

# The Legal Certainty of The Sale And Purchase of Land that Has Not Been Title Transferred in Simpang Perak Jaya Village, Kerinci Kanan Sub-district, Siak Regency, Riau Province (A Case Study on Freehold Title Number 733)

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## Abstract

The issuance of Laws Number 5 the Year 1960 on Basic Agrarian Law in the Republic of Indonesia brings a big change towards land regulations. To implement the Laws, Government regulation Number 24 the Year 1997 on Land Registration is issued. The occurrence of a set of this regulation is to provide legal protection towards the community on the rights and obligations towards their lands. One of the points that has been regulated is that the sale and purchase of land should be done through Land Deed Official (*PPAT*). *PPAT* will, therefore, register the land to the National Land Authority to carry out the land title transfer on the land certificate. However, in the reality of the situation, some people still carry out the sale and purchase of land without title transfer for the land certificate. Consequently, the people who have the freehold title and the name written on the land certificate is different. Consequently, the sale and purchase of land that does not comply with the Government Regulation Number 24 the Year 1997 on Land Registration have no legal certainty.

Keyword: Land Registration, Legal Certainty, Agrarian Law.

## A. Introduction

For an individual, the existence of land is crucial and urgent. There is a strong correlation between humankind and land, and there is no humankind in the world that does not need land. Moreover, the concept of religion defines humankind is created by God from the ground (earth) so that when it comes to death, humankind will be back to (buried) the ground.<sup>1</sup> Land in the Civil Code is categorized as immovable assets. Its character as an immovable asset means the land and everything becomes one with it since it grows and is rooted and being as one and because it is built on the land.<sup>2</sup>

<sup>1</sup> Husni Thamrin, *Pembuatan Akta Pertanahan Oleh Notaris*, LaksBang, Yogyakarta, 2011, Hal. 2

<sup>2</sup> Bambang Daru Nugroho, *Hukum Perdata Indonesia*, Refika Aditama, Bandung, 2017, Hal. 72

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Law is created to regulate all sides of human life. By the existence of law and order, people's life can go in an orderly way because there is a limitation between rights and obligations. To regulate the management and the ownership of land, the government issued Laws Number 5 the Year 1960 on Basic Agrarian Law. To implement it technically, the government also issued the Government Regulation Number 24 the Year 1997 on Land Registration.

Article 19 on Basic Agrarian Law regulates the registration of land rights that assigns the obligation to the government to hold land registration services in all areas in the Republic of Indonesia. It aims to guarantee the legal certainty by using a certain procedure, such as measurement, mapping, recording of land, registration of land rights, and its transfer of land rights, as well as submitting the proof of the applicable deed as the strong proof and a reminder for the condition of the country and the people, the cross-socioeconomic necessities, and so on.

Furthermore, as the implementation of the regulation, the government issued the Government Regulation Number 24 the Year 1997 on Land Registration as the legal framework for the implementation of land registration in the *rechcadaster* program aiming at providing the guarantee for the legal certainty and the legal protection for the holder of land rights by some proofs received at the end of the registration process in the form of the land book and land certificate consisting of the copy of the land book and survey document.

The Government Regulation Number 24 the Year 1997 on Land Registration has a strategic position, as not only the regulation of the implementation of Laws Number 5 the Year 1960 but also more than that. The Government Regulation Number 24 the Year 1997 becomes the core element supporting the land administration and one of the Four Land Code (*Catur Tertib Pertanahan*) program and National Land Law.

In the reality, many people still do not understand the regulations related to the sale and purchase of land. It is because of the lack of knowledge in the community about the strength of the name mentioned in the land certificate. The people think that if they purchase an area of land, the thing that should be owned is the control over the land and the control over the land certificate, even though the name mentioned in the land certificate is not the buyer's name but another person's name.

This problem has frequently experienced by the people in Simpang Perak Jaya Village, Kerinci Kanan sub-district, Siak regency. Therefore, the judicial rights towards land ownership have not been performed essentially and it potentially experiences legal problems due to the absence of the legal certainty of the transfer of land rights. The ownership of land is proven by the name mentioned on the land certificate.

## B. Research Method

The study used here was the normative legal research. The normative research is a type of study that puts law as the norm system.<sup>3</sup> The data used in this study were secondary data consisting of primary legal materials and secondary legal materials. The primary legal materials were in the form of laws related to land and land registration, while the secondary

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<sup>3</sup>Mukti Fajar ND dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Hukum Empiris*, Pustaka Pelajar, Yogyakarta, 2010, Hal. 34

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legal materials consisted of the publication about the law that was not the official document in the form of literature, experts' opinions, or doctrines such as paper or article in the scientific magazine or journal. As legal research, the approaches used here were statute approach and case approach.

## C. Discussion

As has been understood by the people, laws have a function to protect the human needs. Therefore, to make people's interests protected, laws should be performed. The legal implementation can happen normally and peacefully, however, it can happen due to the violation of the law.<sup>4</sup> The issuance of Laws Number 5 the Year 1960 on Basic Agrarian Laws provides a big change towards the Land Law in Indonesia.<sup>5</sup> To actualize the legal certainty in each transfer of land rights, the Government Regulation Number 24 the Year 1997 as the regulation for implementing the Basic Agrarian Law (*UUPA*) has determined that each agreement for transferring the land rights should be completed with an agreement made by and before the Land Deed Official (*PPAT*).

After the Deed of Sale and Purchase by the Land Deed Official (*PPAT*) is made, the relevant parties will submit the required letters, such as the original land certificate and the proof of payment of the registration fee, to the Land Deed Official (*PPAT*). When the deed is finished, at least seven days after the notarial deed has been signed, the Land Deed Official (*PPAT*) hands the agreement over the land registration office for the registration of the transfer of land rights.

Based on Government Regulation Number 24 the Year 1997 on Land Registration, transfer of land rights, and the objects on it should be done using the deed from the *PPAT*. Transfer of land rights from the previous owner to the recipient (as the new owner) is done through a *juridische* levering. It is the levering that should fulfill the formality of laws through the established procedure by using the document and it is made by/before the *PPAT*.<sup>6</sup> This legal institution is deliberately made to carry out the structure of rights and obligations infrastructure amid the community.<sup>7</sup>

The case discussed in this study happened in Simpang Jaya village, Kerinci Kanan sub-district, Siak regency. In that case, the land certificate under Amdul Hadiman Number 733 was held by Winarto. Winarto received the certificate by purchasing the land from Samini. The main problem of that case was not who held the certificate and who controlled the factual possession of land, but it was mainly on the rule of procedural law mentioned in the laws, namely Basic Agrarian Laws Number 5 the Year 1960 and the Government Regulation Number 24 the Year 1997 on Land Registration.

The legal force is needed as a guarantee for certain ownership of property by each individual, such as Proof of Motor Vehicle Ownership (*BPKB*) for a motor vehicle is warranted by the state as a document having legal force in proving the authority over the motor vehicle. It is similar to Land Certificate that the certificate is given to the landowner. The certificate is a copy of the quotation of land certificate kept by the land registry office

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<sup>4</sup> M. Khoidin, *Hukum Eksekusi Bidang Perdata*, LaksBang Justitia, Yogyakarta, 2019, Hal. 18

<sup>5</sup> Rachmadi Usman, *Hukum Kebendaan*, Sinar Grafika, Jakarta, 2011, Hal. 27

<sup>6</sup> Adrian Sutedi, *Peralihan Hak Atas Tanah dan Pendaftarannya*, Sinar Grafika, Jakarta, 2009, Hal. 83

<sup>7</sup> Bernad L Tanya, *Hukum Dalam Ruang Sosial*, Genta Publishing, 2010, Hal. 128

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where the certificate is issued as a document that its legal force and validity is warranted as a proof to control a certain area of land.

Freehold title is proof of the rights of ownership. The Freehold Title according to the stipulation of Civil Code Number 570 is the right to fully enjoy a certain property and to control the property freely as long as it is not used contrary to the laws or the general regulations established by the power that has the authority for that.<sup>8</sup>

Regarding the problem that the author discussed, namely the legal force in the sale and purchase of land that has not been title transferred or registered in the local land registry office described in this discussion chapter was emphasized on the adjustment of juridical data and physical data along with the registration of the changes in data due to the legal activity, namely sale and purchase, happened in the reality. Consequently, it could be adjusted to the data in the land book in the local land registry office that resulted in the well-accommodated data over land.

Data maintenance is certainly important for providing legal certainty and the information related to land that is maintained and updated. To actualize it, one of the ways is registering the land or it is commonly known as title transfer of deed. It is also a foundation of legal force for the landowner to show that the juridical rights have been warranted by the state by the existence of the registration of ownership rights.

The definition of sale and purchase according to *Burgerlijk Wetboek (BW)* mentioned in Article 1457 is:<sup>9</sup> “an agreement with which one party binds itself to transfer material, and the other party to pay the price agreed upon”. Further, in Article 1458 it is stated that:<sup>10</sup> “sale and purchase are considered to happen between two parties after an agreement towards a certain material and its price has been made, even though both the material has not been transferred and paid off”. The term of sale and purchase shows that one of the parties sells, while the other one purchases.<sup>11</sup>

Sale and purchase of land are generally done through person-to-person, person-to-corporation, corporation-to-corporation, etc. Sale and purchase can be in the form of both land and building and it consists of Freehold Title, Cultivation Rights on Land, Building Rights on Land, Strata Title, etc.

The sale and purchase relationship is the civil related relationship in the field of laws of wealth and the transfer of rights from an individual or legal institution to another individual or legal institution. The sale and purchase is the consensual agreement indicating that it has already born as a valid agreement when an agreement is achieved between the seller and the buyer about the essential elements (*essensialia*), namely the material and the price.<sup>12</sup> Regarding the sale and purchase in this study, the author explained it specifically on sale and purchase of land in Desa Simpang Jaya Village, Kerinci Kanan sub-district, Siak regency. The author conducted the study as described in the background of the study, namely sale and purchase of land happened several times without the process of land title transfer.

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<sup>8</sup> Abdulkadir Muhammad, *Hukum Perdata Indonesia*, PT.Citra Aditya Bakti, Bandung, 2000, Hal. 144

<sup>9</sup> Pasal 1457 Kitab Undang – Undang Hukum Perdata.

<sup>10</sup> Pasal 1458 Kitab Undang – Undang Hukum Perdata.

<sup>11</sup> R. Subekti, *Aneka Perjanjian*, PT. Citra Aditya Bakti, 2014, Hal. 1

<sup>12</sup> I Ketut Oka Setiawan, *Hukum Perikatan*, Sinar Grafika, Jakarta, 2015, Hal. 159

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The object analyzed in this study was the freehold title under Amdul Hadiman Number 733 that became the problem in the process of sale and purchase of land to Winarto as the certificate holder and the one who owned the factual control over the land rights. Winarto has the right to control the land by planting palm trees on it and grows and harvests the crop of palm trees.

The problem occurred here was the process of sale and purchase of land from Winarto to the company party, namely the transfer of rights that would be carried out. In reality, the transfer of rights toward the land that would be sold and purchased had never been registered by the previous owners. The updated data that should be done by the rights holders were not carried out in the local land registry office where the land existed.

The sale and purchase of land that was not based on the laws had no legal certainty. In the Civil Code, one of the ways to obtain the freehold title is that by *overdracht* or leveraging). For movable assets, the leveraging is done by transferring the material, while for immovable assets; the title transfer should be done (*over schrijving*).<sup>13</sup>

For land registration, there is a compulsory mechanism that should be done, namely the making of Deed of sale and purchase, Deed of Authority to Sell, and the thing that currently becomes the focus by some heads of land registry office is that the making of one Deed of Conveyance. These documents are required as the basis before the rights of land is registered to the local land registry office.

Besides the making of official documents before the Land Deed Official (*PPAT*), the obligation to taxation also becomes the absolute requirement in land registration, such as the payment for Income Tax (*PPh*), Land and Building Tax (*PBB*), and Land and Building Title Transfer Fee (*BPHTB*).

*PPh* and *PBB* are the requirements that the payment can be made before the registration process as a symbol that all obligations for taxation billed for the ownership of land or the land title transfer have been paid to the state the one who controls over the land, the waters and the natural riches contained therein.

The problem in the registration of land rights experienced by Winarto and the company that would purchase the land needed to complete some steps one by one, starting from the making of the deed, the obligation to pay several taxes such as *PPh*, *PBB*, and *BPHTB*. It is because, since the first time, there is no sufficient document with a good legal force to perform the transfer of rights from one party to another, including the registration of the transfer of rights to the local land registry office and the procedure for settling the taxation fees to the state. Hence, the process of sale and purchase of land is obstructed.

The legal framework for land registration can be obtained from the Government Regulation Number 24 the Year 1997 Article 1 Paragraph 12 on Land Registration and the Maintenance of Land Registration Data. Land registration is the activity to register the land for matching the physical data with the juridical data in the map of land registration, land register, name register, survey document, land book and land certificate with the updated changes in the future.<sup>14</sup>

The duties of the Land Deed Official in Land Registration are stipulated in the Government Regulation Number 37 the Year 1998 Article 2, stating that: "the Land Deed

<sup>13</sup> I Ketut Oka Setiawan, *Hukum Perorangan dan Kebendaan*, Sinar Grafika, Jakarta, 2016, hal. 132

<sup>14</sup> Pasal 1 angka 12 Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Hak.

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Official is responsible for carrying out land registration by making the deed as the proof stating that the legal activity related to the rights of land or strata title has been made, and it becomes the foundation for registering the changes of data in land registration due to the legal activity”.

This is the thing that was not performed by the Notary Public/*PPAT* during the transaction before the officer (**belai**), regarding the transfer of rights done from Samini to Winarto that in the transfer of rights, there was no follow up to settle the obligation to pay the *PBB*, *PPh*, and *BPHTB*. Nevertheless, the Notary Public/*PPAT* made and issued the Deed of Authority to Sell, stating the description of the Deed of Sale and Purchase and the Deed of Authority to Sell between Amdul Hadiman and Samini.

The Land Deed Official is the public officer demanded to be professional and to have the autonomy in performing the duties and authorities. Generally, the duty of the Land Deed Official is helping the Municipal/Regency Head of Land Registry Office in performing the activity of the maintenance of land registration data such as the making of the deed of conveyance, mortgage deed, the grants of New Land Rights, and the Deed of Rights Sharing and helping to realize the purpose of land registration, namely providing a warranty of legal certainty and legal protection, providing information to relevant parties to gain required data in conducting the legal activity about land rights and strata title, and the implementation of the code of land administration.

In performing the duties and authorities, the Land Deed Official gets banned due to the activity that may not be performed by the Land Deed Official because they may get sanctioned or a certain legal effect for the activity. In the laws, it is stipulated the prohibition for the Land Deed Official in land registration, namely, as follows:

The Land Deed Official is not allowed to make an incorrect deed. The parties performing based on the absolute power of attorney that essentially contains the legal activity, namely the transfer of rights (Government Regulation Number 24 the Year 1997 Article 39 Paragraph (1).

Referring to the Deed of Authority to Sell made by the Notary Public/*PPAT* between Samini and Winarto related to the transfer of land ownership controlled by Samini to Winarto was only based on the previous Deed of Authority to Sell between Amdul Hadiman and Samini in the previous sale and purchase. The process of title transfer should be done before the sale and purchase between Amdul Hadiman and Samini to the local Land Registry Office for the process of the Registration of Land Rights for maintaining the physical and juridical data and making a payment for the related tax fees for sale and purchase of land to the state.

After the registration of land rights to the local Land Registry Office, based on the inspection of physical and juridical data and the available land book in the Land Registry Office, the process of title transfer would be performed based on the Deed of Sale and Purchase and the Deed of Authority to Sell made by some parties in the process of sale and purchase of land and any payment process related to tax as the basic process of Transfer or Rights would be recorded by the officer of the Land Titles Registry Office under the name of the person who had the rights to control the land. This process is obligated to be done to adjust the Rights to Control over Land to the real situation and with the proof of ownership held by the party who controls the land.

The applicable proof of title as the strong proof as mentioned in the Basic Agrarian Law Article 19 Paragraph (2) letter c and explained in the Government Regulation Number

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24 the Year 1997 Article 32 Paragraph (1) that:<sup>15</sup>“*Certificate is the applicable proof of title as a strong proof related to physical and juridical data contained therein, as long as the juridical and physical data are compatible with the data contained in the relevant survey document and land book.*”

To provide a warranty of legal certainty to the holder of the rights over land and to make them easily prove that they are the rights holder, the explanation in the Government Regulation Number 24 the Year 1997 Article 32 Paragraph (1) is stated clearly about the official explanation related to the meaning of a strong proof. It is explained that a deed is a strong proof as long as it cannot be proven conversely. The juridical and physical data mentioned in it should be accepted as valid data. Certainly, the juridical and physical data mentioned in the certificate should be relevant to the data mentioned in the land book and survey certificate since the data was taken from the land book and the survey certificate.

Generally, the duty of *PPAT* in land registration is that helping the Head of the Municipal/Regency Land Titles Registry Office in actualizing one of the purposes of land registration as stipulated in the Government Regulation Number 24 the Year 1997 Article 3 on Land Registration, stating that the realization of the code of land administration<sup>16</sup>. However, in the reality, the duty that should be performed well was not done due to the problem that the author had been discussed, namely the juridical and physical data for the control of the land that had never been registered in the local Land Registry Office. It certainly does not accommodate the purpose and the goal mentioned in Government Regulation Number 24 the Year 1997 Article 3 about the realization of the code of land administration.

Based on the author, this can be considered as the Malpractice done by the *PPAT*. This Malpractice was caused by the negligence in performing the job. It certainly could be caused by a lack of professionalism or competence of the relevant *PPAT*. The human resource of *PPAT* should, therefore, be developed in the future.<sup>17</sup>

The sale and purchase process that would be done was obstructed because of a set of the process of the document making to fix the problem related to being not compliance with the code of land administration in the sale and purchase that had been done before. From that case, it can be illustrated that the community still does not have good legal awareness. Besides, it becomes the culture and the requirement for implementing laws in the community.<sup>18</sup>

In the process of the sale of land, the requirement is that it should be proven with the deed made by *PPAT* stated in the Regulation Number 24 the Year 1997 Article 37 Paragraph (1) that: “The transfer of land rights and Strata Title through sale and purchase, exchange, grants, income in the company, and the legal activity related to other transfer of rights, except for the transfer of rights at auction can only be registered by proving the certificate made by the authorized *PPAT* based on the applicable laws”.

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<sup>15</sup> Pasal 32 Ayat (1) Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Hak

<sup>16</sup> Pasal 3 Peraturan Pemerintah Nomor 24 Tahun 1997 Tentang Pendaftaran Hak

<sup>17</sup> Sudikno Mertokusumo, *Kapita Selekta Ilmu Hukum*, Liberty, Yogyakarta, 2011, Hal. 138

<sup>18</sup> Sabian Usman, *Dasar-Dasar Sosiologi Hukum Makna Dialog antara Hukum dan Masyarakat*, Pustaka Pelajar, Yogyakarta, 2009, Hal. 230

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The formal requirement in the sale and purchase of land or Strata Title is that it does not need to be proven with the certificate by *PPAT*. The Head of Municipal/regency Land Registry Office can register the transfer of rights even though it is not proven with the deed from *PPAT*. It is stated in the Regulation Number 24 the Year 1997 Article 37 Paragraph (2) that “In a certain condition determined by the minister, the Head of Land Registry Office can register the transfer of rights to land ownership done between Indonesian citizens proven with the certificate made by *PPAT*, however, according to the Head of Land Registry Office, the level of truth is considered as good to register the transfer of rights of the relevant party”.

*PPAT* should be independent in performing the duty and does not take sides against one of the parties. Irawan Soerodjo stated that the position of *PPAT* is an independent profession having some following characteristics:<sup>19</sup>

- a. Having a function as a public officer, based on the laws and regulations, that has an authority from the government from the Ministry of Agrarian/the Head of National Land Authority to make the deed of conveyance and the encumbrance of the mortgage over land as the authentic proof.
- b. Having a duty for the *recording of deed conveyance* so that the officer is obligated to mention the relevant parties' purpose after achieving the agreement between them.
- c. Validating the legal activity between the parties having the substance to validate the agreement by signing it from the parties that perform the legal activity and warrant the certainty of the date for the execution of the deed.

Referring to the background of the problem that the author discussed, the position of Notaris as stated by Irawan Soerodjo above could be a foundation that the *PPAT* should have a behavior that can provide truth and the decision for a legal activity done by some parties through the *PPAT* as the officer who had an independent authority to create a safe condition between parties that agreed upon the legal activity. It means that as an officer with an independent authority, they should be able to record and comprehend the truth of a legal activity done by the parties and warrant the legal certainty of the parties, not only for the current situation but also for the future situation as the state representative in providing the service and the legal certainty to all people. One of the objective characteristics is that the availability of obligation.<sup>20</sup> *PPAT* as the state official should perform the job professionally.

The making of a deed by *PPAT* should be attended by the relevant parties who did the legal activity (seller and buyer) or the people authorized by them with a written power of attorney based on the applicable laws. The power of attorney for the seller should be completed with the notarial deed, while the power of attorney for the buyer might be completed with the private deed.

Referring to the background of the problem that the author discussed, namely the Winarto's land and the process of the transfer of land rights that happen from Samini to Winarto, it was found that Samini and Winarto were together before the *PPAT* to sign a Deed of Authority to Sell that its content refers to the previous Deed of Sale and Purchase and Deed of Authority to Sell where the transfer of land rights happened from Amdul Hadiman to

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<sup>19</sup> Irawan Soerodjo, *Kepastian Hukum Hak Atas Tanah di Indonesia*, Arkola, Surabaya, 2003, hlm. 149 – 150.

<sup>20</sup> Agus Sardjono, *Riset Hukum Sebuah Novel Tentang Metode Penelitian Hukum*, PT. Rajagrafindo Persada, Depok, 2019, Hal. 11

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Samini. This case became confusing and it was not justified to have absolute jurisdiction for a previous transfer of land rights and the current transfer of land rights.

*PPAT*, in this case, did not inform or give an understanding that there were several things need to be done in the form of the registration of the transfer of land rights to the local Land Registry Office for updating both physical and juridical data as recorded in the land book kept by the local Land Registry Office.

## D. Conclusion

The existence of sale and purchase of land without transferring the Freehold Title happened in Simpang Jaya village, Kerinci Kanan sub-district, Siak regency does not have the legal certainty. It is because the sale and purchase of land do not follow the applicable regulations about land registration, namely Law Number 5 the Year 1960 on Basic Agrarian Law and Government Regulation Number 24 the Year 1997 on Land Registration. A set of legal rule made by the government aims to protect the rights and obligations of the parties by providing the legal certainty in the sale and purchase of land.

The authorized parties are expected to conduct community outreach about the procedure in selling and purchasing land. The active role of the local government in conducting the community outreach should be done consistently and continuously so that the people understand the legal effects from the sale and purchase of land that does not follow the available procedure. Similarly, the Land Deed Official (*PPAT*) directly performs the community outreach to the parties involved in the sale and purchase of land to make the process of land registration can be done immediately due to the maintenance of juridical and physical data in the Local Land Registry Office.

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