

Legal Certainty of Sale and Purchase Binding Agreements as the Basis for the Transfer of Certified Land Rights

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Abstract

In essence, a binding sale and purchase agreement represents a commitment or promise between the seller and buyer prior to the actual transaction. Such agreements typically involve certain conditions or promises that must be fulfilled by one or both parties before the main transaction, i.e., the sale and purchase, can take place. This study explores the legal implications of privately made binding sale and purchase agreements in the transfer of certified land rights. It delves into the legal consequences of these agreements, which, while legally binding, can result in adverse outcomes if either party engages in unethical practices or fraudulent behavior during private land transactions. The involvement of the land deed official (Pejabat Pembuat Akta Tanah or PPAT), a government-appointed official, is crucial to ensure the integrity of the land transfer process. Furthermore, this research addresses the legal certainty of binding sale and purchase agreements made under the hands as a means of transferring certified land rights. It emphasizes that the legal certainty of land transfers through buying and selling is contingent on compliance with PP No. 24 of 1997, which mandates that land transactions can only occur with proof of legal ownership based on the seller's documented land rights.

Keywords

Binding Sale, Legal Consequences, Legal Certainty, Legal Transfer, PPAT

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1. Introduction

In the context of land rights transactions, both buyers and sellers must possess legally authenticated sale and purchase agreements. These agreements are pivotal in ensuring legal certainty regarding the fulfillment of rights and obligations, serving as substantial evidence for future reference (Lubis & Ramadhani, 2021). The governing regulations for such transactions are enshrined in Book III of the Civil Code, specifically in Chapter Five, which delves into the intricacies of buying and selling. According to Article 1457 of the Civil Code, a sale and purchase agreement involves one party obligating themselves to hand over an object, while the other party commits to paying the stipulated price (Wijayanti & Ausiandra, 2020).

The act of buying and selling establishes mutual obligations for parties entering into the sale and purchase agreement. The seller is duty-bound to deliver the object, while the buyer is obligated to make payment, typically involving the transfer of a predetermined sum, often in the form of money. This aligns with the principles outlined in Article 1333, paragraph (1) of the Civil Code, which specifies that an agreement should involve an item with at least a specified type, and the quantity of goods doesn't need to be certain as long as it can be determined or calculated (Nabila et al., 2021).

It's imperative to note that sale and purchase agreements pertaining to land and building rights differ from general sale and purchase agreements regulated in the Civil Code. While these agreements must adhere to the provisions of the Civil Code, they are subject to specific regulations governing land and building rights transactions. Sale and purchase agreements within the context of the Civil Code are explicitly defined and regulated in Articles 1457 to 1540, representing agreements characterized by distinct attributes and legal frameworks (Nabila et al., 2021).

Subsequently, the next stage involves the transfer (levering) of the object that constitutes the subject of the agreement. It's important to clarify that this agreement does not lead immediately to the transfer of rights from the seller to the buyer. The transfer of rights only materializes in accordance with the provisions of Article 1458 of the Civil Code after the subject of the agreement has been physically handed over. In Civil Law, delivery in an agreement signifies the moment when ownership rights to the property are transferred. It's crucial to recognize that this encompasses both the physical delivery and the juridical transfer of ownership rights, often seen in scenarios like bank credit agreements.

Notably, the provisions of Article 37, paragraph (1) of Government Regulation Number 24 of 1997, do not determine the validity or occurrence of the transfer of land rights, such as through sale and purchase, but rather regulate the registration of such transfers. This signifies that the validity and occurrence of a legal act involving the transfer of land rights are not contingent upon the presence or absence of a land deed official (Pejabat Pembuat Akta Tanah or PPAT) deed or whether it is executed in the presence of a PPAT, as clarified in Article 37, paragraph (2).

Furthermore, this research delves into several court decisions addressing diverse legal issues. First, decision number 50/Pdt.P/2022/PN Sim examines a land sale and purchase case involving Drh. Samuel Pohan, Ir. Ramijo Pohan, and Anna Pohan, all holding specific ownership certificates. This decision granted the applicants' request. Second, decision number 25/Pdt.G/2021/PN. Jmb reviews events subsequent to the sale and purchase transaction between Defendant I and Defendant II, concerning the payment of a housing loan for a housing unit.

Defendant II aimed to transfer ownership by selling the land and house to the Plaintiff. The court decision partially granted the Plaintiff's claim. Lastly, decision number 7/Pdt.G/2021/PN Sbr deliberates the transfer of land and a house from Defendant I to Defendant II, with the subsequent transfer to Defendant III through a sale and purchase receipt. This decision granted the Plaintiff's claim in its entirety by default.

In the following sections, this research employs various theoretical frameworks to gain a comprehensive understanding of the legal consequences and certainties associated with binding sale and purchase agreements for certified land rights. These frameworks encompass the Theory of Legal Consequences, which aids in analyzing the legal impact of privately initiated agreements as the basis for transferring rights, and the Legal Certainty Theory, emphasizing the vital role of legal assurance in every legal act.

However, it's essential to acknowledge that exceptions may exist to the principle of legal certainty, allowing for the revision or withdrawal of provisions under certain circumstances or due to evolving perspectives. Such revisions may occur when decisions are challenged in court and deemed invalid. In practice, the establishment of legal certainty is intricately tied to human behavior, encompassing clarity in regulations (*sicherheit des Rechts*) and predictability in human conduct. Legal certainty plays a pivotal role in maintaining stability and justice within the legal system.

2. Research methods

The research method used in this study is the normative juridical method, also known as library legal research, focusing on the analysis of library materials and secondary data relevant to the research topic. The approach applied in this research includes several aspects, including the statutory approach, which involves reviewing all laws and regulations related to the legal issue being researched. Researchers need to understand the hierarchy of legal regulations and the principles contained therein.

The conceptual approach is used to analyze the legal concepts that underlie the issue being studied, including the values contained in legal regulatory norms. The analytical approach involves the analysis of legal materials to reveal the conceptual meaning of the terms used in statutory regulations. Additionally, this approach is used to understand the application of regulations in practice and legal decisions. The case approach allows researchers to build legal arguments based on concrete cases occurring in the field, relating theory to practical situations in real life. By employing these various approaches, this research aims to gain an in-depth understanding of legal certainty in the context of binding sales and purchase agreements as the basis for privately made transfers of rights to certified land. This approach will aid in addressing the problem formulation and achieving the research objectives set forth.

In this research, the sources of legal materials are divided into three main categories: primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials are authoritative legal sources, including relevant legislation such as the 1945 Constitution of the Republic of Indonesia, the Civil Code (KUHPerdata), and other related regulations concerning binding agreements for the sale and purchase of rights to certified land. Secondary legal materials encompass non-official legal publications and research, such as books, scientific journals, seminar papers, and internet sources relevant to the legal issues being researched. These sources

provide additional explanations and insights into the research topic, including the latest legal developments concerning binding sales and purchase agreements.

Tertiary legal materials serve as instructions or explanations for primary and secondary legal materials and may include legal dictionaries, encyclopedias, cumulative indexes, and other sources that aid in understanding and interpreting the law. The collection of legal materials involves identifying and inventorying positive legal rules, researching library materials, and other pertinent legal material sources. After collection, the legal materials were classified, selected, and arranged to facilitate analysis and construction in this research. The analysis techniques employed encompass legal interpretation, legal construction methods, and various interpretation techniques such as grammatical and systematic analysis.

3. Results and Discussion

3.1 General Overview of Buying and Selling Certified Land Rights

The legal understanding of agreements is regulated in Book III of the Civil Code concerning Engagements, which has the nature of an open system. The law of engagement/agreement provides the widest possible freedom to legal subjects to enter into agreements containing anything, as long as they do not violate legislation, public order, and morality.

A legal relationship involving two or more parties who promise or are deemed to promise to do or not to do a certain action, and these parties have the right to demand the implementation of the promise. This definition describes an agreement as an agreement in which one or more people undertake or promise to another or more people to do or not do something. Civil law also regulates an agreement as an act in which one or more individuals bind themselves to one or more other individuals. Thus, an agreement includes verbal or written statements containing promises or agreements between the parties involved, which can then produce enforceable legal consequences.

The conditions for the validity of an agreement are stated in Article 1320 of the Civil Code, which includes four main requirements. First, subjective requirements involve the agreement of the parties involved in the agreement and their ability to make an agreement. Second, objective requirements include the existence of a certain thing and a lawful cause. These conditions must be met for the agreement to be considered valid. When one of the subjective conditions is not met, the agreement can be canceled at the request of the aggrieved party or the incompetent party. On the other hand, if the objective conditions are not met, the agreement is null and void.

It is important to note that the conditions for the validity of an agreement emphasize the significance of the agreement, the legal capacity of the parties involved, clear objectives, and causes that are in accordance with the law and ethics. Violation of any of these conditions may result in the agreement being declared void or voidable in accordance with applicable law. Therefore, when entering into an agreement, the parties involved must ensure that all the conditions for the validity of the agreement have been met to give it valid legal force (Marpi et al., 2021).

In an agreement, several elements must be present. First, there are parties who mutually promise, representing the involved parties committed to each other. Second, there is the agreement itself, where the parties must reach a consensus regarding the contents of the

agreement (Shiffrin, 2009). Third, there are goals to be achieved through the agreement. Fourth, there are actions or obligations that must be fulfilled concerning the subject matter of the agreement. Fifth, there are specific forms, both oral and written, that can be used as evidence. Finally, there are specific conditions, both basic conditions related to the subject matter of the agreement and additional or supplementary conditions.

In contract law, several principles are known that pertain to the formation of agreements. First, the principle of consensus, which affirms that a valid agreement is established from the moment there is an agreement between the parties. There are three theories regarding agreement related to this principle. Second, the principle of freedom of contract, which grants parties the freedom to either enter into or abstain from making an agreement, engage in agreements with anyone, determine the content of the agreement, its implementation, and its form, as long as it does not violate the law, morality, and public order. Lastly, the principle of *Pacta Sunt Servanda*, which stipulates that valid agreements are binding as law on those who make them. The formation of an agreement depends on mutual agreement and the conformity of will between the parties involved, which is typically manifested in a written statement for legal certainty (Kurniati & Mordekhai, 2021).

The enactment of the Basic Agrarian Law (UUPA) has transformed the agrarian legal framework in Indonesia and abolished the previously existing dualistic nature. The new agrarian law adheres to the provisions of the UUPA and is based on customary law, which aligns with the character of the Indonesian nation. Concerning the transfer of land rights, the UUPA stipulates that the buying and selling of ownership rights to land constitute a form of rights transfer that must be conducted through a deed prepared by PPAT. This implies that every transaction involving the sale and purchase of land ownership rights must be officially documented with a PPAT deed.

In addition to buying and selling, the UUPA also recognizes several other forms of land rights transfer, such as grants, exchanges, and bequests. All these forms of rights transfer must comply with the provisions regulated by the UUPA, and these transactions typically involve the use of a PPAT deed to ensure and record the transfer of rights. The role of the PPAT is highly significant in the process of transferring land rights. PPATs are public officials vested with the authority to create deeds related to the transfer of land rights, including land sale and purchase deeds. The deeds prepared by PPATs possess strong legal validity and serve as valid evidence in court (Saputro et al., 2021).

The transfer of rights to certified land must comply with the rules stipulated in Government Regulation Number 24 of 1997 concerning Land Registration. Article 37 paragraph (1) of the regulation states that every transfer of land rights, except through auction, must be registered on the basis of a PPAT deed. Therefore, in the context of buying and selling certified land rights, the transaction must involve PPAT in making the sale and purchase deed.

In practice, the transfer of certified land rights involves several processes. The seller and buyer will enter into a sale and purchase agreement, which includes all the provisions regulated by UUPA. Subsequently, the sale and purchase deed will be drawn up by a PPAT, encompassing essential transaction details such as the price, identity of the seller and buyer, and specifics of the land rights being transferred. This deed is then signed by all parties involved, including PPAT as

a witness. The sale and purchase deed, once ratified by the PPAT, serves as legal evidence for registering the transfer of land rights at the local land office.

It is important to remember that the process of transferring title to certified land must comply with applicable legal provisions, and the role of PPAT is crucial in ensuring that the transaction complies with the law. The deed made by PPAT is legal evidence that will be used in the legal process if there is a dispute or problem related to the transaction.

3.2 Legal Position of Under-Handed Deeds in Buying and Selling Land Rights

A private deed is a type of document created without the presence of a public official and involves only the parties who are part of the agreement. When drafting a private deed, there are no witnesses present to sign the document. This sets it apart from an authentic deed, which is prepared in the presence of an authorized public official. Authentic deeds carry stronger evidentiary weight compared to private deeds (Agustin & Anand, 2021).

Despite its validity and legal applicability to the involved parties, private deeds have certain limitations. One such limitation is the absence of witnesses during the document's creation, which can make it more challenging to provide evidence in civil disputes. If either party disputes or denies their signature, proving the authenticity of the private deed may become necessary in a court of law (Aditya, 2021).

Private deeds fundamentally differ from authentic deeds in how they are created and formalized. Authentic deeds are prepared in the presence of an authorized public official, such as a notary, while private deeds are solely established by the parties involved without the involvement of public officials. Examples of authentic deeds include notarial deeds, court judgments, and trial records, while private deeds encompass agreements like house rentals or sale and purchase contracts. However, it's important to note that in some instances, a private deed can serve as valid evidence if the signatures on it are acknowledged by the parties involved. This explanation helps provide a clearer understanding of the distinctions between private deeds and authentic deeds in civil law (Burhanuddin, 2021).

Private land transactions can be associated with issues in land registration under the law. One of these issues is the lack of completeness in Standard Operating Procedures and Standard Products in the land registration process, making it less than optimal. Furthermore, cases of double certificates often arise because land parcels are not adequately registered on land registration maps, adding to the complications. Other obstacles include insufficient availability of large-scale maps, complex and non-affordable regulations, as well as intricate land laws. Buyers who engage in private home purchases often do not clearly explain their reasons for not involving a notary in the sale and purchase agreement. This may be related to convenience and simplicity in the process, but in reality, buyers should have a binding sale and purchase agreement attended by a notary to protect both parties.

In the practice of private land transactions, several parties are involved, namely the seller and the buyer. The seller's obligation involves ensuring that the property being sold is legitimately theirs, while the buyer's obligation is to pay the agreed-upon price. Sale and purchase agreements are governed by civil law and must be fulfilled according to what has been agreed upon. In cases of breach of contract, where one party fails to fulfill their obligations, sanctions can be applied, such as compensation payment to the aggrieved party. Breach of contract can result from various

factors, including negligence, incapacity, or unforeseen circumstances. Consequences of breach of contract may include compensation payments, contract cancellations, risk transfer, and legal expenses if the matter is taken to court. Furthermore, a written warning or formal notice can also be issued to a defaulting debtor as an initial step before pursuing further legal action.

Proving the validity of a private sale and purchase is a complex part of the litigation process. The process of proof in court requires the plaintiff to prove their claim, and the defendant must prove their defense. This means that court decisions always depend on the strength of the evidence presented during the trial, both in written and oral forms. Evidence presentation is the act of presenting legally admissible evidence to the judge to determine the truth of the events presented in court.

Contracts, one of the sources of obligations, can be formed either through oral or written agreements. Sale and purchase is one such agreement that involves the transfer of ownership rights to an item in exchange for a sum of money as its price. The occurrence of a sale and purchase agreement depends on the agreement regarding the item and its price. However, land sale and purchase agreements require an authentic deed made by an authorized public official, such as a Notary or PPAT. If a sale and purchase is conducted through a private agreement without an authentic deed, it is considered invalid and will not transfer land ownership from the seller to the buyer (Danaparamita & Fadhilah, 2021).

In proving a land sale and purchase agreement, several general principles must be followed, including the pursuit and establishment of formal truth. Unlike criminal proceedings that demand the search for truth beyond a reasonable doubt, in civil litigation, judges seek formal truth that can be accepted as genuine truth. This process relies on the evidence presented during the trial.

Evidence in court involves various types of proof, including documentary evidence, witnesses, presumptions, admissions, and oaths. Proof through witnesses requires more than one witness, and formal truth can be considered fulfilled only if there is more than one witness. Presumptions are supplementary evidence, and admissions can conclude a case if presented effectively. Oaths can also be used as evidence in some situations. However, it's essential to remember that the standards of proof and the strength of evidence can vary depending on the laws and local regulations. In authentic proof, specific requirements, such as an authentic deed, must be met for the agreement to be considered legally valid (Danaparamita & Fadhilah, 2021).

3.3 Analyzing Legal Consequences of Private Transactions for Certified Land Rights

The legality of land transactions, as per laws and government regulations, hinges on whether the transaction is conducted in the presence of a land deed official or through an authentic deed ratified by an authorized official. According to Government Regulation No. 24 of 1997 concerning Land Registration, Article 37, paragraph 1, transactions involving the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grant of income within a company, and other legal acts of transfer of rights are considered valid. However, the transfer of rights through auctions can only be registered if substantiated by a deed executed by an authorized PPAT in accordance with the provisions of applicable laws and regulations.

People engage in buying and selling using authentic deeds or deeds legalized by authorized officials to ensure the legal validity of these transactions. In terms of the legality of private buying and selling, there is no significant difference. A valid agreement is one that meets the

requirements stipulated by the law. These conditions are designed to provide legal certainty regarding these legal actions, forming the basis for future protection or dispute resolution. According to Article 1320 of the Civil Code, an agreement must satisfy four requirements: the mutual consent of the parties, their legal capacity to enter into an agreement, a clearly defined subject matter, and a lawful cause (Marpi et al., 2021).

The agreement between the parties involved in making the agreement must be freely given, without any coercion, mistake, or fraud. Legal capacity indicates that all parties involved must meet general prerequisites, such as being of adult age, having sound mental health, and not being under guardianship. A clearly defined subject matter refers to the object or achievement of the agreement, which must be clear, identifiable, and quantifiable. Lastly, a lawful cause emphasizes that the content of the agreement must comply with the law, public order, and morality. Failure to meet these conditions can serve as grounds for one party to request the cancellation of the agreement. Thus, the validity of an agreement plays a crucial role in ensuring legal protection for all parties involved (Snyder, 1993).

In this case, several issues arose concerning the ownership of a residential house intended to be transferred from Defendant I to the Plaintiff. Initially, Defendant I owned the house, and after the Plaintiff paid off the mortgage, he sought to transfer ownership of the house to his name. However, a problem emerged when Defendant IV insisted that the Plaintiff provide the identification card of the initial buyer, Defendant I, as one of the conditions for the house's ownership transfer. The Plaintiff searched for Defendant I for two years but was unsuccessful in locating him (Hastie et al., 1999).

Subsequently, the Plaintiff engaged in a conversation with Defendant IV and explained that he had spent two years unsuccessfully searching for Defendant I. Defendant IV proposed that the Plaintiff file a lawsuit or seek legal grounds from the District Court, allowing him to take legal action for transferring the house's rights and ownership from Defendant I to the Plaintiff's name. This step aimed to ensure the house's legal status. Throughout this process, the Plaintiff has inhabited, controlled, and occupied the house since the change in ownership. However, to execute legally valid legal action for transferring rights and ownership, fulfilling the requirements for changing the property's name from Defendant I to the Plaintiff's name at Bank BTN Jambi Branch (Defendant IV), the Plaintiff requires permission, power of attorney, or rights based on the District Court's decision.

This lawsuit has been filed with sufficient evidence, and the Plaintiff requests that the decision be executed in advance (*Uitvoerbaar bij voorraad*), despite the potential for opposition, appeal, cassation, or reconsideration. In this case, the roles of law, evidence, and the seller's obligations in the sale and purchase agreement also come under scrutiny. Contract law plays a pivotal role in determining the rights and obligations of each party, especially in cases involving hidden defects that the buyer must prove when making claims against the seller for these defects (Macaulay, 2020).

The seller's obligations regarding the maintenance and preservation of the sold items, as well as their liability for damaged or defective items, are regulated by civil law. Regardless of fault, the seller still bears an obligation to compensate for losses suffered by the buyer if the item sold has hidden defects affecting its use. In this context, it is also crucial to understand the role of evidence in determining whether these hidden defects existed before the sale and whether both

parties were aware of them or not. In conclusion, this case reflects various legal aspects related to ownership, sale and purchase agreements, and the obligations and responsibilities of the parties involved in the transaction. The Plaintiff's effort to change the ownership of the housing property through legal proceedings is a reasonable step toward seeking legal certainty in a complex situation like this (Ávila & Ávila, 2016).

The transfer of land rights through sale and purchase must strictly adhere to procedures established by the law. Land transactions require the support of a deed prepared by a PPAT. While PPATs are typically notaries or sub-district heads, numerous cases involve the transfer of land rights through sale and purchase agreements that are not prepared by PPATs, particularly in rural areas. In these instances, land transactions are only documented through private deeds signed by both parties and acknowledged by the village head. However, it's crucial to note that these transactions must be registered with the National Land Agency to obtain a land certificate.

The process of selling and buying registered or certified land carries lower legal risks because ownership rights and the legal status of the seller are clear and transparent. In contrast, for land that is not registered or certified, there are higher legal risks and uncertainties. Therefore, special attention is given to land rights transactions that lack registration or certification to ensure that the seller is a legitimate and authorized party to sell the land.

The transfer of land rights through sale and purchase can be delegated to another person by granting them the power to sell. The valid requirements for granting such power must comply with applicable civil law, whether it is drawn up by a notary or done privately. It's important to note that the rights of the grantor do not transfer absolutely, as the power given can be revoked or withdrawn by the grantor. In the context of land sale and purchase, specific requirements must be met in accordance with relevant legislation. Failure to meet these requirements may lead to questioning the legality of the land rights transaction, and the transfer of rights may not be registrable. In cases where a land certificate does not exist or has not been issued, the land still holds legal validity, although ownership proof is not fully documented. However, land ownership becomes clearer and more certain when a land certificate is issued.

Deeds of sale and purchase prepared by a PPAT play a crucial role in the process of transferring land rights and serve as valid evidentiary instruments. Through these deeds, land registration processes can be executed, and land certificates can be issued. Consequently, PPAT deeds of sale and purchase contribute to achieving the principle of publicity in land registration, allowing anyone to access physical and legal data about the land. In conclusion, in the context of land rights sale and purchase, it is essential to adhere to applicable legal procedures and ensure that all requirements are met. This approach will help ensure legal certainty in the transaction and minimize legal risks in the future.

4. Conclusion

Private sale and purchase agreements carry significant implications for the transfer of rights to certified land. While such transactions are generally considered legally valid, parties involved must exercise caution. There is a potential for detrimental consequences to arise if one of the parties engages in unethical or fraudulent practices during the land buying and selling process. Therefore, the involvement of a PPAT or a Notary appointed by the government is of utmost importance to ensure the integrity and legality of the transaction. Furthermore, legal certainty in

private sale and purchase agreements plays a pivotal role in the transfer of rights to certified land. In accordance with the regulations outlined in PP Number 24 of 1997, the transfer of land rights through sale and purchase can only take place if the seller can demonstrate legal ownership of the land. The existence of legal proof of ownership instills confidence that the seller possesses the legal authority to sell the land, subsequently providing legal certainty to all parties involved in the transaction.

Suggestion

The transfer of land rights through buying and selling is a process that must involve a PPAT for its authority and oversight. This is exceptionally crucial because one of the primary prerequisites for obtaining a land rights certificate is the existence of a valid sale and purchase deed issued by a PPAT. Consequently, the presence of a PPAT is an indispensable step in the land rights registration process, ensuring that all aspects of the transaction adhere to the law. It is imperative for the public to recognize the importance of exercising caution in land buying and selling transactions, especially when the land lacks a certificate or has not been registered with the National Land Agency. Such vigilance is essential to prevent potential future issues related to the transfer of land rights. Before engaging in a transaction, it is advisable to verify the land's status and ensure full compliance with all legal procedures. This approach helps mitigate risks associated with unauthorized land transactions and preserves legal certainty.

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