



## Legal Protection of Sporadicly Controlled Land

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### **Abstract**

Land registration is an activity that aims to provide information to the public to know physical and juridical data on the status of land owned. The first registered land registration is sporadic land registration based on Government Regulation No. 24 of 1997 concerning Land Registration which is an effort to protect the legal rights to land to guarantee and provide legal certainty to landowners. The results showed that, Legal Protection in the Sale and Purchase of Rights to Land controlled sporadically can be done through the Process of Land Registration Activities with the aim to obtain proof of ownership for land rights holders in the form of certificates, with the existence of land certificates will provide legal certainty and legal protection to land rights holders, and Consideration of Judges In Deciding Disputes In Court Against The Register Number of Cases No. 12 / Pdt.G / 2020 / PN-JTH refers to the decision of the District Court Jantho who already has a permanent legal force. However, in all legal considerations and decisions of the Panel of Judges is not clearly and expressly implied about the principles, principles and theories of agrarian law / land. However, it focuses more on the principle of proof of civil ownership of the rights to the disputed land

**Keywords:** *Legal; Land; Sporadic Protection*

### **Introduction**

Soil is a source of life that has a function and role that is very important for human survival, not just a place to live but also a place of residence. The existence of land for humans is very important, therefore there is often a desire from individuals to control the land in various ways, thus causing the emergence of various land problems that cause disputes.

Based on Law No. 5 of 1960 on Basic Rules of Agrarian Fundamentals (hereinafter referred to as UUPA), which came into force on September 24, 1960, land is defined as part of the earth called the earth's surface. As referred to in the provisions of Article 1 paragraph (4) uupa states that in the sense of the earth covers the surface of the earth (which is called the ground), the body of the earth under it and which is under water. Furthermore, Article 4 paragraph (1) of the Constitution also states that "On the basis of the right to control of the State as referred to in Article 2 is determined the existence of various rights on the surface of the earth, called land, which can be given to and possessed by people, either alone or together with other people and legal entities".

Thus the existence of the UUPA is intended to provide the basics in order to provide guarantees of legal certainty regarding the rights of land for all Indonesians. The constitutional basis of land law is basically based on Article 33 paragraph (3) of the 1945 Constitution which reads: "The earth and water and the natural wealth contained therein are controlled by the state and used to the greatest extent for the prosperity of the people". Based on these reasons with the ratification of the LAW, the foundation has been formed for the implementation of the Land Administration in order to realize the National goal. Uupa gives responsibility to the government to register land in accordance with Article 19 uupa aims to ensure legal certainty which includes:<sup>1</sup>

1. Certainty about the person / legal entity who is the holder of the right to land which is also called the certainty of the subject of land rights.
2. Certainty of location, boundaries, length and width called with certainty of objects on the ground.

The existence of land registration referred to above will bring legal consequences, namely the granting of a proof of ownership of land rights by the government called a Certificate. This certificate is a strong evidence in which it contains physical data and juridical data on land, as long as the juridical data and physical data are in accordance with the data contained in the measuring letter and book of land rights concerned and the absence of lawsuits from other parties who feel they have rights to the land within 5 (five) years from the issuance of the Certificate, as referred to in Article 32 paragraph (2) of Government Regulation No. 24 of 1997 concerning Land Registration (hereinafter referred to as PP No. 24 of 1997).<sup>2</sup>

The transfer of rights to land owned by adat, materially based on customary law with the condition of "light and cash", but formally must be with the Deed of the Land Deed Official (hereinafter referred to as PPAT). The existence of PPAT in the transfer of customary property rights in lieu of the Chairman of Adat or Village Head. Buying and selling land according to customary law basically has a condition of light, real (concrete) and cash (kontan), meaning that the sale and purchase is done in front of the head of the village and the buyer pays the price of land in cash to the seller in accordance with the agreement between the seller and the buyer.

Boedi Harsono stated that before the enactment of the Law known as the legal institution of buying and selling land. Some are regulated by Ki, the tab of the Civil Law Law (hereinafter referred to as the Civil Code) is written, and some are governed by unwritten customary law.<sup>3</sup> As stipulated in Article 1457 of the Civil Code it is stated that a trade is an agreement by which the seller binds himself (meaning to promise) to give the right to the land in question to the buyer who binds himself to pay to the seller at the agreed price. While in customary law, property rights can be switched or transferred. The sale and purchase of land that results in the transfer of property rights to land from the seller to the buyer is called a loose sale term. In addition to selling loose, in customary law is also known to sell pawns, and sell buy back.

The object of the trade here is the right to the land to be sold. In practice it is called the sale and purchase of land. The rights to the land for sale, not the land. It is true that the purpose of buying the rights to the land is so that the buyer can legally control and use the land, but the purchased (sold) is not the land, but the right to the land.<sup>4</sup> It is in accordance with the provisions in the Law, mentioning the transfer of land rights is one of the events or legal actions that result in the transfer of land rights from the owner to other parties. The transition can be intentional because of legal actions such as buying and

<sup>1</sup> Irwan Soerodjo, *Kepastian Hukum Hak Atas Tanah Di Indonesia*, Arkota, 2003, Surabaya, p. 78.

<sup>2</sup> Pasal 32 ayat (2) PP No. 24 Tahun 1997 stating, "in the case of a field of land has been issued a certificate legally on behalf of the person or legal entity who obtained the land in good faith and clearly controlled it, then the other party who feels the right to the land can no longer demand the exercise of such rights if within 5 (five) years from the issuance of the certificate does not file a written objection to the certificate holder of the Head of the Land Office concerned or does not file a lawsuit to the Court regarding land tenure or issuance of the certificate".

<sup>3</sup> Boedi Harsono, *Hukum Agraria Indonesia Himpunan Peraturan-Peraturan Hukum Tanah Edisi Revisi*, Djambatan, Jakarta, 2004, p. 7.

<sup>4</sup> Effendi Perangin, *Praktek Jual Beli Tanah*, Raja Grafindo Persada, Jakarta, 1994, p. 8.

selling, renting, and also accidentally due to legal events such as inheritance transfer.

Land has a high economic value, in addition to cultural, social, political and other values. To get land is very difficult, so it is not surprising that land problems always occur in the community. Where the land registration activities are carried out on all areas of land in the territory of Indonesia, including land derived from customary law that has been owned by individuals called land owned by custom.

As the above statement of customary law is not written, the rights to land under customary law in the control of the owner are also not supported by written evidence. In contrast to the rights to land based on the Civil Code, from the beginning of the control by the principal must be registered in the land office and subsequently issued written evidence of the right to the land in question. So it is very clear that the position of the owner of the right to customary land is very weak, because its control is not supported by written evidence.

Ownership of customary land rights that are not supported by written evidence, will certainly affect the transfer of land rights to other parties. One of them is the transfer of rights to customary land on a trade basis. In this case the basis of the right or basis of the possession of customary land is only a certificate of physical use of land (Sporadic), which is then used as the basis by ppat in making the Deed of Sale and Purchase (hereinafter referred to as AJB).

Therefore, the making of the AJB is based only on a certificate of physical land tenure made by the Village Head (Keuchik), of course it will cause problems or disputes in the community. One of them is a case filed or examined by the Jantho District Court with Case Register Number No. 12/Pdt.G/2020/PN-JTH. In that case Zainab as a defendant has controlled a piece of land located in babah jurong village, Kuta Baro district, Aceh Besar regency with an area of 806 square meters, witnessed by the Head of Hamlet. Where the control over the land is only evidenced by the Existence of a Statement of Physical Mastery of the Land Field (Sporadic). Where the case is a case that is analyzed based on the Decision of the Jantho District Court which has had a fixed legal force that occurred in 2020. The plaintiff in this case Juniar Binti M. Anzib stated on May 3, 1974 based on the Certificate of Redemption there has been the exchange of half a plot of rice fields belonging to almarhumah Da Cut (parents of the defendant) and a house belonging to the late M. Anzib (the plaintiff's parents). However, the statement is denied by the defendant that the statement mentioned by the claimant as a whole is incorrect. Based on the decision of the Jantho District Court stated that rejecting the plaintiff's claim for the entirety and rejecting the defendant's exception for the entirety, even though the defendant has a Statement of Physical Mastery of the Land (Sporadic) without canceling the defendant's AJB.

Therefore, in order to further examine the sale and purchase of rights to sporadically controlled land, this study is important to be studied and researched by researchers to make a paper in the form of Thesis entitled "Legal Protection in The Sale and Purchase of Sporadic Land Rights".

### ***Research Method***

The research used in this study is normative law research (Normative Juridical) which is research focused on reviewing the application of rules or norms in positive law. This research approach uses a statutory approach and a case approach. Data collection techniques are carried out by means of triangulation (combined), data analysis is inductive, and qualitative research results emphasize meaning rather than generalization.<sup>5</sup> The data collection techniques used in this study are through the conception of theory or doctrine, opinions or conceptual thinking or research related to the object of this study.<sup>6</sup>

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<sup>5</sup> Sugiyono, *Memahami Penelitian Kualitatif*, CV.Afabeta: Bandung, 2008, p. 1.

<sup>6</sup> Johnny Ibrahim, *Teori & Metode Penelitian Hukum Normatif*, Bayumedia: Malang, 2012, p. 295.

## **Result and Discussion**

### **1. Overview of Sporadic Land Registration**

According to Article 1 of Government Regulation No. 24 of 1997 (hereinafter referred to as PP No. 24 Year 1997) states that land registration is a series of activities carried out by the government continuously, continuously, and regularly including the collection, processing, bookkeeping and presentation and maintenance of physical data and juridical data, in the form of maps and lists, concerning land areas and units of flats, including the provision of certificates as proof of its rights to existing land areas and property rights to housing units and certain rights that burden it".<sup>7</sup>

Meanwhile, according to Boedi Harsono, the understanding of land registration as a series of activities carried out regularly and continuously to collect, process, store and present certain data about certain areas or lands that exist in a particular region with a specific purpose.<sup>8</sup> The purpose of land registration according to Boedi Harsono is so that the registration activities can be created a situation, Where:<sup>9</sup>

- a. Those who own the land and the legal entities can easily prove that they are the ones who are entitled to it, what rights they have and which land is rightfully entitled. This goal is achieved by providing proof of rights to the rights holder concerned.
- b. Anyone in need can easily obtain reliable information about the lands located in the registration area in question (either prospective buyers or prospective creditors) who want to obtain certainty, whether the information given to him by the prospective seller or debtor is correct. This goal is achieved by giving the public an open nature to the stored data.

Land registration is derived from the word Cadaster or in Dutch is a technical term for a record that applies about the area, value and ownership of a field of land.<sup>10</sup> The purpose of land registration is essentially stipulated in Article 19 of the Agrarian Basic Law (UUPA) namely that land registration is a government task held in order to ensure legal certainty in the field of land (rechts cadaster or legal cadaster). In addition to rechtskadaster, it is also known as land registration for the purposes of determining classification and the amount of tax (fiscal cadaster).

### **2. Consideration of Judges in Deciding Disputes in Court Against Case Register Number No. 12/Pdt.G/2020/PN-JTH Is in Accordance with Applicable Regulations**

In the case of civil litigation related to land, then a number of considerations of the Judge in deciding the dispute in the Jantho Court there are several important considerations that are related:

1. The evidence of the lawsuit filed by the Plaintiff in the sitting of the case that Defendant I has committed an act against the law, namely:
  - a. That since 2001 the rice fields owned by the late M. Anzib plaintiff's parents managed by defendant I never gave the results obtained from half the rice fields located in Cot Panah Gampong Babah Jurong managed to the plaintiff's family as the landowner;
  - b. Defendant I who sells and Defendant II who buys Half a Plot of Rice Fields owned by the Plaintiff is an unlawful act;

<sup>7</sup>Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaannya*, Djambatan, Jakarta, 2005, p. 474.

<sup>8</sup>Hasan Wargakusumah, *Hukum Agraria I*, PT. Gramedia Pustaka Utama, Jakarta, 1995, p. 80.

<sup>9</sup>*Ibid*, p. 80-81.

<sup>10</sup>AP. Parlindungan, *Pendaftaran Tanah Tanah dan Konfersi hak milik atas tanah menurut UUPA*, Alumni, Bandung, 1988, p. 2.

- c. Certificate of sale and purchase made by The Defendant II as Geucik Gampong Babah Jurong, Mukim Ateuk, Kuta Baro District, Aceh Besar Regency must be declared invalid and legally flawed.

The Plaintiff's Request through the Chairman of the Jantho District Court to be able to call the parties in a hearing specifically for it and deign to give the Primary verdict as follows:

- a. Accept and grant the Plaintiff's claim in its entirety;
- b. Declare half a plot of rice fields with an area of  $\pm 806M^2$  located in Cot Panah Gampong Babah Jurong, Mukim Ateuk, Kec. Kuta Baro belongs to the Plaintiff;
- c. Declaring the actions of Defendant I who sold and Defendant II who bought Half a Plot of Rice Fields belonging to the Plaintiff is an act against the law;
- d. Cancel and Declare the certificate of sale and purchase made by The Defendant II as Geucik Gampong Babah Jurong, Mukim Ateuk, Kec. Kuta Baro Aceh Besar Regency shall be declared invalid and legally flawed;
- e. Canceling and Declaring the Deed of Sale and Purchase made by The Defendant I shall be declared invalid and has no legal force.

2. The written answer of Defendant I in the subject matter presented at the Jantho District Court hearing, as follows:

- a. Defendant I rejects all the plaintiff's claims;
- b. Defendant I's parents/mother named Da Cut originally used to have a plot of rice fields, covering an area of + 1,600 M2, located in Cot Panah, Babah Jurong Village, Kuta Baro District, Aceh Besar Regency, then half a plot of rice fields owned by da cut (defendant I's parents) has been sold to M. ANZIB (Plaintiff's Father), the sale has been going on + 48 years ago (long enough), while the other half of the rice fields are still left and still belong to the parents of Defendant I (Da Cut), which in the end after Da cut (defendant I's parents) died of rice fields fell to Defendant I;
- c. Defendant I and Da Cut never exchanged with anyone, including the plaintiff's parents (never), let alone exchanged half a plot of rice fields in exchange for an Aceh House owned by the plaintiff's parents as mentioned in the lawsuit, even according to Defendant I 1/2 (half) house (Not a house) that defendant I and his family once occupied also with the Plaintiff's Grandmother, not an exchange but requested by the plaintiff's parents so that Defendant I would occupy the plaintiff's parents' house while accompanying

The Application of Defendant I through the Chairman of the Jantho District Court in order to be able to the Panel of Judges gives the following verdict:

- a. Reject the Plaintiff's Claim entirely;
- b. Punish the Plaintiff to pay the costs of the case;
- c. Please be fair;

3. The written answer of Defendant II in the subject matter presented at the Jantho District Court hearing, as follows:

- a. Defendant II refutes the plaintiff's evidence;
- b. Defendant II has purchased rice fields owned by defendant I and has made a deed of sale and purchase at the Land Deed Office (PPAT) in Aceh Besar Regency (but the boundaries of the plaintiff's version of the rice field listed in the lawsuit are different from those stated in the Sale and Purchase Certificate);
- c. Defendant II in making the purchase of rice fields with legal procedures / procedures and documents as determined by the legislation, namely before the Land Deed Office (PPAT) (in accordance with the provisions of PP No. 27 of 1997), proven by the existence of a Deed of Sale

- and Purchase with Number 659 / 2019 Dated 24 (twenty-four) september 2019;
- d. Defendant II made a purchase from the rightful owner as evidenced by a statement of ownership from the seller and knew the local Geucik Namely Geucik Gampong Babah Jurong Kuta Baro District, Aceh besar Regency;
  - e. Defendant II (through his guardian) has also conducted an examination of the object of rice fields to be purchased by meeting the seller and his family at the seller's residence in Gampong Lambaet Kuta Baro District, Aceh Besar Regency and has also seen directly the object of land that is sold in Gampong Babah Jurong Kuta Baro District, Aceh Besar Regency accompanied by sdr Misri villagers Babah Jurong Kuta Baro District Aceh Besar.

Based on all the reasons stated above, Defendant II requested. The Panel of Judges is pleased to decide:

- a. Accept defendant II's exception for the entirety;
- b. Declare the Plaintiff's claim rejected or at least declare the Plaintiff's claim unacceptable;
- c. Reject the Plaintiff's claim entirely;
- d. Declare that the paddy fields purchased by Defendant II are the legally valid property of Defendant II;
- e. Punish the Plaintiff to pay all costs incurred in this case.

4. Legal considerations of the Jantho District Court Judge Panel as follows:

- a. Evidence P.1 in the form of Photocopy of Certificate of Redemption (on May 3, 1974) explains that Da Cut (Parents of Defendant I) has exchanged half of his rice fields located in Cot Panah Gampong Babah Jurong, Mukim Ateuk, Kuta Baro District with a house owned by M. Anzib (plaintiff's parents), but in evidence P.1 is not explained where the location, building area, land area and boundaries of the house;
- b. Proof P.1 in the form of a certificate is a deed under the hand, which based on Article 1874 BW explained that the deed under the hand is a deed signed under the hands, letters, lists, letters of
- c. The Deed under the hand the responsibility of the contents of the deed under the hand is on the parties who sign and the deed under the new hand has material power if the signature is recognized by the one who signed the deed;
- d. Based on the information of Expert Dr. Suhaimi presented in court on the basis of the transfer of land rights must be done by making a Ppat Deed in accordance with PP No. 24 of 1997. That the Deed is under the power of its rights as far as the person admits it. That the legal condition of exchange in the exchange letter must be two parties who signed the exchange letter and both parties must be clearly mentioned in the exchange letter. That the evidence of P-1 is invalid and not sufficient condition, should be in the exchange letter must be listed on both sides and the signature must also be both parties, but the certificate as evidence P.1 is only one-sided, so it can be concluded in the case of a quo never happened to exchange houses for rice fields.
- e. If the expert information and also the evidence of P.1 mentioned above, then the Panel of Judges argues that the evidence of P.1 submitted by the Plaintiff is not enough to prove the existence of a valid ownership of half the plots of rice fields that are the object of dispute as in the lawsuit Plaintiff has switched ownership to M. Anzib (plaintiff's parents), it also applies otherwise that the evidence P.1 is not enough to prove the existence of a valid ownership rights on a house as in the lawsuit Plaintiff has switched ownership to Da Cut (parents of Defendant I);
- f. Evidence P.1 only describes a legal act in which Da Cut (the parents of Defendant I) has exchanged half of his rice fields for a house owned by M. Anzib (plaintiff's parents), but it is not known whether the legal action has been approved by the parties, because the signed on the Certificate as evidence P.1 is only Da Cut (parents of Defendant I) and no signature of M. Anzib (plaintiff's parents) , so it is not clear whether the certificate has been approved by the parties or only approved by Da Cut (the parents of Defendant I). That against the evidence P.1 is also not clearly known

where the house belongs to M. Anzib (plaintiff's parents) and also not explained the area of the building, land area and boundaries of the house. That when viewed more thoroughly the evidence P.1 signed as a witness one of them is Zainab who in the case a quo is Defendant I who is also the son of Da Cut. That is therefore indirectly even though Defendant I is not used as a witness in the case a quo, but clearly in his answer Defendant I rejects all the evidence from the Plaintiff against the validity of the evidence P.1, so based on the above becomes an oddity that becomes a conjecture of the Panel of Judges whether it is true that there has been an exchange of half a plot of rice fields for a house as postulated by the Plaintiff;

- g. Evidence P.1 although justified by witness Hasballah, witness Hasbi, witness Andawiyah, witness M. Yunus, witness Ainun Mardiah and witness Sanusi but the witnesses do not know directly exchange half the plot of rice fields belonging to Da Cut (Parents defendant I) with the house owned by M. Anzib (parents of the plaintiff) but only know from the plaintiff and also get a story from the village community, so that the capacity of these witnesses are not witnesses who are fully aware of the exchange event and signed in the certificate as evidence P.1;
- h. Defendant I's answer and corroborated by the testimony of Sanusi witnesses and Andawiyah witnesses that the land site of the house owned by the plaintiff's parents who in the case a quo postulated has been exchanged for half a plot of rice fields (object of dispute) has now been sold by Zainab (the plaintiff's parents) to Abdul Razak next door to the house that was exchanged, because the house has been torn down. It is also an oddity considering the evidence from the Plaintiff that there has been an exchange of a house owned by M. Anzib (plaintiff's parents) with half a plot of rice fields owned by Da Cut (defendant's parents I), then the person who is entitled to sell the land of the house is Da Cut (the parent of Defendant I) instead of M. Anzib (the plaintiff's parents), because if it is true that there has been an exchange of half the plot of rice fields for a house as postulated by the Plaintiff then Defendant I who owns the house and the land where the house stands;
- i. Evidence P.1 is not enough to prove the plaintiff's evidence on the basis of land ownership rights of the object of the dispute;
- j. Evidence of T-I.1 in the form of a Statement of Physical Mastery of Land (Sporadic) dated July 23, 2019 explains the existence of Physical Mastery of Land by Defendant I located in Babah Jurong Village, Kuta Baro District, Aceh Besar Regency, with an area of 806 m<sup>2</sup> (eight hundred six square meters) where the evidence of T-I.1 is known and signed by Keuchik Gampong Babah Jurong an. Syukri Tgk. Idris and also signed by witnesses an. Hasballah David and Tgk. Rasyidin Daud;
- k. Proof of T-I.3 and evidence of T-II.1 in the form of Photocopy of Sale and Purchase Deed No. 659 / 2019 explains that there has been a sale and purchase of rice fields between Defendant I (Zainab) and Defendant II (Sri Mulyani) conducted in front of the Land Deed Office (PPAT) and made in the form of a Deed of Sale and Purchase and signed by sellers and buyers and witnesses;
- l. Evidence T-I.1, T-I.3 and evidence T-II.1 has been justified by witness Hasballah Daud and witness Tgk. Rasyidin Daud who in essence the witnesses had signed a Sporadic Letter on behalf of Defendant I (evidence T.I-1). That the signature on the Sporadic Letter is the true signature of the witnesses. That the witnesses had signed the Deed of Sale and Purchase No.659 / 2019, made by Notary / PPAT Muchsin, SH. (evidence of T.I-3 and evidence of T-II.1). That the deed that the witnesses signed is the Deed of Sale and Purchase of rice fields in Babah Jurong Village. That when witnesses sign the letters there is no coercion and pressure from the other party;
- m. Evidence T-I.1 although the form is a deed under the hands but has the perfect evidentiary power because it is strengthened by the testimony of witnesses who are signed in the evidence of the letter as evidence T-I.1, so that if the evidence of the letter is denied by the other party then the force of proof remains perfect if it can not be proven otherwise;
- n. Proof of letter T-I.3 and proof of T-II.1, is an Authentic Deed which under Article 1868 (Civil Code), an authentic deed is a deed made in a form determined by law by or before the public official authorized for it and where the deed was made. This means that the creation of an authentic deed must have a legal basis, namely legislation that orders that a new state or act can be proven by

- an authentic deed. In the case of proof, an authentic deed has the power of perfect proof, which is evidence that must be considered true, unless the other party can deny the truth. As long as it cannot be proven untruthful, the authentic deed must be considered true and perfect as a means of proof;
- o. The testimony of the witnesses presented by Defendant I and linked to the evidence of T-I.1, the paddy field that became the object of the dispute belonged to Defendant I which was obtained through generations from the parents of Defendant I and Defendant I and their families who absorbed the rice fields of the dispute object until Defendant I sold the object of the dispute to Defendant II;
  - p. Testimony of witnesses and also linked to evidence T-I.1, T-I.3 and evidence T-II.1 there is a legal fact that the sale and purchase of rice fields Defendant I (object of dispute) with Defendant II is valid and in accordance with the rules on buying and selling, the rice fields that Defendant I sold is the land of Defendant I itself that has been Defendant I has mastered for generations and there has never been a transfer of rights before , so that the transaction of buying and selling rice fields in front of PPAT is in accordance with the procedure;
  - q. Based on the evidence submitted by the Plaintiff as outlined above in relation to each other, the Panel of Judges held that the main evidence of the plaintiff's lawsuit, which states the object of the dispute is half a plot of rice fields with an area of  $\pm 806M^2$  located in Cot Panah Gampong Babah Jurong, Mukim Ateuk, Kuta Baro District owned by Da Cut (defendant I's mother) has been exchanged for a house located in Gampong Lambaet, Buengcala Settlement, Kuta Baro District, Aceh Besar District owned by the plaintiff's parents can not be proven by the Plaintiff and vice versa Defendant I, Defendant II and Defendant I can prove the evidence of the denial;
  - r. Because the Plaintiff cannot prove the basic evidence of his claim, the plaintiff's evidence stating that Defendant I and Defendant II were found guilty of unlawful acts, must be rejected according to the law;
  - s. Because the Plaintiff cannot prove the basic evidence of the lawsuit, thus the principal petitem in this case is rejected, then the other petitem must be rejected, so that the plaintiff's claim is rejected entirely according to the law;
  - t. Because the plaintiff's claim has been rejected, then against the evidence of letters and testimony of witnesses submitted by the Plaintiff as well as the evidence of letters and testimony of witnesses submitted by Defendant I and Defendant II that are not considered by the Panel of Judges because it has no relevance to the subject matter in the case a quo, then the Panel of Judges argues against other evidence tools do not need to be considered further so that reason to be ruled out;
  - u. Because the Plaintiff's claim is rejected, the Plaintiff must be punished to pay the costs of the lawsuit;

Considering the provisions of the legislation as cited above, The Law of the Republic of Indonesia Number 48 of 2009 concerning the Power of Justice and other relevant regulations; Adjudicating with Exceptions:

1. Reject defendant II's exception entirely.
2. Reject plaintiff's claim entirely;
3. Punish the Plaintiff to pay the costs of the lawsuit

Based on the results of the civil case research No. 12/Pdt.G/2020/PN-JTH, this refers to the decision of the Jantho District Court 12/Pdt.G/2020/PN-JTH which already has a fixed legal force, where the Legal Sale and Purchase Act (AJB) on the field of disputed land is a certificate of Property Of Defendant I. This is very clearly shown in the Consideration of the Panel of Judges at the Supreme Court level. However, in all legal considerations and decisions of the Panel of Judges is not clearly and expressly implied about the principles, principles and theories of agrarian law / land. The Panel of Judges for Civil Cases No. 12/Pdt.G/2020/PN-JTH focuses more on the principle of proof of civil ownership of



the rights to the disputed land.<sup>11</sup>

The principles of Agrarian Law are:

#### 1. Nationality Principles

The whole territory of Indonesia is the unity of the homeland of all Indonesian people who are united as an Indonesian nation. This shows that the land for the Indonesian nation has a communalistic nature, meaning that all the land in the territory of the Republic of Indonesia is a land with the people of Indonesia, which is united as an Indonesian nation. The principle of nationality is found in article 1 paragraph (1), paragraph (2), and paragraph (3) of the Constitution, namely:

- a. The whole territory of Indonesia is the unity of the homeland of all Indonesian people who are united as an Indonesian nation.
- b. The whole earth, water, and space, contained in it within the territory of the Republic of Indonesia, as a gift of God Almighty is the earth, water and space of the Indonesian nation and is a national treasure.
- c. The relationship between the Indonesian nation and the earth, water, and space is included in paragraph (2) of this article is a lasting relationship.

Land in the territory of the Country of Indonesia becomes a right for the Indonesian nation, so it is not solely the right to be the owner only. Similarly, land in the regions and islands is not solely the right of the native people of the region or island in question only.

2. The principle at the highest level, Earth, Water, Space, and natural wealth contained therein is controlled by the State.

This principle can be seen in article 2 paragraph (1) of the Constitution which states that: "on the basis of the provisions in article 33 paragraph 3 of the Constitution and the matters referred to in article 1, earth, water, and space, including the natural wealth contained therein it is at the highest level controlled by the state as the power of the organization of all people. On the basis of the right to control of the country, the state may give land to a person or legal entity with a right according to its provisions and needs, such as Property Rights, Business Rights, Building Rights, or Usage Rights, or give it in management to a regulatory body to be used for the implementation of their respective duties.

3. The Principle of Prioritizing national interests and countries based on the unity of the nation from the interests of individuals or groups.

This principle can be seen in article 3 of the Constitution, namely: "by remembering the provisions in article 1 and article 2, the implementation of civil rights and similar rights of indigenous legal communities, as long as in reality still exists, must be in such a way that it is in accordance with the national and state interests, which are based on national unity and should not be contrary to higher laws and regulations".

4. The Basis of All Land Rights Has a Social Function.

The principle of all land rights has a social function found in article 6 of the Constitution, namely: "all rights to land have a social function." Land rights have a social function not only in the form of property rights, but also business rights, building rights, usage rights, and rental rights for buildings. The

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<sup>11</sup> Supriadi, *Hukum Agraria*, Sinar Grafika, Jakarta, 2007, p. 53-54.

right to any land that exists in a person, or a legal entity, cannot be justified that the land is used (or not used) solely for his personal benefit, especially if it is detrimental to society.

#### 5. The Principle of Only Indonesian Citizens Who Have Property Rights on Land.

This principle confirms that only Indonesian citizens are subject to property rights. People who are Indonesian citizens in addition to foreign nationals cannot own property. Foreigners domiciled in Indonesia cannot own land with property rights, but can only control land that has the status of usage rights and rental rights for buildings with a limited period of time. The principle of only Indonesian citizens who have property rights over land is found in article 9 paragraph (1) of the Constitution, namely: "only Indonesian citizens have a complete relationship with the earth, water, and space, within the limits of article 1 and article 2". This principle can also be found in article 21 paragraph 1 of the Constitution, namely: "only Indonesian citizens have property rights".

#### 6. The Principle of Equality for Every Indonesian Citizen.

This principle stipulates that Indonesian citizens, both men and women, have the same opportunity to obtain land rights. This principle is found in article 9 paragraph (2) of the Constitution, that: "every Indonesian citizen, both male and female, has the same opportunity to obtain a right to land and to benefit and result, both for himself and his family."

#### 7. The Principle of Agricultural Land Must Be Worked on or Actively Cultivated By Its Own Owners and To Prevent Ways of Flavoring.

This principle asserts that anyone who has the right to land for the benefit of having to work or work on his own farm actively and in working on or working on the farm must be prevented in ways that are flavoring. This principle can be seen in article 10 paragraph (1) of the Constitution, namely: "every person and legal entity that has the appropriate rights to agricultural land is essentially obliged to actively work on or work on their own, by exploring ways of flavoring."

#### 8. Horizontal Separation Principle

The principle of horizontal separation is found in article 44 paragraph (1) of the Constitution, that: "a person or a legal entity has a right to lease land, if he is entitled to use someone else's land for building purposes, by paying to the owner, some money as rent." The implementation of the principle of horizontal separation is the right to rent a building, i.e. a person or legal entity rents another person's vacant or non-existing property by paying a certain amount of money as rent of the amount stipulated on the basis of the agreement, for a certain period of time, and the tenant is given the right to build the building used for a certain period of time agreed by both parties.

### ***Conclusion***

Legal Protection in the Sale and Purchase of Rights to Land controlled sporadically can be done through the Process of Land Registration Activities with the aim of obtaining a legal certainty and certainty of rights for land rights holders. With the registration of land rights, the land rights holder will get proof of ownership of land rights in the form of a certificate, therefore with the land certificate will provide legal certainty and legal protection to the land rights holder. And The Consideration of Judges in Deciding Disputes In Court Against The Case Register Number No. 12/Pdt.G/2020/PN-JTH refers to the decision of the Jantho District Court 12/Pdt.G/2020/PN-JTH which already has a fixed legal force. However, in all legal considerations and decisions of the Panel of Judges is not clearly and expressly

implied about the principles, principles and theories of agrarian law / land. According to the Author, the Panel of Judges for Civil Cases No. 12/Pdt.G/2020/PN-JTH focuses more on the principle of proof of civil ownership of the rights to the disputed land.

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