AND SUGGESTION

A. Conclusion

1. In the resolution of disputes, particularly land disputes, which are among the most complex conflicts within society, the volume of complaints highlights the wide variety of cases involved. The ideal resolution, often referred to as a "win-win solution," is widely anticipated by the public, as it ensures a fair outcome where no party feels disadvantaged. When land becomes the subject of a dispute, a thorough review based on applicable laws and regulations is necessary. This will ensure that the transfer of land rights in the disputed case is resolved fairly and in accordance with the prevailing legal framework. Thus, if a land transaction occurs, it must be legally valid.

2. In the process of transferring land rights to another party, there must be a legal relationship between the holder of the rights and the land being transferred, whether it is the land itself or its associated facilities. Without such a legal

relationship, the transfer would be invalid, potentially leading to a land dispute, as each party involved may believe they have equal rights to the land.

3. The resolution of disputes by judicial bodies occurs when the parties involved cannot reach an agreement through deliberation. If the disputing parties reject a unilateral settlement proposed by the head of a government institution, the dispute must be taken to court. If the court finds that the provincial official's decision is in accordance with the law and established procedures, the provincial head may issue a ruling rejecting the third party's claim. The party challenging the administrative decision made by a government official will be subject to the legal process.
4. Several challenges often arise in the legal analysis of land right transfers, particularly those involving land sales that are the subject of disputes, including:
   a. Lack of Knowledge About Land Right Transfers
   b. Insufficient Understanding of the Legality of Land Transactions
   c. Complex Legal Procedures
5. Efforts to address these challenges include:
   a. Providing Public Education on the Importance of Land Certification
   b. Ensuring Clear Legal Status of Land Subject to Sale
   c. Ensuring Fast, Accurate, and Transparent Land Certification
   d. Implementing Appropriate Dispute Resolution Methods

B. Suggestion

1. In carrying out the process of buying and selling land, it must be registered and conducted in the presence of a PPAT (Land Deed Official) to ensure that the transfer of land rights is properly executed, as evidenced by the Land Sale and Purchase Deed (AJB) created by the PPAT.
2. Based on the enforcement of law concerning the transfer of land rights, all parties must fulfill their duties and obligations in accordance with the applicable laws and procedures, in order to avoid future land disputes that may lead to the annulment of the land title deed that forms the basis for the issuance of the land ownership certificate.
3. For a land sale to have legal force without the PPAT deed, both parties—buyer and seller—must approach the local village head. The seller will then sign a stamped deed confirming that they have sold the land to the buyer. This deed must be signed by the village head and witnessed by two legally competent witnesses.
4. The National Land Agency (BPN) and PPAT should jointly provide socialization and education to the public regarding the legal regulations related to the PPAT deed, registration procedures, land rights transfers, and other related technical and procedural matters. This is essential for ensuring the efficiency of land administration and for preventing future land disputes, conflicts, and legal issues.

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