

## Legal Protection of the Legitimate Buyer of Rights over Land Acting in Good Faith

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### ABSTRACT

*In 2009 land office of Malang city has issued certificates of land number 174,078 fields with an area of 71,862,761 m<sup>2</sup> and certificate of ownership flats in a number 1,075 of fields. Amount of land rights has been certified has increased from year to year, it is proving public awareness of the importance of land registration in order to achieve legal certainty and legal protection has increased. However, increasing public awareness of the land registration does not affect the existing land problems in society. Cases relating to land are still a lot going on. BPN based on the data; there are approximately 13,000 cases of land or a land dispute in Indonesia unresolved. Until the period of January - June 2011, approximately 1,333 new cases of 14,337 cases that could be solved. The cases above indicate that the purpose of land registration in the UUPA and PP 24/1997 has not been fully achieved. People still do not get the legal protection of their land rights.*

**Keywords:** Protection, legitimate buyer, acting in good faith

### INTRODUCTION

Birth of UUPA not only aimed at the unification of the national law of the land, but also to provide legal certainty of land rights and legal protection for holders of land rights land registration system. The rights referred to in article 19 of the UUPA, namely:

1. To ensure legal certainty by government held land registration throughout the republic of Indonesia according to the provisions set forth by government regulations.
2. Registration referred to in paragraph 1 of this article include:
  - a. Surveying, mapping, and land clearing;
  - b. Registration of rights to land and transfer of such rights;
  - c. Granting letters of proof of the right, which serves as verification tool
3. Registration of land held by the state and given the state of society, socio-economic needs of traffic and the possibility of its implementation, according to the minister of agrarian considerations.
4. In government regulations set costs related to the registration referred to in paragraph 1 above, provided that the people were not able to exempt from the payment of such costs.

In land registration activities, the government in this case the national land agency (BPN) is assisted by other officers, namely: land deed officials (hereinafter abbreviated PPAT) and other officials assigned to carry out certain activities according to the government rules and regulations the relevant legislation. PPAT is authorized to make the authentic deeds regarding certain legal actions regarding land rights or ownership of an apartment. The legal action is the sale and purchase, exchange, grant, revenue in the company (inbrenng), together with the distribution rights, granting the right to build/ use rights to land ownership, granting security

rights, the authorization to charge mortgage. Refer to the provisions of article 19 UUPA and article 3 PP 24/1997 mentioned above, there are two important things to be achieved in the land registration are: first, the rule of law, and secondly, the protection of the law. both of these goals are interrelated and have a causal relationship because without the legal certainty of land rights land rights holders do not receive legal protection.

However, increasing public awareness of the land registration does not affect the existing land problems in society. Cases relating to land are still a lot going on. BPN based on the data; there are approximately 13,000 cases of land or a land dispute in Indonesia unresolved. Until the period of January-June 2011, approximately 1,333 new cases of 14,337 cases that could be solved.

The cases above indicate that the purpose of land registration in the UUPA and PP 24/1997 not fully achieved. People still do not get the legal protection of their land rights, although it has a certificate as proof of his rights. There are two things that lead to legal certainty and legal protection of land rights is still not able to apply fully the publications concerning land registration system and the strength of the certificate verification. Publication systems are in use today is the system of negative publicity that contains positive elements. Arie Sukanti said that the system of negative publicity that has meaning if land titles have been issued in the name of a person and if there are other parties who can prove as much entitled to the owner through the courts then the certificate can be revoked land titles were later given to those who have more right. Different from the positive publicity system gives the sense that the certificate as evidence proving the rights have absolute power, means any printed or written on the certificate should be accepted as an absolute truth.

There are two important things to note in article 32 paragraphs 2 above, the good faith of the holders of land rights and the limitation of time for others to refute the certificate. In general good faith can be seen from the origin of the right was not obtained illegally and use the land in accordance with the law. Land rights holders acting in good faith should get legal protection of their rights. Although PP 24/1997 has given the limitation of time for others to refute the data contained in the certificate, this does not eliminate the cases of land disputes in society, as happened in the case as follows:

In 1975, a dispute between host A (defendant) and host C (plaintiffs) on a plot of land inheritance in court Malang. In 1985, the district court Malang won a host as the defendant. This case continues to appeal the Supreme Court. In 1998, the decision of the Supreme Court upheld the verdict and the district court Malang host A declared as having the right to land. the decision of the Supreme Court is already *inkracht* and land certificates and equipment is stated on behalf of the host A. in 2007, without the knowledge of host A, host C file a judicial review against the decision of the Supreme Court in the 1998, and finally in 2010 came out of the Supreme Court ruling that granted reconsideration host C. problems arise later in 2010 was host A has sold the land to host S, host C asked the court to cancel the sale and purchase between host A and host C on the pretext of buying and selling is carried out illegally and against the law of the land because the object is still in dispute.

### **Legal Protection of the Buyer Good Faith If not Doing behind the Name in the Certificate of Land**

Buying and selling according to M. Yahya Harahap is: "a binding agreement with the seller promised to surrender something of goods / objects (*zaak*), and others who act as buyers who bind themselves by promises to pay the price. Whereas according to Kartini Muljadi and Gunawan, buy and sell are always 2 sides of the civil law that is legal material and legal engagement. Say so because the legal side of material, purchase birth right for both parties

over the bill in the form of delivery of material on the one hand, and the payment of the selling price on the other side. Whereas in terms of engagement, buying and selling is a form of agreement which gave birth to liabilities in the form of delivery of material sold by the seller, and the delivery of cash by the buyer to the seller. But the Civil Code view purchase only from the side engagement alone, i.e. in the form of liability in the field of wealth of each party reciprocally to one another, and therefore, also included in the sale and purchase of the third book of the engagement. according to western law settings contained in Civil Code, the sale and purchase provided for in article 1457 Civil Code which explains that: "buying and selling is an agreement, with the parties bound themselves to submit the material and the other party to pay the price that has been promised". while according to article 1458 civil Code states that the sale is deemed to have occurred between the two parties at the time they had reached an agreement regarding the traded items for sale as well as the price, even if the object has not been delivered and the price has not been paid. with the buying and selling it, right belongs to the object in question has not been transferred to the buyer, such as the price has been paid and that the sale and purchase of the land, the land has been handed over to the authority. Beside it can be seen in the opinion of Subekti about buying and selling which states that "the sale and purchase is an agreement with the agreement of the parties bound themselves to hand over ownership of the goods and the other party to pay the price that has been promised". Terms of the sale and purchase of above can be taken multiple elements in a purchase agreement, namely: 1. the parties at least 2 people, 2. the approval of the parties; 3. delivery of title to the goods, and, 4. payment of the promised price. Whereas in the case of objects arranged in a civil law legal matter. Legal object is a translation of the Dutch term, namely *Zakenrecht*, it is well known that the system of legal regulation is enclosed object as opposed to the open nature of the debt system. Legal regulatory system objects are closed, meaning that one cannot hold the rights of new material in addition to that already established in the law.

Related to this case, the sale and purchase of land made between the seller and the buyer, before the district was acting as the action PPAT sale are set forth in the form of the deed of sale deed of land listed number and date of the purchase is done. UUPA does not provide clarity on what is meant by buying and selling land, but even so given that agrarian law use law system and customary law principles, hence the understanding of buying and selling land must now be interpreted as a form of legal acts delivery of property (land appropriation for forever) by the seller to the buyer, who at the time was also handed over to the seller's price, which is the meaning of customary law. The question then is whether legitimate land purchase agreement was not before the PPAT (official land deed)?

Buying and selling is done without the presence of PPAT remain valid because the UUPA based on customary law (Article 5 UUPA), whereas in the common law system is a system used concrete / cash / real / obvious. however, to realize the existence of a rule of law in any transfer of land rights, government Regulation no. 24, 1997 as the implementing regulations of the UUPA was determined that any agreement intended to transfer the land must be evidenced by a deed made by and before PPAT. subsequent to the sale and purchase of a plot of land, there is one other activity that had to be done by PPAT or can be done alone by the buyer, the data maintenance activities, which meant in this case, namely: activities to register and noted that there has been a shift land rights, and requested that the land office immediately cross out the old name of the holder of the rights to the new rights holders, namely: the buyer who just bought a plot of land in the land book and the certificate in question. Meaning listed in this book and published proof of his/her rights. Proof of land rights is called a certificate consisting of copies of books and letters measuring land that

bound together in one cover. The certificate is a verification tool that strong, meaning that the data contained therein have the force of law and must be accepted as true information and as long and as long as no other verification tools that prove otherwise. this is in accordance with the strength of a certificate as evidence as the explanation of Article 32 paragraph (1) PP no.24 of 1997 which states that the certificate is a certificate of proof applicable rights as a powerful tool of proof, in the sense that as long as it can be proven otherwise, the data physical and juridical data contained therein must be accepted as true, all the physical data and juridical data in accordance with the existing data in the measurement certificate and land book in question. for land that has been certified, the process of transfer registration records simply by affixing the rows found on the third page of the book land and land rights certificates. If the transfer of rights for the first time, in addition to noting the transfer of rights, rights holders name is written on two pages omitted. Registration process for land was that has not been certified, of course, that takes longer than the process of land registration that has been certified as required the issuance of a certificate before noting the transition right. As for issuing a certificate for it to go through the process like announcements, land surveying, and so on. that the plaintiff in this case as a good faith purchaser who did not get legal protection because he was not able to prove that the name listed in the certificate of land in dispute in this case. It looks because he does not meet the provisions of Article 32 paragraph (1) Regulation no. 24 of 1997 concerning land registration, which states that the certificate is a certificate of proof of the right to apply as a strong evidence of the physical data and juridical data contained in it, all physical data and juridical data in accordance with the existing data in the measurement certificate and land book.

### **Legal Protection of the Buyer Good Faith if Making the Deed not Equipped with Data-Data of Land**

PPAT is a public official who is authorized to make the deeds of certain land as stipulated in the legislation in question, namely the transfer deed and the imposition of land right and ownership of an apartment, and the deed granting the power to charge a mortgage. Since the entry into force of Regulation no.10 of 1961 on land registration, sale and purchase made by the parties before the PPAT, in this case only PPAT served to make deed. With buying and selling done before PPAT, filled with light conditions (is not a dark legal act, which is done in secret). deed of sale is signed by the parties to prove there has been a transfer of rights from the seller to the buyer, accompanied by payment of the price, has qualified in cash, and show that real or real sale of legal act in question has been implemented. Those deed has been done to prove that the correct assignment of the legal actions for ever and paying the price. By works of the law is the legal act of transfer of rights, then the deed is proved that the assignee (buyer) has become the new right holder. in those PPAT deed conditions that must be done in order to take legal actions are valid as provided in Article 38 paragraph (1) are: (1) must be attended by the parties (seller and buyer), (2) witnessed by at least 2 qualified witnesses (in the sense of an adult and physically and mentally healthy). The next thing that has to be submitted by the PPAT to the parties before the deed was signed by the parties, the witnesses, and PPAT, that is those PPAT deed shall be read or explained its contents beforehand, as governed by the provisions of Article 22 of Government Regulation No. 37 of 1998 about position regulatory of land deed official, as outlined in the Indonesian republic gazette number 52 in 1998.

After the deed of sale made by PPAT, then the deed is typically used by the buyer to do the data maintenance activities or land registration. as the data source for the maintenance of land registration data, therefore, as an officer, which makes PPAT deed shall observe the conditions there so made a deed can serve as a solid foundation for the registration of the

transfer and charging of the right in question, as well as to prove there has been a valid legal act. To support the legal act of the data maintenance of land registration, the validity of the deed of sale of land depends on the obedience and accuracy PPAT in running his authority, that in examining and checking on things:

1. Certificate that the object of the purchase agreement the land is not being used as bank collateral, dispute, or, and the encumbrances;
2. Certificate of land that became the object of agricultural buying and selling is still in the right application at the district land office / city
3. Land certificates on behalf of another person;
4. Buyers yet of age;
5. Prospective buyers who want to buy land (especially for paddy land) does not reside in the area where the land is located;
6. Parties or one of them is not old enough to make buying and selling;
7. Land right lie in dispute condition
8. Confiscated land rights in state court (*conservatoir beslag*), or has been submitted to the committee affairs and the state's claim has not been seized by PUPN;
9. Non-statutory body under Regulation no.38 of 1963 has allowed the land to property;
10. parcels of land located outside the working area PPAT;
11. Candidate land buyers are foreigners;
12. Waqf land and land mortgaged while.

Another limitation of the authority is the deed of sale of land should not be done by PPAT is not a working area. PP 37 in 1998 has been stressed several legal actions that are the responsibility of PPAT, namely:

1. The truth of the events contained in the deed, such as the type of legal action intended by the parties, regarding has been payment buying and selling.
2. About the object of legal action, both its physical data and juridical data.
3. About the identities of the complainants are parties to take legal actions. all the factors that must be considered by a PPAT and the precautionary principle should he/ she consider before making the deed and after making such deed mentioned above, if it is well done and conduct, then the deed made sure we can say as a legitimate deed and do not contain legal flaws where the deed can be used as a basis of strong evidence that there has been legal action. It is certainly beneficial to avoid a conflict or dispute between the parties at a later date. but when that happens is the opposite, as happened in this case, a PPAT negligence in the process of making the deed of sale of a plot of land, and in the end the deed that created it resulted in the emergence of the dispute by the parties. This is clearly cause harm to the emergence of a lawsuit to be filed. when a land transfer case has been submitted to the court, the judge will first assess and examine the deed of sale is being disputed by the parties, and if there is a possibility that the deed does not meet the legal requirements of deed, then the deed of sale which made by PPAT is concerned, it can be canceled and considered as if nothing ever happened the deed.

Based on the above description can be concluded that the legal protection for good faith purchasers which will make hurt if PPAT deed of sale that the completeness of data on land does not qualify for a deed of sale made. Non-fulfillment of the completeness of the data requirements into the gate selling swift dispute will happen in the future.

## **CONCLUSION**

Basic considerations of judges in the cancellation of the land purchase based on deed made by a notary or other public officer authorized is authentic because it has the content certainty, date and person. The certificate is a proof binding and perfect and should be trusted by the judge and must be true (as long as the truth is not proven otherwise) and does not require additional evidence.

Legal protection to fulfillment of the rights of the parties where one party is in default under the binding sale and purchase agreement is dependent upon the strength of binding sale and purchase agreement that was made, that if made by deed under the hand protection in accordance with the protection of the deed under the hand, while if it is made by a notary public or before then by itself hence deed that will be deed so that protective power in accordance with protection against an authentic deed.

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