



## Legal protection for buyers in land rights transactions without transfer of rights

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### Abstract

Amidst Indonesia's rapid economic growth, land rights transactions are becoming increasingly significant, necessitating strong legal protection for buyers, especially when the transfer of land rights has not been registered. This study employs normative legal research methods with a legislative and case study approach. Focusing on the implementation of Law No. 5 of 1960 on Basic Agrarian Regulation and Government Regulation No. 24 of 1997 on Land Registration, this research explores the legal protection available to land buyers when the transfer of land rights is unregistered. Preventive legal protection has been implemented through the issuance of the Basic Agrarian Law (UUPA) and Government Regulation No. 24 of 1997, which establish procedures to be followed in land transaction activities. However, legal loopholes remain. In response to disputes, repressive legal protection can be sought through judicial processes. The existence of court decisions that favor plaintiffs in relevance to the registration of land rights transfers as stipulated in Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 can serve as a basis for plaintiffs/land buyers to carry out the process of transferring their rights.

**Keywords:** Legal protection, land rights transactions, transfer of land rights

### Introduction

In the era of globalization and rapid economic growth as seen today, land transaction activities have become common and significant in Indonesia's economic activities. As a capital asset, land has emerged as an extremely important economic entity, not only as a commodity for trade but also as an object of speculation. (Bagaskara dkk., 2021) <sup>[10]</sup>. Land, being one of the most valuable assets, often becomes the subject of complex transactions that require strong legal protection. However, in practice, issues often arise in relation to the buying and selling of land rights, especially when the transfer of land rights has not been formally conducted in accordance with the applicable legal procedures.

In Indonesia, the agrarian law, particularly as governed by Law No. 5 of 1960 on the Basic Agrarian Principles Regulation (UUPA), along with other related regulations such as Government Regulation No. 24 of 1997 on Land Registration (PP No. 24 of 1997), provides the legal framework for land transactions. The issuance of PP No. 24 of 1997 marked the beginning of the mandatory registration of land rights transfers to be conducted in the presence of a Land Deed Official (PPAT) and/or PPATS. According to PP No. 24 of 1997, land registration employs a negative publication system. In this system, the state passively accepts what is declared by the party requesting registration. The negative publication system offers legal protection to land rights holders who can legally provide evidence of their ownership (Sutedi, 2011) <sup>[5]</sup>.

However, the implementation of these regulations often proves not entirely effective in providing protection to land buyers in cases where the transfer of land rights has not been completed. This issue arises due to the reluctance or procrastination on the part of many individuals to handle the legality of land rights transfers. Among the reasons for the community's delay in transferring the title of certificates include: (Anandari dkk., 2023) <sup>[8]</sup>

1. The high tax value at the time of the legal act of land rights transfer;
2. Relying on under-the-table agreements as proof of land ownership;
3. The belief that holding a certificate equates to ownership of land rights;
4. Entrusting the management of the process to freelancers or brokers;
5. A lack of knowledge about the land rights transfer process, making it easy to be deceived.

This situation creates risks and legal uncertainties for buyers, who lack legal protection for the land rights they purchase. Often, the community only addresses the process of transferring land rights upon signs of impending disputes, such as: (Anandari *et al.*, 2023) <sup>[8]</sup>

1. The seller listed on the certificate has passed away or their whereabouts are unknown;
2. Another party claims ownership rights over the land and buildings;
3. The seller refuses to sign the land rights transfer documents due to the time elapsed since the legal act was conducted, thus requesting additional payment;
4. The seller denies having sold the land, among other reasons.

It is crucial to delve deeper into how Indonesian law provides protection to land buyers and to identify gaps in the law that may weaken this protection. Through this study, it is hoped that solutions can be found to address these issues, thereby offering legal certainty and protecting the rights of land buyers in Indonesia.

### Research Method

The research employed in this study is of the normative legal type. The research approaches utilized include the statute approach, focusing on legislative texts, and the case approach, concentrating on judicial decisions. The primary

legal materials used are Law No. 5 of 1960 on the Basic Regulation of Agrarian Principles and Government Regulation No. 24 of 1997 on Land Registration, along with secondary legal materials. In collecting legal materials, this study employs various techniques, including literature study, examination of legal documents, and review of court decisions. These sources were selected based on their relevance to the research problem. The analysis of legal materials will be conducted through normative interpretation methods. This involves a textual examination of legislation and legal cases to understand and explain the legal aspects related to the research issue.

### Result and Discussion

Land is a right inseparable from human life. As a divine gift from God Almighty, land is an essential natural resource for humans. It is not only a valuable asset but often becomes the center of social and economic life. With the increasing human population every day, land becomes highly sought after and contested among people because it is a source of livelihood for continuous living, dwelling, and fulfilling needs, whether directly for life necessities such as farming or housing (Arief dkk., 2023).

Generally, acquiring or transferring land rights from another party involves sacrifices from those desiring it. The essence is that people strive to obtain land because they believe ownership will bring benefits to their lives (Tampil Anshari, 2005)<sup>[7]</sup>. The such effort is through the process of buying and selling land. In everyday life, a sale transaction involves two subjects: the seller and the buyer. The sale of land can only be conducted by those who have rights over it, each with their respective obligations and rights. A land sale is an agreement where one party commits to transfer the land, and the other to pay the agreed price (Arief dkk., 2023). The term sale, as it relates to land, is contained and regulated in legislation, specifically in Article 26 paragraph (1) of the UUPA, which states that sales, exchanges, donations, bequests, and other acts intended to transfer ownership rights and oversight are regulated by government regulations (Santoso, 2010)<sup>[3]</sup>.

It is undeniable that many in the community conduct land rights transactions without following the proper legal procedures. Such transactions are conducted merely between the buyer and seller and are concluded with a handshake, at which point the land ownership is considered transferred. These are commonly referred to as under-the-table sales, based solely on trust (Harahap, 2021)<sup>[12]</sup>. From a formal juridical perspective, such land sale agreements are inherently risky. If all parties have good intentions, such risky agreements may not pose a problem later. However, if any party acts in bad faith, it can easily lead to disputes and harm the other party.

Indonesia, as a rule of law nation, is obligated to provide legal certainty for its citizens. According to Utrecht, legal certainty encompasses two notions: first, the existence of general rules allows individuals to know what actions are permissible or forbidden. Second, it provides legal security for individuals from governmental arbitrariness, as the presence of general rules enables individuals to understand what the state can impose or enact upon them (Syahrani, 2008)<sup>[6]</sup>. One form of fulfilling the assurance of legal certainty is the certainty regarding ownership of land rights. The process of buying and selling land cannot be separated from several considerations, one of which is to avoid future

conflicts or problems. To conduct a land transaction, there must be evidence of the sale, where the transfer of land rights through sale must be proven with a deed made by a Land Deed Official (PPAT) or PPATS. This provision in Indonesia is regulated under Article 19 of the UUPA and Article 37 paragraph (1) of Government Regulation No. 24 of 1997, stating that the transfer of land rights and ownership rights over condominium units through sales, exchanges, gifts, incorporation into a company, and other legal actions transferring rights, except for transfers of rights through auctions, can only be registered if proven with a deed made by an authorized PPAT according to legislative regulations. According to Boedi Harsono, the PPAT deed functions as proof that the sale has indeed taken place (Harahap, 2021)<sup>[12]</sup>.

This transfer of rights is a step taken as an effort to provide legal certainty guarantees regarding the land, both in terms of its subject (the rights holder) and its object (the land), along with its rights status. According to Article 23 paragraph 2 of the UUPA, the registration of the transfer of land rights is a strong proof of such transfer. This provision indicates that in a land sale, the transfer must be registered, thereby necessitating a change of name to indicate that there has been a transfer of land rights (Faustina & Hoesin, 2022)<sup>[11]</sup>. However, many people are still reluctant and postpone handling the legality of the transfer of land rights. Most people only manage the process of transferring land rights after signs of impending disputes appear, such as: (Anandari dkk., 2023)<sup>[8]</sup>

1. The seller listed on the certificate has already passed away or their whereabouts are unknown;
2. Another individual claims rights over the land and buildings;
3. The seller refuses to sign the land rights transfer documents due to the legal act being considered past, thus requesting additional payment;
4. The seller denies having conducted the sale of the land, and so forth.

In relation to disputes, this legal article focuses on land sales where the transfer of land rights from the original owner to the seller at the time of transaction is known to be unregistered. The existing certificate is still in the name of the old owner. A land certificate is a formal document containing juridical and physical data used as evidence and proof for an individual or legal entity over a parcel of land controlled or owned with certain land rights (Rizky dkk., 2020)<sup>[13]</sup>. Based on the land registration publication system in Indonesia, which adopts a negative publication system with a positive tendency, a certificate constitutes strong evidence in the proof of land ownership rights, meaning that unless proven otherwise, the physical and juridical data listed in it must be accepted as true. The negative publication system applies the principle of *Nemo Plus Juris*, which means that a person cannot transfer rights beyond what they have. This principle aims to protect the rights holders who can always reclaim their registered rights in anyone's name (Sutedi, 2008)<sup>[4]</sup>.

When the land certificate is still registered in the name of the old owner, this situation often triggers ownership disputes because the certificate is the primary evidence of ownership recognized by law. Land sales, according to regulations, must include a sale and purchase deed (AJB) issued by a Land Deed Official (PPAT) or PPATS. The AJB

serves as the basis for the registration of the transfer of land rights. PPAT or PPATS is obligated to submit the deed they have made along with the relevant documents to the Land Office for registration no later than 7 (seven) working days from the date the deed is signed. This is based on the provisions of Article 40 paragraph (1) of Government Regulation No. 24 of 1997.

Without prior registration of the transfer of land rights, the seller does not possess the legal right to transfer ownership, thereby placing the buyer at high legal risk. This condition results in legal consequences, namely harm to the buyer due to the lack of legal certainty guarantees over the ownership of the land rights, allowing for physical control but not proving formal juridical ownership.

Legal certainty can be realized by providing legal protection to the community. Legal protection is the most crucial part of every human life. Whether individually or collectively, the law serves as a binder and guide in interacting with fellow humans in daily life (Suharyono dkk., 2022) <sup>[14]</sup>. According to Satjipto Rahardjo, legal protection is an effort to protect an individual's interests by allocating a power to them to act in the interest of those interests (Rahardjo, 2003) <sup>[2]</sup>. Harjono argues that the protection provided by the law is protection of the public's rights, which are the result of the transformation of their interests into legal rights, so that the rights of the community can be respected, protected, and complied with (Harjono, 2008) <sup>[11]</sup>.

The theory of legal protection for parties in land sale transactions can be facilitated through preventive and repressive legal protection. Preventive legal protection is a form of legal protection for the community by providing an opportunity to submit objections or opinions before a decision from the government becomes definitive. Its purpose is to prevent future disputes or violations and to provide guidelines or limitations in performing a duty. Repressive legal protection is the ultimate form of protection in the form of fines, imprisonment, and additional punishments given after a dispute has occurred or a violation has been committed. (Rizky dkk., 2020) <sup>[13]</sup>.

Preventive legal protection has been enacted by the government through the issuance of the Basic Agrarian Law (UUPA) and Government Regulation No. 24 of 1997. However, in cases of land sale disputes where a transfer of rights has not been executed, the regulations concerning the registration of land ownership, even when holding a land rights certificate, are not accommodated. A land certificate holder can be considered a lawful landowner according to the law if they have registered the land in accordance with the applicable legislation, as stated in Article 19 Paragraph (1) of the UUPA. This reveals a legal loophole, indicating that the community becomes a victim of the failure of legal products to provide protection for the land rights they possess.

Referring to the aforementioned conditions, as a form of repressive protection, the buyer can take legal action against the seller and request a decision from the District Court to provide legal certainty to the plaintiff as the lawful owner of the land and the buildings on it. This is accommodated in Article 55 of Government Regulation No. 24 of 1997, which regulates Changes in Land Registration Data Based on Court Decisions or Determinations, stating that the court clerk is required to notify the Head of the Land Office about the content of all court decisions that have obtained legal force and the Determinations of the Court President that

result in changes to the data regarding a registered plot of land or condominium unit to be recorded in the relevant land book and, as far as possible, on its certificate and other registers.

A court decision in written form constitutes an authentic deed, which can be used as evidence by the parties involved, both in the execution of legal efforts and in its implementation. An authentic deed, according to Article 1868 of the Civil Code, is a deed made in the form prescribed by law by/or in the presence of a public official authorized/empowered for that purpose, at the place where the deed is made. The referred officials include notaries, Land Deed Officials (PPAT), court clerks, bailiffs, civil registration officers, judges, etc. Article 31 Paragraph (1) of Law No. 48 of 2009 about Judicial Power explains that court judges under the Supreme Court are officials who execute judicial power within the judicial body under the Supreme Court, thereby making a judge's legal product in the form of a decision a document-based piece of evidence. The provisions regarding court decisions in Article 55 of Government Regulation No. 24 of 1997 are generally applicable to all types of court decisions and do not specifically require whether the decision was made in absentia or not. Thus, the existence of a court decision that grants the plaintiff's claim in its relevance to the registration of the transfer of land rights referred to in Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 can serve as a basis for the plaintiff/land buyer to proceed with the name change/registering the transfer of their land rights. With this decision, the plaintiff can register the transfer and shift of land rights and simultaneously process the name change on the property certificate in the name of the plaintiff/buyer because, in the legal perspective of proof, a court decision that has obtained legal force (*inkracht*) holds the same position and proof strength as an authentic deed.

## Conclusion

Land certificates still registered in the name of the previous owner create legal uncertainty, trigger the potential for disputes, and place the buyer at risk. Preventive legal protection has been implemented through the issuance of the Basic Agrarian Law (UUPA) and Government Regulation No. 24 of 1997, which establish the procedures to be followed in land sale transactions. However, legal loopholes still exist. In response to disputes, repressive legal protection can be sought through judicial processes. The existence of a court decision that grants the plaintiff's claim in its relevance to the registration of the transfer of land rights as referred to in Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 can serve as a basis for the plaintiff/land buyer to proceed with the name change/registering the transfer of their land rights.

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