



Juridical analysis of the legal validity of land sale and purchase transactions without the involvement of land deed officers (PPAT)

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Abstract

The sale and purchase of land rights in Indonesia follow officially regulated and lawful procedures that must be conducted in the presence of Land Deed Officers (PPAT) based on Government Regulation No. 24 of 1997. This step signifies the validity of the land rights sale and purchase transactions. PPAT is responsible for composing the Deed of Sale and Purchase, which is subsequently registered at the local Land Office, explicitly acknowledging the transaction and recording the transfer of land ownership to the new buyer. Land sale and purchase transactions conducted without involving Land Deed Officers (PPAT) indeed possess limited legal strength, merely confirming the validity of the sale and purchase transaction itself in line with Article 1457 of the Civil Code and Supreme Court Decision No. 126 K/Sip/1976. Nevertheless, this does not provide comprehensive legal assurance regarding the ownership of the traded land. This uncertainty aligns with the regulations stated in Government Regulation No. 24 of 1997, specifying that the validity of the transfer of land rights can only occur if the sale and purchase transaction fulfills formal requirements, specifically conducted in the presence of authorized PPAT. Therefore, valid proof indicating land ownership is the land certificate issued by the National Land Agency, one of which is obtained through a deed drafted in the presence of PPAT. This emphasizes that through land transactions facilitated by PPAT, there exists more convincing legal strength and clearer legal certainty regarding the ownership of the land. Suggestions advocate the awareness of the significance of involving Land Deed Officers (PPAT) in every land sale and purchase transaction to ensure legal certainty concerning land ownership. Hence, it is advised that individuals engaging in land transactions consistently involve PPAT to compose a legally valid deed. By involving PPAT, the security and legal certainty regarding land transactions are more assured, thus potentially reducing future disputes concerning land ownership. Additionally, it is crucial to comprehend and adhere to the procedures and regulations governing the land ownership transfer process to ensure the legality of transactions and accurate land ownership, thereby avoiding undesired legal consequences.

Keywords: Land deed officers (PPAT), validity of the land, legal assurance

Introduction

The current rapid increase in land demand contrasts with the increasingly limited availability of land locations, significantly impacting the escalation of land value and prices. This situation has led to a profound effect on the rise of potential conflicts and issues related to land. The complexity arising from the human-land relationship necessitates regulations that can ensure legal certainty. The objective is to regulate interactions between humans and land, anticipate conflicts, and resolve various problems arising from land ownership or usage ^[1]. The sale and purchase of land rights in Indonesia follow procedures that are officially and legally regulated, requiring the involvement of a Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT) based on Government Regulation No. 24 of 1997. This step serves as an indicator of the validity of the land rights transaction. The PPAT is responsible for drafting the Deed of Sale and Purchase, which is then registered at the local Land Office, specifically recognizing the transaction and recording the transfer of land ownership to the new buyer ^[2].

However, in everyday practice, the phenomenon of land sales and purchases without involving PPAT is still common. Many transactions are only supported by receipts or unofficial agreements as evidence of the sale and purchase transaction. As a result, many individuals only possess proof of land ownership that is still registered under

the previous owner's name, without a formal process of ownership transfer carried out through a valid and officially registered Deed of Sale and Purchase.

The involvement of PPAT in land rights transactions is key to ensuring legal certainty. This process ensures that changes in ownership are officially recorded and provides legal protection to the buyer. Without involving PPAT, the validity and legality of land rights transactions are not legally guaranteed, potentially leading to uncertainty and conflicts in the future regarding land ownership status. Therefore, it is important to understand and adhere to officially regulated procedures in conducting land sales and purchases to avoid potential legal issues that may arise in the future.

The process of transferring land rights must comply with Government Regulation No. 24 of 1997 and Government Regulation No. 37 of 1998. The creation of a land deed by the Land Deed Official (PPAT) is a primary requirement to register the transfer of land rights at the relevant district/city land office.

However, in reality, there are still frequent occurrences within the community where land sale and purchase transactions do not comply with the applicable regulations. The sale and purchase process is often conducted traditionally, where the seller gives money to the buyer, and the buyer provides proof of land ownership such as Letter C, Petok D, or a certificate to the seller. To authenticate the

transaction, the seller issues a receipt or creates a written agreement that records the transfer of ownership based on the buyer's proof of ownership. In this agreement, it is stated that the seller has transferred the land rights to the buyer with reference to the buyer's proof of ownership such as Letter C, Petok D, or a certificate.

The buyer provides payment in cash to the seller in exchange for the ownership of the land. This sale and purchase agreement is signed by both parties, the seller and the buyer, and witnessed by present witnesses during the transaction.

However, even though this agreement serves as evidence of the sale and purchase transaction, the buyer still does not possess proof of land ownership in their name, which remains registered under the previous owner's name, namely the seller. Based on these circumstances, the writer is interested in conducting a study on this phenomenon, which will be documented in the form of a scholarly work entitled "Juridical Analysis of the Legal Power of Land Sale and Purchase Transactions Without Involving a Land Deed Official (PPAT).

The research method

employed in crafting this scholarly work on the legal power of land sale and purchase transactions without the involvement of a Land Deed Official (PPAT) is normative legal research. This research is conducted by examining literature, which comprises secondary data. The approach adopted in this research includes statutory and conceptual approaches, drawing legal source materials from legal literature consisting of primary and secondary legal materials. The technique used to gather legal materials is document study, where legal regulations, books, and articles related to uncertified land sales and purchases are analyzed. These legal materials are then interpreted, argued, and discussed descriptively in this article. The article is compiled by referencing relevant legal literature sources, conducting analysis, and providing explorative descriptions.

Results and Discussion

Before the Basic Agrarian Law or Act Number 5 of 1960 was enacted on September 24, 1960, the land sale and purchase process in Indonesia followed two different legal systems. There was a separation in the application of Western Law for the European group and Customary Law applied to the indigenous or native population. Prior to the enforcement of UUPA, Indonesia experienced dualism in agrarian law, where both of these legal systems formed the basis of land law, namely Customary Law and Western Law. This condition resulted in the classification of land into customary land and land subject to Western Law^[3].

According to Customary Law, the sale and purchase of land are not regarded as an agreement as regulated in Article 1457 of the Civil Code (KUH Perdata). Instead, in the perspective of Customary Law, the sale and purchase of land are considered a legal action that occurs when the seller permanently transfers the land to the buyer, and the buyer provides payment to the seller. In the context of Customary Law, the sale and purchase of land refer to the process where the seller definitively transfers land ownership to the buyer while receiving payment, which may be the full or partial purchase price, possibly made in cash.

Following the enactment of the Basic Agrarian Law, which includes Article 19 governing the procedures for Land

Registration, the Government issued Government Regulation Number 10 of 1961 concerning Land Registration to align the implementing regulations with the provisions of Article 19 of the Basic Agrarian Law. Furthermore, the issuance of Government Regulation Number 24 of 1997 aimed to update the regulations related to Land Registration.

The land registration system after the enactment of the Basic Agrarian Law requires the Agrarian department (at that time) to issue land certificates. Land certificates serve as a place to record various matters such as the registration of land rights, transfer of rights, encumbrances, as well as the recording of the creation and deletion of land rights. Before the existence of the Basic Agrarian Law, the land registration process did not encompass these aspects.

In executing the land registration system according to the Basic Agrarian Law, where land certificates serve as the registration of transferred or encumbered rights based on the PPAT deed, it is crucial for PPAT (Land Deed Official) to ensure the formal correctness in creating such deeds. Therefore, the Agrarian Department/National Land Agency (BPN) needs to issue deed forms that can be verified for their correctness through specific codes and numbers to guarantee the formal validity of the deeds produced.

The land registration process, encompassing measurement, mapping, and recording of land rights in accordance with Article 19 of the Basic Agrarian Law, is closely related to technical, legal, and administrative aspects in managing land-related information. Land data management presents specific differences when compared to other technical activities. The uniqueness in the land registration process relates to the importance of providing legal certainty and protection for specific land, including the rights subject, object, and relevant land rights^[4].

The PPAT deed plays a role as evidence regarding the validity of land sale and purchase transactions. Although such transactions can be reinforced with other evidence, in the land registration system governed by Government Regulation Number 24 of 1997, the registration of a sale and purchase is only officially recognized if supported by the PPAT deed as valid evidence.

Individuals conducting land sale and purchase transactions without the support of a PPAT deed will not acquire a land certificate, even if the transaction is legally valid. In their role of providing services to the public, a PPAT is responsible for accepting requests to create specific land deeds in accordance with land registration regulations and the regulations concerning the PPAT position. When faced with such requests, a PPAT has the obligation to decide whether to reject or approve the submitted request.

If the rights to a particular land are not registered, the land lacks evidence to assert ownership. This situation creates the possibility for others to claim ownership of the land. However, if the land was previously registered for tax purposes, there might be tax-related evidence that can be used as proof of ownership. Some still perceive these tax-related documents as proof of legitimate land ownership. Nonetheless, there are parties who conduct the transfer of land rights through informal deed creation, approved by village or district officials.

The transfer of land rights through transactions using receipts or unofficial documents cannot serve as a basis for registering such a transfer, unless there is an authentic deed made in the presence of authorized officials, such as a PPAT

(Land Deed Official). According to Article 37 Paragraph 1 of Government Regulation Number 24 of 1997, the transfer of land rights and ownership rights over condominium units through sale and purchase, barter, grant, integration into companies, and other transactions, excluding auctions, must be accompanied by a deed made by a PPAT authorized by applicable law.

Based on Supreme Court Decision No. 126 K/Sip/1976 dated April 4, 1978, stating that land sale and purchase transactions are not mandatory to be executed through a deed made by and in the presence of a land deed official, as the deed from such official serves merely as evidence of the transaction. Hence, land sale and purchase transactions are still considered valid, and the ownership rights are transferred from the seller to the buyer, provided the transaction meets the material requirements related to the seller, buyer, and the land being sold.

Nevertheless, land sale and purchase transactions not conducted in the presence of a PPAT still carry potential risks as they may not offer the necessary legal certainty. Legal certainty is a condition where regulations are clearly made and announced, governing decisively and rationally. This concept emphasizes that every legal action must ensure its legal certainty. This understanding aligns with the Theory of Legal Certainty utilized in this study, emphasizing that adherence to positive law is crucial for maintaining security within a state, and only land transfer transactions conducted in the presence of a PPAT can provide the required legal certainty.

Land certificates serve as legitimate and legally binding representations of land ownership, highly sought after by society as conclusive evidence. However, obtaining such a certificate involves following procedures in line with prevailing regulations. The National Land Agency (BPN) is responsible for issuing these land certificates, which constitute an important legal basis in proving land ownership.

From the discussion above, it can be concluded that land sales and purchases not involving a Land Deed Official (PPAT) are not immediately considered illegal but are more informal transactions. This is based on the provision in Article 37 paragraph (1) of Government Regulation Number 24 of 1997, which stipulates that land sale and purchase transactions must fulfill formal aspects, where the transfer of rights can only be registered if conducted in the presence of a PPAT.

However, the essence of this issue lies in the fact that without involving a PPAT, land sale and purchase transactions do not provide a definite guarantee of legal certainty regarding ownership rights resulting from the transaction. In this context, land transactions not recorded with a PPAT do not generate authentic deed documents that can serve as valid proof of the rights transfer.

When land sale and purchase transactions do not involve a PPAT, in accordance with Article 37 paragraph (1) of Government Regulation Number 24 of 1997, the transfer of land rights cannot be registered, thus preventing the acquisition of a certificate stating ownership of the land. Such situations have the potential to lead to disputes concerning land ownership rights, resulting in legal uncertainty regarding land ownership.

Based on the aforementioned discussion, it is evident that the legal strength of land sale and purchase transactions without the involvement of a Land Deed Official (PPAT) is

confined to the transaction itself meeting the elements of Article 1457 of the Civil Code and Supreme Court Decision No. 126 K/Sip/1976. However, it does not confer legal authority concerning the legitimate ownership of the sold land; this is consistent with the provisions of Government Regulation Number 24 of 1997, stating that land sale and purchase transactions must satisfy formal aspects, where the transfer of rights can be registered only if conducted in the presence of a PPAT, and the valid proof of land ownership is the land certificate issued by the BPN, based in part on the deed made in the presence of a PPAT

Conclusion

Based on the aforementioned analysis, it can be concluded that land sale and purchase transactions conducted without involving a Land Deed Official (PPAT) indeed possess limited legal strength, validating solely the authenticity of the transaction itself in accordance with Article 1457 of the Civil Code and Supreme Court Decision No. 126 K/Sip/1976. Nevertheless, this doesn't provide comprehensive legal assurance regarding the ownership of the traded land. This uncertainty aligns with the regulations stipulated in Government Regulation Number 24 of 1997, which dictates that the validity of the transfer of land rights can only occur if the sale and purchase transaction meets formal requirements, specifically conducted in the presence of an authorized PPAT. Therefore, the valid proof signifying ownership of the land is the land certificate issued by the National Land Agency (BPN), which is obtained, in part, from the deed prepared in the presence of a PPAT. This underscores that through land transactions facilitated by PPAT, there is a more convincing legal force and a clearer legal certainty regarding the ownership of the land.

Recommendations

Drawing from this review, awareness of the crucial role of involving a Land Deed Official (PPAT) in every land sale and purchase transaction is necessary to ensure legal certainty concerning land ownership. Hence, it is advised that individuals engaging in land transactions consistently involve a PPAT to prepare legally valid deeds. By involving a PPAT, the security and legal certainty surrounding land transactions can be better ensured, thus reducing the potential disputes arising from land ownership in the future. Additionally, it's crucial to understand and adhere to the procedures and regulations applicable in the process of transferring land ownership to ensure the legality and accuracy of land transactions, consequently avoiding undesirable legal consequences.

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