



THE FUNCTION OF THE SALE AND PURCHASE DEED IN THE TRANSFER OF LAND OWNERSHIP RIGHTS

Akbar Rahmat Irhamulloh Abbas¹, Dimas Al Hakim² & I Putu Aris Udiana Putra³

Fakultas Hukum Universitas Airlangga¹²³

akbar@ariasiatek.co.id¹, alhakimdimas@gmail.com² & putuarisudiana@gmail.com³

Published: 23/04/2021

Abbas, Akbar. R., Hakim, D. Al & Putra, I. P. A. U. (2021). The Function of The Sale and Purchase Deed in The Transfer of Land Ownership Rights. *Journal Equity of Law and Governance*, Vol. 1(1), 48–60.
<https://doi.org/10.22225/elg.v1i1.3244>

Abstract- Land is one of the wealth guaranteed by the State of Indonesia for the prosperity of its people. The Country of Indonesia is a legal state in accordance with article 1 paragraph 3 of the Constitution of the Republic of Indonesia in 1945 which indicates that all actions taken by the authorities and the public must be based on the applicable law. Likewise, in the field of land, that all actions taken by both the ruler and the public must always be based on the prevailing law which is the provisions of the prevailing laws and regulations. The purpose of this research is to analyze the legal requirements of the transfer of property rights to land and to know the function of the deed of sale and sale in its relationship in the transfer of property rights to land. This type of research is normative juridical research. The problem approach used to examine this issue is the approach of legislation. Legal materials used are primary legal materials and secondary legal materials. The method of analysis of legal materials is to use the technique of inventorying and classifying legal materials and to answer the problem of this research using the principle of preference where to point to the law which takes precedence. The results of the discussion show that for the valid terms of sale and purchase of property on land must meet the provisions in the Civil Law and Agrarian Principal Law which is further regulated in Government Regulation No. 24 of 1997 on Land Registration. The legal consequence of the transfer of property rights to land according to the Basic Agrarian Law is that the authority of the old land owner is automatically lost and transferred to the buyer, due to the dualism of regulations regarding the sale and purchase of land rights, namely in accordance with the provisions of the Civil Code and according to the provisions of the Law In the Basic Agrarian Law, the principle of preference is used here, namely more specific provisions overriding more general provisions.

Keywords: Civil code, Deed, Land, Transition

1. INTRODUCTION

Nowadays, land has become a very promising asset and important for the development of business and human life. Human life is inseparable from the presence of the land element, whether it is used as a place to live, do business, or grow crops. With the increasing development, the need for land will also increase. In line with that, the supply of land for development began to be limited. This situation clearly has an impact on human life. One of the negative impacts of the high demand for land is the emergence of various cases and problems in the land sector, for example, land brokering or better known as the land mafia, and the issuance of fake land certificates.

To fulfill these provisions, of course, it must be based on the existence of legal rules governing land issues so that legal certainty can be manifested in ownership of land rights. Therefore, it is necessary to prevent legal violations in ownership of land rights, especially in the process of transferring land rights, so that land rights do not transfer to unauthorized parties. Provisions regarding this matter can be known by referring to the provisions of Article 19 paragraph 1 of Law Number 5 of Year 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) which states: "To ensure legal certainty in the land sector, the government has held land registration in the entire territory of the Republic of Indonesia according to the provisions regulated by the Government Regulation, namely Government Regulation Number 24 of 1997 concerning Land Registration (hereinafter referred to as PP24 / 97) " (Harsono, 2000)

Land registration in the form of *Cadastral Recht* is aimed at ensuring orderliness of legal administration and ensuring certainty of land rights. In line with the previous research has explained that land prices have been regulated in Indonesian legislation including land tax from each land sale and purchase transaction, but actors sometimes do not follow the regulations because the tax is too high and does not match the predetermined land price. Therefore, it is necessary to have a legal evaluation of land problems like this in order to prevent the occurrence of parties who can violate the law and can harm the community and also the state (Sari & Yasniwati, 2019).

In the framework of its implementation, the task of registering land is carried out through various activities, such as registration and transfer of land rights. In the transfer of land rights based on statutory regulations, it is determined that the execution is carried out by the Official for Making Land Deeds (hereinafter referred to as PPAT). Furthermore, Abdurachman (1993) states that to meet the need for land under construction, ways that can be done are:

1. Land acquisition, carried out by releasing the legal relationship between the holder of land rights and the provision of appropriate compensation to the party concerned;
2. Revocation of land rights, namely the taking of land by force by the state to a person which results in the loss of property rights over the land and is given appropriate compensation by the state;
3. The transfer of rights to land is carried out by way of sale and purchase including public
4. tenders, exchanges, grants, wills, gifts according to custom, and other actions intended to transfer land rights to other parties.

What include land rights in the UUPA are as follows:

- a. Right of ownership;
- b. Building rights;
- c. Business Rights;
- d. Usage Rights and Management Rights.

Before the UUPA came into effect, there was dualism in land law because land rights with western status were regulated in the Civil Code / *Burgerlijk Wetboek* (BW), such as the rights of *Eigendom*, *Erfacht*, and others whose rights were transferred by the selling parties and buyers with rights provided for in customary law. With the enactment of the UUPA, dualism in land law is eliminated, and all transfers or transfers of land rights are carried out by PPAT on the basis of the UUPA. The transfer of land rights that must be carried out before the PPAT is:

- a. Buy and sell;
- b. Grant;
- c. Exchange;
- d. Ordinary Separation and Division;
- e. Submission of Inheritance Grants;
- f. Mortgages.

Even though there are provisions regulating the issue of land transfer, until now not all people know it correctly, so they often transfer land rights without going through the PPAT, which of course can create legal uncertainty in the transfer of rights to the land. In order to prevent this

from happening and to guarantee legal certainty in ownership of land rights, land registration is felt to be very important by the Government and the community. Therefore, the land registration agency is an institution that has quite a heavy-duty in the land sector, in which the requirements for land registration, both formal and material, must be examined. Likewise, the parties related to the land should be careful, so that later they do not cause a dispute. The focus of this research is to analyze the legal requirements of a transfer of title to land and also to find out the function of the sale and purchase deed in relation to the transfer of land rights.

2. METHODS

There is a problem in this research, namely conflict of norms. Norm conflict is a condition in which a norm has been created but it is contrary to other legal norms. Thus, this research used normative research methods to discuss and evaluate the law of land in Indonesia. Normative research is research that finds out a rule of law, legal principles, and legal doctrines faced and this research is conducted to produce new arguments, theories or concepts as prescriptions in solving problems (Marzuki, 2011). The approach used in examining this problem is a normative juridical approach, namely an approach from the legal aspect of the problems raised in this study. This study used primary legal materials in the form of statutory regulations. The secondary legal materials used in this research were literature books and the opinions of scholars relating to the conflict of norms of the Civil Code regarding buying and selling with the UUPA which is further regulated in PP 24/97 article 19 regarding the sale and purchase of rights belonging to the land. The technique of collecting legal materials needed in this study was carried out using the technique of inventorying and classifying the legal materials obtained, namely by reading, understanding and reviewing statutory regulations and literature books that are related to the issues discussed. The analysis used on the collected legal materials is done by processing the legal materials qualitatively and analyzed using systematic interpretive techniques. Therefore, a clear, justifiable conclusion can be drawn. This means that there is a relationship between one legal material and another to get an overview of the research results (Fajar & Achmad, 2010).

3. RESULTS AND DISCUSSION

3.1 Procedures for registering land rights

3.1.1 Land rights registration system

In accordance with the provisions of Article 19 of the UUPA and its explanations, to ensure legal certainty of all land rights, it must be registered and the registration of the land must be carried out in a simple and easy to understand manner and be carried out by the community concerned. The land registration includes:

- a. Land measurement, mapping, and bookkeeping;
- b. Registration of land rights and transfer of these rights;
- c. Providing documents of proof of rights that are valid as a strong means of proof.

In the activity of registering land rights, there are several systems known, namely:

- i. The positive system, namely the land certificate given is valid as proof of land rights. Registration of land rights is a perfect guarantee that the name registered in the land book is indisputable or absolute, even though in reality he is not the rightful owner of the land. So, in this positive system give complete confidence in what is written in the land book. Based on this, the third party acting on the basis of the evidence received a guarantee even though it later turned out that the information contained in the land book was incorrect. With this strong guarantee, the third party must trust and not have to worry that in the future they or the parties listed in the land book register will lose their rights. If we look further from the registration scheme, this positive system has advantages and disadvantages, namely:
 - The advantages of the positive registration system:
 - a. There is legal certainty from the land book;
 - b. Active role of officials in transferring land names;
 - c. The working mechanism in the issuance of a definite land certificate;

d. Easy to understand.

- Disadvantages of the positive registration system:
 - a. The active role of the officials behind the name of the land will take a long time;
 - b. Owners who actually have rights to the land will lose their rights because of the certainty of the land book itself;
 - c. The authority of the court is placed under administrative authority.
- ii. Negative System, where a strong guarantee is given to the owner of the land concerned. A landowner can contest his rights over a piece of land from a person registered in the land registration book. So if we look at these provisions, even though someone's registration in the land book does not absolutely indicate that he is the owner of the land in question. According to the provisions of this negative system, it can be said that everything that is listed in the land book/land certificate is deemed true until it can be proven that a condition is otherwise / incorrect before a court hearing. The principle contained in this negative system is the memo plus yuri principle, which is to protect the real land titleholder from the actions of other people who transfer their rights without the holder of the real right knowing (Soejono dan Abdurrahman, 1995).

When compared to a negative system with a positive system, one of the main features of a negative system is that the registration of land rights does not guarantee that the name registered in the land book is the correct person and cannot be disputed if the registered name is not the real owner. The rights of registered persons are determined by the rights of the previous rights grantor. As a result, with this scheme, transferring previous rights is a sequence of processes that cannot be isolated from one another. All information stated in the lists is legally binding in this framework, and must be recognized by the judge as valid until it can be proven otherwise, at which point the court can determine which proof is correct.

Apart from the aforementioned opinion, there are also some groups who argue that this negative system is very detrimental to the interests of third parties who have good intentions, even though this opinion is not entirely correct but that does not mean the third party is unprotected. Although it is certainly a guarantee of protection, it is still less when compared to the guarantee of protection in a positive system. Thus, third parties must always be careful and do not easily believe what is written in the land book or proof of title. So, although the weakness of this negative system does not seem to provide protection to third parties with good intentions, this has been balanced by the legal principle which says that a third party with good intentions and based on the information provided correctly will always receive legal protection. The protection referred to is in the hands of the judge who in a dispute before the court will consider the conflicting legal interests.

Furthermore, Effendi (1983) states that in the implementation or use of this negative system, several weaknesses can be stated, such as:

- a. The land book and land registration certificate do not provide legal certainty because the certificate can still be defeated by other evidence even though those whose names are registered in the land book do not constitute a guarantee as the owner;
- b. Land registration officers always play a passive role waiting for anything;
- c. The process of land registration is quite difficult and difficult for the layman to understand.

Apart from these weaknesses in the negative system, advantages can also be found such as, the existence of protection of the real rights holders and the existence of an investigation of the history of the land before the certificate is issued (Effendi, 1982).

- iii. The Torrens system, which is a system created by Sir Robert Torrens, in which the implementation of this system is held in each regional capital city a land registration office known as the National Land Agency (hereinafter abbreviated as BPN) so that every land right is recorded in a land book and a copy of the land book called a certificate. This certificate is made in duplicate, one for the owner of land rights and the other for the BPN office as an archive. This certificate will later serve as perfect and inviolable evidence. The advantages of the Torrens system are:

- Uncertainty is replaced by certainty;
- Transfer costs are reduced from pounds to shillings and time from days;
- Unclear and convoluted affairs are brief and clear;
- Agreements are simplified in such a way that each person will take care of each of his own interests;
- Fraud is severely prevented.

Therefore, in the land registration system, it is known that there are three systems for registration of land rights, while the law in Indonesia in UUPA article 19 paragraph 2 letter c states that, the issuance of certificates of proof of rights, which acts as a strong means of proof. Meanwhile, a further regulation in PP 24/97 concerning land registration states that the bookkeeping of a right in the land book register in the name of a person does not result in that the person who is actually entitled to the land will lose his / her rights. That person can still sue the person who is not entitled to the land. So that in Indonesia, with the provisions of the UUPA, it adheres to a negative registration system, which means that everything that is listed in the land book or land certificate is true until it is proven by the opposite situation before the court.

3.1.2 Procedures for registering land rights

In accordance with what has been described above, the registration of land rights is very important because the results of the registration are strong evidence of the existence of these rights. So, after the sale and purchase of the land has been completed before the PPAT, the buyer is obliged to register the transfer of rights over the land in order to obtain proof of rights. According to the general explanation in PP 24/97 concerning land registration Number 8 letter a, that in order for what has been registered in the land register book remains in accordance with the actual situation, changes that occur in a right must also be registered. From these provisions, we can see that there are three phases in the process of implementing the registration of land rights, namely:

1. In the sale and purchase agreement phase, which is at this time, both the seller and the buyer agree to a sale and purchase agreement for land rights in which the seller is obliged to deliver the goods and has the right to get paid and the buyer has the right to get the goods and is obliged to pay the price. Of course for the validity of the sale and purchase agreement, it must comply with the provisions of Article 1320 of the Civil Code (BW), this applies to both the sale and purchase of land that has been booked and which has not been recorded.
2. The sale and purchase deed phase, which is that the parties have agreed to conduct a sale and purchase, so to obtain strong or authentic evidence of the sale and purchase act must come and appear before the PPAT official himself. In the event that the land being sold has not been proven/has not been in the form of a certificate, then it must ask for information from the local village head and a representative of the Village Government who will act as a witness as well as guarantee that the land being sold is indeed the property of the seller and is authorized to sell it. Meanwhile, if the land being sold is certified, it is sufficient to be attended by two witnesses who do not have to be the village head and a member of the village administration from where the land was sold. When attending the PPAT, he also submitted the necessary conditions for the making of the sale and purchase deed of the land. In making the deed, PPAT must pay attention to the following matters:
 - a. Is the making of the deed prohibited;
 - b. Request information from the local Agrarian Office / BPN regarding the land parcel has not been registered or a statement from the person transferring the right that the land title does not yet have a certificate;
 - c. Examining materials proving ownership of the transferor, for example:
 - i. Previous sale and purchase letter;
 - ii. Kekitir / petuk / girik;
 - iii. Information from the village head using a special form that transfers rights confirmed by the sub-district head.

d. Paying the registration fee according to the location of the land.

If one of these conditions is not fulfilled/violated, it can make the deed legally flawed and can be null and void.

3. Registration and certificate granting phases. After the PPAT deed is signed and a transfer permit is obtained from the local Agrarian Office, then the person concerned must register at the local BPN/land office regarding the transfer of land rights by bringing the sale and purchase certificate along with the attachments of the certificate. Then the person concerned will be given a certificate of registration proof that the land title of the person concerned is still in the certification process at the BPN office and besides that the person concerned will also receive a copy of the sale and purchase deed as proof that he has purchased the land parcel in question while the original remains with the PPAT to be forwarded to BPN. The proof of registration and sale purchase certificate will later be used to collect the certificate concerned at the Land Office when the certificate has been completed.

Furthermore, after BPN receives the documents from the applicant, BPN will conduct an examination of the conditions for land registration, which in this case can be divided into two parts, namely:

1. For land that has not been temporarily certified/certified, BPN will conduct an inspection of:
 - a. Deed of sale and purchase of land rights;
 - b. Proof of land;
 - c. A certificate from the village head endorsed by the sub-district head confirming the land rights;
 - d. Citizenship certificate;
 - e. Letter / receipt for payment of registration fee.
2. For land already certified, BPN will conduct an inspection of:
 - a. Deed of sale & purchase;
 - b. Land title certificate (original);
 - c. Citizenship certificate;
 - d. Receipt of registration fee payment.

The land registration section will carry out measurements and mapping to create a situation picture. Meanwhile, an announcement is made regarding the application for land registration referred to by the applicant who is placed at the BPN and sub-district offices, which is posted for two months. If within two months no one submits an objection to the application for land registration, the applicant's application will be granted so that a decree to prepare a land book will be issued.

In the land book, the name of the owner and type of rights will be contained, a copy of the land book and the land measurement certificate will be bound together with a cover in the form determined by the Regulation of the Minister of Agrarian Affairs, that is the registration result called the name of the certificate that will be accepted by the applicant. With regard to the registration of such land rights, in its implementation before BPN issues a certificate, it must first pay attention to the provisions contained in article 28 PP 24/97 concerning land registration. The requirements stated in the article are:

The head of the land office (BPN) refuses to register the land if one of the following conditions is not fulfilled, namely:

1. The deed as referred to in Article 12 shall only be submitted with a certificate or certificate or requirements as referred to in Article 25 paragraph (1) and other documents;
2. Certificates and certificates concerning the condition of land rights do not match the existing lists with the BPN;
3. If the person who transfers, gives the right must pawn or use the rights over the land is not authorized to do so;
4. In terms of buying and selling, exchanging, granting, giving according to customary law and other actions intended to transfer property rights, permission is not obtained from the Minister of Agrarian Affairs and the appointed official.

In addition to these requirements, Article 7 of the Minister of Agrarian Regulation No. 14 of 1961 regulates the reasons for refusal of land registration by BPN, namely, "permission to refuse the above rights if the transfer violates the provisions of the UUPA, Law Number 56 Prp of 1960 concerning the determination of land area agriculture, Government Regulation number 21 of 1961 concerning the implementation of land distribution and compensation. Judging from the provisions of Article 28 PP 24/97 and Article 7 PMA No.14 / 61, it can be said that if one of these conditions is not fulfilled, the BPN must reject the request for registration of land rights into the land book by the buyer. With the refusal of the transfer of title to the land of the buyer, the certificate cannot be issued automatically and all documents, including the sale and purchase certificate, are returned to the person concerned. This is because land registration is very important in determining the existence of legal certainty. In the registration of land rights, there are two types of legal certainty obtained, namely:

1. Legal certainty regarding the person or legal entity that holds the rights to the land. This certainty is related to the provisions of who the holder of the land rights is, this is known as certainty regarding land rights;
2. Legal certainty regarding the location of the land, land boundaries, length, and width of the land. This certainty is related to the location of the boundaries and the width of the land, where it is called certainty regarding the subject of the land right.

3.2 The function of the sale and purchase deed is in the transfer of land rights

3.2.1 Evidence and legality of the transfer of land rights

As we know, in discussing evidence of transfer of property rights over land, it can be discussed from several articles in UUPA and PP 24/97 concerning land registration, apart from the opinions of scholars relating to this matter. From the scholar's opinion it can be seen that there are 3 (three) shreds of evidence of the transfer of ownership rights to land, namely:

1. A certificate of ownership rights over land, regarding the meaning of a certificate can be seen from the provisions of Article 13 PP 24/97 which states:
 - a. For each of the rights that are recorded, a copy of the land book is made;
 - b. To describe the land referred to in the copy of the land book, a measuring letter is made;
 - c. Copies of land books and measuring documents after they are bound together with a cover paper in the form stipulated by the Minister of Agrarian Affairs are called certificates and given to those who have the right;
 - d. The certificate is a certificate of proof of rights referred to in article 19 of the UUPA.

Thus, if seen from the provisions of Article 13 PP 24/97, what is meant by a certificate is a copy of a land book and a measuring letter after it is bound together with a cover paper whose form is determined by the Minister of Agrarian Affairs. A certificate of land rights as stated in the statutory regulation is a legal entity having a right to land or a certain parcel of land. The certificate of proof of right, if the land has been recorded, the land book shall constitute sheets of form in the event that it has been filled with evidence concerning:

- a. Types of land rights that are recorded;
- b. The subject who has it;
- c. Which land is right (refers to the letter of measurement or a picture of the situation);
- e. Other burdensome rights.

Furthermore, as already stated, a land title certificate consists of a copy of the land book and a measuring letter bound together. If seen from the condition of a measuring letter which is part of a certificate, a certificate can be divided into a certificate as regulated in Article 13 PP 24/97 and a temporary certificate. Provisions regarding temporary certificates are regulated in article 17 PP 24/97 concerning land registration, which states:

1. Temporary certificate, namely a certificate without measuring documents, functions as a certificate;
2. A temporary certificate has the power of a certificate.

Temporary certificate can be issued at any time with a certificate of measurement, and then the picture of the situation is replaced with a certificate of measurement so that the temporary certificate becomes a certificate ". So here what is meant by a temporary certificate does not mean that the certificate is valid temporarily, but because it does not have a measuring letter, and in its place is a picture of the situation. From these provisions it can be seen the difference between a temporary certificate and a certificate, namely the location of the measuring letter and the situation picture.

Certificate as proof of rights, the function of the certificate lies in the field of proof. With the existence of a certificate of land rights, it will be easy for us to prove it in terms of:

1. From a juridical perspective, it can prove:
 - a. The legal status of the land we control, whether it is freehold land, land use rights, building use rights, use rights or management rights;
 - b. That we are the ones who have the right to the land;
 - c. Loads that may be on the land;
 - d. What legal events have happened to the land, such as buying and selling, trading, grants, will grants, inheritance and so on.
2. Judging from the literary point of view, it can prove:
 - a. Which land we have right on, includes its location, its boundaries, and its area.

Thus, we can know juridical matters from the copy of the land book which is part of the certificate concerned, while those which are cadastral in nature can be seen from the measuring letter, which is another part of the certificate. If the land in question does not have a measuring document, then the location of the boundaries and the size of it will be described in the situation picture.

2. The deed of the official land deed maker (PPAT deed), is evidence of the transfer of title to land in accordance with the formulation of article 5 UUPA, article 20 UUPA, and article 19 PP 24/97 regarding land registration which the formulator shows that "which is evidence of transition Right of ownership over land is a deed of sale and purchase drew up by and before the PPAT, namely the PPAT the working area covers the area where the land being sold is located " (Perangin, 1990).

Furthermore, if seen from the PPAT deed itself, the formation process is the second phase of the birth of land rights based on sale and purchase. Where this phase is a very decisive phase because at that time both the seller and the buyer formally and materially prove the sale and purchase agreement that has been previously agreed. The sale and purchase deed was drawn up by and in front of PPAT and as proof, the said sale and purchase deed was drawn up. The sale and purchase conducted before the PAAT is attended by the seller, buyer, and two witnesses, and of course, the seller and the buyer can each be represented by their proxies.

Regarding the witnesses who were present at the time of drawing up the deed, they were usually employees of the PPAT office itself. However, it is hoped that the witnesses will be the Village Head and a member of the village government, especially land that has not been registered or has not been recorded. Whereas land that has been registered or has been recorded is not a necessity to be present by the Village Head or a member of the government, anyone can be a witness. However, the presence of testimony from the Village Head and a member of the village government will ensure the truth of the sale and purchase deed of the land carried out. Because the village head, as the head of the village administration, at least knows the owner of the land rights holder in his village. The PPAT deed is signed by the seller, buyer, witnesses, and PPAT. Furthermore, the sale and purchase deed are made in four copies, the original is sent to the land office (BPN) together with other files for the purpose of registering the sale and purchase, and a copy of it for the seller, buyer, and PPAT.

From the description above, the ownership rights to the land are transferred at the time the PPAT deed is made, then to obtain a strong proof of ownership of the land that is purchased, those who have the right can apply for land registration so that a certificate of ownership rights over the land will be issued.

3. A court decision that legalizes the sale and purchase of land with a receipt not made before PPAT, in the provisions of Article 19 PP 24/97 concerning land registration it is stipulated that the sale and purchase must be carried out by and in the presence of PPAT. However, if seen from the formulation of the other articles, there is not a single article that states that if this is not done, the sale and purchase will be invalid. Hence, it can be said that these articles were made with the aim that those concerned would refuse to do so, with the hope that all land sales and purchases were carried out before the PPAT.

In the implementation of the sale and purchase approval that is carried out not before the PPAT, it can be done by requesting the approval of the sale and purchase from the Court. This application was made due to several reasons including:

- a. The buyer still experiences difficulties when the third party or seller denies the sale and purchase;
- b. If the seller has died so that the buyer and his heirs cannot transfer to other parties or burden with a mortgage or credit verband;
- c. Without a sale and purchase deed, it will be difficult for the owner to ask for permission to transfer property rights.

Furthermore, based on the aforementioned provisions, it can be said that the buyer can submit to the court to ratify the existing receipts as valid evidence. As a result, the position of the receipt as proof of rights over the transfer of rights by sale and purchase can occur, with the same position as the deed drawn up before the PPAT. Thus, ownership rights over the land will be transferred at the time the court decision is issued which has permanent legal force. Furthermore, to obtain strong proof of land ownership of the land he has purchased, those who have the right can apply for land registration so that a certificate of ownership will be issued in the name of the buyer.

Regarding the validity of a transfer of land rights, it cannot be separated from the provisions of the UUPA and the Civil Code. As we know, the definition of property rights according to the UUPA is hereditary; the strongest and fullest rights that people have overland considering that all land rights have a social function. Hereditary rights refer to the transfer of property rights to other parties because the owner has passed away so that legally, these rights are transferred to the descendants. Meanwhile, the strongest and most fulfilled word does not mean absolute or inviolable rights as in the original meaning of eigendom, but is still limited by social interests; this is because the UUPA emphasizes the principles of society (Subekti, 1989).

Furthermore, the UUPA also stipulates that property rights can be transferred and transferred to other parties. The definition of transfer refers to the transfer of property rights due to the death of the owner, while the definition of transfer refers to the transfer of property rights to another party due to a deliberate legal act with the aim of obtaining that right. The legal actions can be in the form of buying and selling, exchanging and giving, where the property rights are transferred when the owner is still alive. But it was diverted because the gift in a will occurred after the owner died. In connection with the transfer of property rights such as sale and purchase, exchange, grants, and so on, from the rights before the enactment of the UUPA, this is carried out in front of the Village Head. But after the enactment of the UUPA, the transfer of these rights must be carried out before PPAT, this is in accordance with the provisions of article 19 PP 24/97 concerning land registration where for every agreement that intends to transfer land rights, grant new rights to land, mortgage land or borrow money with land rights as dependents, must be proven by a deed drawn up by and before an official appointed by the Minister of Agrarian Affairs. From the description above, it can be said that the transfer of title to land due to sale and purchase is at the completion of the signing by the parties, witnesses, and finally by the Head of the Sub-District as the Official for Making Land Deeds. This provision can be seen from Article 1 in the sale and purchase Deed, namely:

- Starting today, the land, rights, and buildings as well as plants described in this deed have been handed over to the buyer who claims to have also received the handover with all the benefits derived from all losses/burdens suffered on the land and buildings as well as the plants mentioned above will become rights/dependents buyer.

According to T. Haryanto. (1981) that If we stick to the nature of cash rather than buying and selling, which nature is considered to exist in the sale and purchase of land according to current agrarian law under the provisions of Article 5 of the UUPA, then when the sale and purchase are carried out before the PPAT, the right is transferred to the buyer and for the transfer of that right the terms material and the sale and purchase of both the seller, the buyer and the land and the price must be met. However, in its implementation, after the sale and purchase are carried out, it is still necessary to ask for permission to transfer rights to the relevant agency, namely BPN. If the request for permission is rejected, the sale and purchase will be canceled even though the land is still controlled by the buyer, but this is done not as the owner but as the party who has the power of the seller as the owner of the land concerned. If the request for permission is accepted, then it can be done recording the transfer of property rights from the seller to the buyer.

As with other agreements, the agreement in the sale and purchase must also meet the legal requirements of the agreement stipulated in article 1320 of the Civil Code, namely:

1. To agree with those who bind themselves;
2. The ability to make an engagement;
3. A certain thing;
4. A cause that is lawful.

The first and second terms are called subjective conditions because they concern the person or subject who makes an agreement. Meanwhile, the third and fourth conditions are called objective conditions because they are concerned with the agreement itself or the object of the agreement and also the legal actions that are carried out. There is an agreement from those who bind themselves, which is meant as all the achievements or actions that have been agreed on the main points of the agreement. The certificate between the parties entering into the agreement must be flawless, because if the agreement contains flaws, then the agreement can be requested for annulment in court (Kartono, 1974). As for what is meant by defects, for example, there is an element of oversight, an element of coercion as well as an element of fraud. The element of error can occur regarding the goods or the person, the element of coercion occurs when a person gives consent because he is afraid of a threat, while the element of fraud occurs when one party deliberately provides untrue information accompanied by cunning so that the other party becomes persuaded by it.

As for the ability to make an agreement, it means that the parties who enter into an agreement must be capable of acting according to law. In principle, every person who is mature and in sound mind is declared capable of acting according to law, according to the provisions of Article 1329 of the Civil Code states that "every person is capable of making engagements if he/she is not declared incompetent by law". Regarding who is deemed incapable of making an agreement, it can be seen from Article 1330 of the Civil Code, namely:

1. A person who is not yet an adult;
2. The person who is put under interdiction;
3. Women, in matters not stipulated by law and in general all the people to whom the law prohibits making certain agreements.

Regarding the incompetence of married women in carrying out legal actions, it has been revoked based on the Supreme Court Circular Number 3 of 1963, as well as in Law Number 1 of 1974 concerning Marriage. A certain thing, the meaning here is that the object in the agreement must be certain at least of a certain type, a cause that is lawful means, "in making an agreement it is not based on coercion beyond the willing of the parties. So here it must be in accordance with what has been the goal of the parties making the agreement. If the objective achieved from the agreement is against the law, public order and morality, then the agreement is not lawful and therefore can be null and void by law".

So it can be seen from the explanation that the sale and purchase agreement of land ownership must also meet these requirements, the requirements stipulated in the UUPA, for example, those who can have property rights are Indonesian citizens (WNI), and must be carried out and before the PPAT. So it can be said that the validity of a formal transfer of title to land is that it must meet these requirements both in the provisions of the Civil Code and the provisions in the UUPA and after the sale and purchase deed is made by the PPAT.

3.2.2 Legal Consequences of Land Ownership Transfer

In a sale and purchase agreement of ownership over land, the land rights will be transferred after the PPAT official issues a sale and purchase deed which explains that there has been a transfer of rights to land, namely a legal act in which the sale and purchase of the land have occurred so that the rights to the land are transferred from the seller to the buyer. So it is clear here that in a sale and purchase there are two parties, namely the seller and the buyer, each of which has rights and obligations. As mentioned by Wirjono Prodjodikoro (1986) that "in buying and selling there are two subjects, namely the seller and the buyer, each of whom has various obligations and various rights in which each of them is in some authority and in other cases is the party entitled". In this description, it can be seen that in buying and selling there are two parties as for the rights and obligations of the seller and the buyer as follows:

1. The seller's rights and obligations:
 - a. The seller has the right to receive payment for the price of the goods sold from the buyer;
 - b. The seller has an obligation to deliver the goods sold to the buyer;
2. Hak dan kewajiban si pembeli:
 - a. The buyer has the right to accept delivery of the goods which are the object of the seller's agreement;
 - b. The buyer has an obligation to pay in full the price of the goods which are the object of the promise to the seller.

After both parties exercise their rights and obligations, there will be a legal consequence of the sale and purchase agreement, namely:

1. With the delivery of goods (land) from the seller to the buyer and cash payment from the buyer to the seller, the transfer of land rights is transferred from the seller to the buyer;
2. In the event that the payment is made in advance, it turns out that one of the parties does not fulfill the obligation, the sale and purchase shall be canceled under the following conditions:
 - a. If the seller does not fulfill his obligation to hand over the goods to the buyer, he must return the down-payment of twice the amount;
 - b. If the buyer does not fulfill his obligation to pay the price of the goods, the down payment that has been submitted to the seller will be lost and the goods he has received must be returned.

From what has been described above, it is clear what the rights and obligations of the seller are as well as the rights and obligations of the buyer, which are essentially reciprocal in nature. By fulfilling the obligations and obtaining the rights of each party, there will be a transfer of rights from the seller to the buyer which ultimately results in legal consequences in accordance with the legal actions taken by each party. As for the legal consequences of the transfer of land rights, namely:

1. The sale and purchase must be carried out before and by the PPAT and thus will bring legal certainty for the implementation of the transaction and is a strong proof if there is a denial from the third party or from the seller himself;
2. With the handover of land from payment of land prices as evidenced by a sale and purchase deed drawn up by and before the PPAT, the transfer of land ownership rights from the seller to the buyer, except because of the bad faith of one of the parties;
3. After the buyer obtains proof of ownership of the land title in the form of a certificate which is a strong proof of ownership, the rights and obligations of the old landowner will be lost and automatically transferred to the new landowner.

So if we look at the description above and relate it to the provisions of the UUPA and Customary Law regarding the sale and purchase of land rights, since the sale and purchase began in which two parties have received rights and carried out their respective obligations resulting in a transfer of rights to the land, then the seller is no longer authorized to sell the object and turns to the buyer. However, if the transfer has not been registered with the local BPN/Land Office, the legal consequence is that the legal certainty that the buyer has on the land is limited to the seller and does not have legal certainty from the existence of ownership claims from third parties later. However, if the transfer of land rights has been registered and a certificate has been issued as proof of ownership, the legal consequence is that the buyer's authority over the land has legal certainty for anyone, including third parties. As a result, with the transfer of land ownership rights as a result of a legal act of sale and purchase that had been carried out in accordance with the procedures stipulated in the UUPA, legally as a result the old owner's authority over the land was lost and automatically changed hands to the new owner (buyer).

4. CONCLUSION

- a. The legal requirements for the sale and purchase of property rights over land are that it must comply with the general provisions stipulated in the Civil Code (BW) and the special provisions stipulated in the UUPA of Agrarian Law. Therefore, buying and selling, in general, is an agreement, so for the validity of an agreement, it must meet the provisions of article 1320 of the Civil Code regarding the terms of the validity of an agreement. Meanwhile, according to the provisions in the UUPA, the validity of a sale and purchase of land rights is that the sale and purchase must be carried out by and in front of the PPAT as evidenced by the existence of a sale and purchase certificate of the land.
- b. Legitimate sale and purchase of land rights under the UUPA must be carried out before the PPAT as evidenced by the existence of a sale and purchase deed. So, it can be concluded that the function of the sale and purchase deed in the transfer of title to land is very important, namely as a strong evidence that there has been a transfer of title to the land from the seller to the buyer. Furthermore, the existence of the sale and purchase deed will make it easier for the buyer to register ownership rights over the land with the local Land Office so that a certificate can be issued as a strong proof of rights regarding ownership of the land rights, which results in the authority over the land automatically transferred to the buyer.

REFERENCES

- Abdurachman. (1993). *Masalah Pencabutan Hak-Hak atas Tanah dan Pembebasan Tanah di Indonesia*, Bandung. Alumni.
- Abdurachman, H & Soejono. (1995). *Prosedur Pendaftaran Tanah, Tentang Hak Milik Hak Sewa Guna dan Hak Guna Bangunan*, Jakarta. Rineka Cipta.
- Effendi, B. (1982). *Kumpulan Tulisan Tentang Hukum Tanah*, Bandung. Alumni.
- Effendi, B. (1983). *Pendaftaran Tanah Di Indonesia dan Peraturan-Peraturan Pelaksanaanya*, Bandung. Alumni.
- Fajar, Mukti; Achmad, Y. (2013). *Dualisme Penelitian Hukum Normatif & Empiris*, Yogyakarta. Pustaka Pelajar.
- Harsono, B. (2000). *Hukum agraria Indonesia: himpunan peraturan-peraturan hukum tanah*. Jakarta. Djambatan.
- Kartono. (1974). *Persetujuan Jual Beli Menurut KUH Perdata*, Jakarta. Pradnya Paramita.
- Marzuki, P. M. (2011). *Penelitian Hukum*, Surabaya. Kencana.
- Perangin, Effendi. (1990). *Praktek Jual Beli Tanah*, Jakarta. Rajawali.
- Prodjodikoro, W. (1995). *Asas-Asas Hukum Perdata*. Bandung. Sumur Bandung.
- Subekti. (1989). *Pokok-Pokok Hukum Perdata*. Intermedia.

- T, Haryanto. (1981). *Cara Mendapatkan Sertipikat Hak Atas Tanah, Surabaya*. Usaha Nasional Surabaya.
- Yasniwati, Sari. N. K & Rembrandt (2019). Legal Consequences of the Deed of Sale by PPAT Containing Non-Actual Transaction Price. *International Journal of Multicultural and Multireligious Understanding*, Vol6(6), 201–2014.