



## The implementation of transparency and cash principles in transferring of land title through buy and sale

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### Abstract

Indonesia's original law, known as the Basic Principles of Land Policy or Act No. 5 of 1960 (UUPA), is a national land law rooted in customary law and consistent with the essence of the Indonesian nation. When land is bought and sold under customary law, the process involves a direct exchange of cash for land rights. This means that the transfers of land right is made in the presence of an authorised official such as the Land Deeds Drafting Officer (PPAT) and is immediately paid in cash. In practice, however, there are circumstances where it is clear that the cash principle does not apply to a purchase or sale transaction. For example, as stated in Judge's Decision No. 18/PDT.G/2021/PN.BNA, if the property has not yet been fully paid for, the buyer and seller may choose to enter into a Purchase Agreement (PPJB) first.

**Keywords:** Light principle, cash principle, transfer of rights, buying and selling

### Introduction

Article 5 UUPA states that: "Agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests, which is based on national unity, with Indonesian Socialism and with the regulations contained in this Law and with other statutory regulations, all taking into account elements that are based on religious law." In the UUPA national land law, the sale and acquisition of land are governed by customary law, which aligns with the essence of the Indonesian nation (Zulhadji, 2016: 31).

As per customary law, the transaction of land involves a transparent exchange of land rights without the involvement of monetary transactions. Consequently, the transfers of land right is conducted through the proper channels, specifically the Land Deed Official (PPAT), and the payment is made in currency (Baharuddin, 2014: 92). The cash-light principle is a legal principle that cannot be ignored in buying and selling land rights. Satjipto Rahardjo believes that the importance of legal principles lies in: "The essence of legal regulations, because legal principles are the broadest possible basis for the formation of legal regulations, then ultimately legal regulations can be traced from these principles." (Winandra and Hanafi Tanawijaya, 2020: 2).

A legal principle is one of the causes or reasons for the emergence of a legal provision as a legal product or a legal relationship that exists as a legal provision. Legal principles and the law itself are more than just a collection of applicable regulations. Legal principles thus include a system of moral values and requirements. Therefore, in buying and selling land rights, the principles of clarity and money are the spirit of the state agricultural law. The principle of clarity and smoothness in the practice of buying and selling land is a concept that can also be interpreted as the open or transparent nature of a transaction.

This obviously means that the sale and purchase were made by the parties before the PPAT. Meanwhile, cash can be interpreted as a form of payment where at the time of the transaction there is proof of money immediately and immediately according to the price agreed upon by both

parties (Nur Hayati, 2016: 284). To draft a sale and purchase deed, it is essential to fulfill the formal and material prerequisites of clarity and cash. In the event that these requirements are not met, it is advisable to initially prepare a sales contract. Clarity and cash are crucial elements when it comes to creating a sale and purchase deed (Baharuddin, 2014: 92). If the necessary formal and material conditions for its creation are not satisfied, it is recommended to first draft a Sale and Purchase Agreement (referred to as PPJB).

According to Herlin Budiono, the PPJB falls under the category of an assistance agreement that can serve as a preliminary agreement in a flexible form. This means that the PPJB can be considered a preliminary agreement before the execution of the main or principal agreement. Therefore, the PPJB can be classified as a binding agreement where both parties agree to transfer an object without actually transferring ownership (Putri and Purnawan, 2017: 196). The PPJB serves as a fundamental agreement that signifies an initial commitment to facilitate a more formal and legally binding sale and purchase in the future, contingent upon the fulfillment of specific conditions, such as the payment of the price or the provision of necessary documents. Consequently, the PPJB is classified as a preliminary agreement preceding the execution of the actual sale and purchase agreement. As such, it falls under the category of engagement agreements, which involve a contract between two parties. Specifically, the PPJB is an arrangement between the buyer and the seller that governs the initial binding aspects of a sale and purchase transaction, typically associated with property transactions, such as land or houses. The creation of a PPJB can occur either in the presence of a Notary or through a private arrangement. The PPJB can be formalized either in the presence of a Notary or in a private setting.

The preparation of the PPJB serves to legally bind the involved parties, allowing for the immediate drafting of the purchase and sale deed before the PPAT, provided that the intent to create the deed is fulfilled (Suhaimi, Isdiyana Kusuma Ayu, Yandri Radhi Anadi, 2024: 88-98). As stipulated in Section 37(1) of Government Regulation (PP)

No. 24 of 1997 concerning land registration, the transfer of ownership and rights to real estate, including residential units, must occur through sale or donation. Additionally, any legal actions pertaining to the transfer of business income and other rights are required to be registered and must be accompanied by a certificate issued by the PPAT.

A method of transferring land rights involves the process of buying and selling. The principles governing land transactions are fundamentally similar to those of general agreements. Classified as an engagement agreement, PPJB is a contract between two parties. This agreement, established between the seller and the buyer, outlines the initial binding terms for the sale and purchase of goods, typically concerning property transactions like land or houses. Essentially, the PPJB signifies an initial commitment to conduct a more formal and legally binding sale at a future date, contingent upon the fulfillment of specific requirements such as payment of the price or provision of necessary documents. Consequently, PPJB serves as a preliminary agreement prior to the execution of the actual sale and purchase contract.

As stated in Article 1313 of the Civil Code (KUHPerdata), a sale constitutes a contract involving two or more individuals and requires the agreement of all parties involved. The sale and purchase of land rights must also comply with the conditions for the validity of the contract set out in Article 1320 of KUHPerdata. In addition to observing the provisions of Article 1320 of KUHPerdata, the principles of clarity and cash must also be observed when buying and selling land rights (Fajar Adhitya Nugroho, (et.al), tt: 4). However, in practice there are several cases of buying and selling that do not apply the clear and cash principles. For example, as contained in decision No.18/PDT.G/2021/PN.BNA. The problem in this case started with KA and NH wanting to buy land and buildings belonging to the late ZI. However, KA and NH have not been able to make payment in full for the land, so KA and NH and ZI agreed to make a PPJB first before an SR Notary. One month after signing the PPJB, KA and NH with SR persuaded ZI to sign the Deed of Sale and Purchase of the Land. In fact, in this case, SR as PPAT knew that the sale and purchase of this land had not been paid in full by KA and NH, so based on the clear and cash principle, the sale and purchase deed for this land could not be carried out because it did not meet the cash element.

Another example can be found in Decision No. 1/Pdt.G/2019/PN.LBT. The judgment stated that the sales contract was invalid because it did not comply with the principles of lightness and cash, especially the lightness element. In this case, the subject matter of the sale was joint property registered in the husband's name, but the transfer of property rights occurred without the wife's consent and without her presence. This was not done by an authorized official but in the presence of the village chief. Since the transfer of rights was effected without the consent of the wife and not in the presence of an authorized officer, the transfers of right to the land did not meet the evidentiary elements. Therefore, it is very interesting to study the application of transparency and cash principles in the sale and transfer of real estate rights.

### Research Methods

This study employs empirical legal research as its methodology. Specifically, the article utilizes empirical

legal research, which relies on field data as its main source, including findings from interviews and observations. This form of research is aimed at analyzing law as a structured aspect of social behavior in individuals' lives, constantly interacting with and connected to social elements (Bambang Sunggono, 2003: 43). The research was carried out in Aceh Province. For data analysis, qualitative methods were implemented, involving the organization and categorization of data into manageable segments, synthesizing information, identifying patterns, determining significance, and making decisions about what to study, all of which can be communicated to others (Bambang Sunggono, 2003: 43).

Reflecting the descriptive analytical approach of this study, the data gathered from the research findings are compiled and examined through qualitative analysis, then further described descriptively in order to obtain a picture that can be understood clearly and directed towards answering the problems studied.

### Results and Discussion

In Indonesia, the transfer of land rights is governed by various laws and regulations that dictate land ownership and its transfer. According to UUPA, this process entails the upkeep of land registration data as part of the ongoing land registration efforts initiated for the first time (Abon, Maria Avelina, Komang Febrinayanti Dantes, Ni Ketut Sari Adnyani, 2022: 64-80). One of the primary goals of land registration is to ensure legal certainty concerning land rights. This legal certainty, in turn, offers protection for the land (Muhammad Al Fadhil, Suhaimi, Ika Susilawati, 2023: 80-88).

Ni Ketut Sari Adnyani, 2022: 64-80). The land registration entry itself is one of the aspirations or objectives of the UUPA, which is to establish legal certainty over land rights. This ensures that the property is legally protected in a legally safe manner.

Land rights transfer refers to the transfer of land rights from the old rights holder to the new rights holder in accordance with the provisions of applicable laws and regulations (Ramadhani, Rahmat, 2022: 5-60). The meaning of land rights transfer is that it can be transferred and transferred. Transfer refers to the transfer of land rights based on inheritance, and the transfer can take the form of sale, exchange, donation, bequest, etc.

Basically, the application of the clear and cash principle must be carried out by both parties, both the parties and the PPAT. However, in practice, in several sales and purchases carried out by the parties, the parties did not heed the clear and cash principles, as in the case example described previously, resulting in problems that were detrimental to many parties in the future, including PPAT itself. Based on the case examples described previously, it can be seen that the parties involved in the sale and purchase and especially the PPAT did not apply the clear and cash principle in making the deed.

The principles of clarity and cash are the most important things in the legal act of buying and selling land. The principle of clarity and cash in the practice of buying and selling land often occurs in society so it is a concept that can also be interpreted as the nature of openness in transactions (Desvia Winandra, 2020: 5). Obviously, it can be interpreted that the sale and purchase is carried out in the presence of the parties and the PPAT. The principle of clarity means that the sale and purchase of land is carried out openly and is not

hidden. According to state law, land transactions must be carried out openly, meaning they must be carried out in front of the traditional head. Now, the authority of traditional heads has been taken over by the state, through PPAT (Desvia Winandra, 2020: 4). According to PP No. 24 of 1997 on land registration, this clear principle is fulfilled when the sale and purchase of land is carried out before the PPAT. Apart from that, the principle of clarity also includes the fulfillment of all the conditions for certainty of rights to the object of sale and purchase, such as certainty that the taxes owed have been paid, the subject and object of the owner of the land rights being clear, certainty of the results of a clean check at the land office to confirm the object of the land rights. It truly belongs to the seller, is not used as collateral for a debt, and is not under dispute.

Meanwhile, the cash principle is related to payments that have been agreed upon by the parties. Cash can also be interpreted as a form of payment where at the time of the transaction there is proof that the money was paid in full according to the price agreed upon by both parties. And the sale and purchase deed is usually proof that the amount of money agreed upon by the buyer has been paid to the seller. The advantage of buying and selling land rights in full is that the seller receives payment of the agreed price in full (in full), so that buying and selling land is more effective and efficient and the seller feels safe and comfortable. compared to payments that have only been made in part, because payments that have only been made in part can cause problems such as not being paid again/payment being hampered by the buyer to the seller (Dewi Kurnia Putri and Purnawan, 2017: 632).

Apart from paying the price to apply the cash principle, disclosure of information regarding the transaction price is a must in buying and selling. Apart from being related to the payment of taxes owed, this is also related to the inclusion of the price in the sale and purchase deed. PPAT is required to include the actual transaction price in the deed it makes. However, in practice, parties often hide the truth regarding transaction prices to avoid paying taxes that are too high. This is also what often ensnares the PPAT when disputes occur between the parties and then the PPAT is also summoned and questioned by investigators and judges in court.

Husnaina Aflenda (Interview, 10 January 2024) said that often parties with bad intentions hide the true transaction price so that the information obtained by PPAT becomes incorrect, so that if in the future there is a dispute between the parties regarding the object of sale and purchase, PPAT will participate. brought because it was deemed not to apply the principle of light and cash. To anticipate things like this, PPAT will usually ask for proof of payment in the form of a receipt or proof of transfer which can prove that the agreed price has indeed been paid in full. In line with this, Dermawa Dewantara (Interview, 10 January 2024) also said that to anticipate undesirable events in the future, PPAT can also make a statement letter signed by the parties stating that the transaction price stated in the sale and purchase deed is the actual price agreed upon. the parties, and the price has been paid in full by the buyer to the seller.

According to Yuniarti (Interview, 11 January 2024) to apply the clear and cash principle, before making a PPAT deed, it is mandatory to ask the parties regarding the payment, regarding the payment method that has been agreed upon by the parties and whether the sale and purchase transaction has

been paid before signing. deed or will be paid after signing. So that later PPAT can continue to make deeds for the parties so they can update the data to the land office.

In practice, PPAT cannot actually detect whether the parties' statements regarding the transaction price are correct, but to anticipate this, PPAT will usually make the transaction price the same as the price that has been validated by the tax office in proof of payment of Land and/or Building Rights Acquisition Fee (BPHTB). This is as stated by Teuku Irwansyah, (Interview, 11 January 2024) when referring to existing regulations, PPAT can only make a sale and purchase deed after showing him proof of payment of the tax owed, one of which is BPHTB, only then will PPAT make one. the deed corresponds to the price set in the BPHTB so that the transaction price in the deed and in the BPHTB is always the same value. If in the future the parties dispute the truth of the price, the BPHTB can be used as formal evidence that the price stated in the deed is the actual price in accordance with the price in the BPHTB.

Cut Era Fitriyeni (Interview, 15 January 2024) said that in practice many applicants come to make a sale and purchase deed but actually the sale and purchase deed cannot be done. In this regard, if PPAT has not been able to make an AJB due to various reasons, whether it has not been possible to make payment in full, or the taxes owed have not been paid, then PPAT can advise the parties to make a deed of sale and purchase agreement (PPJB), PPJB themselves. is a preliminary agreement made by the parties because the sale and purchase cannot yet be carried out. By making a PPJB, it will provide certainty and bind the parties until an AJB can be made. With the current modernization, making PPBJ in full is also considered to have implemented cash characteristics in buying and selling even though AJB cannot yet be made.

From the research results, the application of the clear and cash principle is the core of achieving good faith sales. If the clear conditions are not implemented (not implemented in the presence of an authorized official), the Land Registry will not be able to process the data update on land rights, and the deed issued using PPAT as one of the conditions of the purchase and sale is not fulfilled. This is because in a sale, the title will only be transferred from the seller to the buyer after the sale deed is signed. The signing of the deed indicates that both the buyer and the seller have fulfilled all rights and obligations, including cash payment.

If the cash payment requirement is not met at the time of the sale, the transfer of title through the sale has not occurred. This means that there are still matters involved regarding the rights and obligations between the parties that have not been fulfilled. The seller has not received his right in the form of payment of money from the sale of the sale and purchase object, while the buyer has not carried out his obligation to pay off the agreed price.

If analyzed using the clear and cash principle in buying and selling, it can be said that this principle is realized in the land sale and purchase deed signed by the parties and executed before the PPAT, as well as being proof that there has been a process of transferring land rights from the seller to the buyer accompanied by appropriate payment. agreed land price. In this way, every time a transfer of land rights occurs through a sale and purchase, both the PPAT and the parties must apply this principle in the sale and purchase process. Because the consequences if this principle is not implemented will result in legal uncertainty and losses for

the parties and the PPAT. Apart from that, the deed also contains formal defects, because what is contained in the deed could be denied, either by the parties or by third parties (Muyassar, Dahlan Ali, Suhaimi, 2019: 149).

### Conclusion

The principle of clear and cash payment is a principle in the sale of land that originated in the common law and was later incorporated into the National Land Law. The principle of clear and cash payment is a sale principle that must be followed when drafting a purchase agreement. Failure to comply with the principle of clear and cash payment may result in a purchase agreement that is formally defective, which may lead to losses and legal uncertainty for both parties. The legal consequences of drawing up a sales contract that does not comply with the principle of clear and cash payment are invalidity pursuant to Articles 1320 KUHPerdata *jo* 1337 KUHPerdata and 5 UUUPA. The principle of clear and cash payment is an objective condition of the agreement, i.e. a legal ground. However, it all depends on how the judge uses evidence and considerations to decide a case related to the principle of clear and cash payment in the sale of land rights. If buying with cash is not possible, one option is to complete a PPJB. A PPJB falls under the category of contractual agreements, which are agreements between two parties. A PPJB is an agreement between a seller and a buyer that governs the initial commitment in a sale and purchase transaction of goods, usually in relation to real estate purchases such as land or houses. The PPJB is basically an agreement that indicates a preliminary commitment to proceed with a more formal and legal purchase and sale later upon meeting certain requirements, such as: B. Payment of the price or required documentation. Therefore, a PPJB can be categorized as a preliminary agreement prior to executing the actual sale and purchase agreement.

### Suggestion

It is recommended that parties and PPATs who have not been able to apply the clear and cash principle in making a deed, that the parties can make a PPJB until the deed can be made so that the clear and cash requirements for making a sale and purchase deed are fulfilled. Then, law enforcers, especially judges, in examining and deciding cases related to the fulfillment of the clear and cash principles, pay more attention to the elements of the validity of agreements contained in Article 1320 of the Civil Code, in order to provide justice and legal certainty for both parties.

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