



## Legal Certainty of the Position of the Selling and Purchase Deed Due to Land Rights Claims in Padang Pariaman Regency

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### **Abstract**

Land is an object that can provide welfare to the owner or those who control it, because land is an object that has a relatively increasing value from year to year. Land that has strategic value is vulnerable to the occurrence of a problem. For example, what happened at the Obsolete Market, Padang Pariaman, where there was a sale and purchase transaction, when all processes had been carried out and prepared, it turned out that the object was a lawsuit during AJB's registration to BPN Padang Pariaman. The problems examined in this thesis are: 1) How is the legal certainty of the position of the Sale and Purchase Deed due to a claim for land rights in Padang Pariaman Regency? 2) How is the protection of land rights holders due to a lawsuit over land rights in Padang Pariaman? The approach method used in this research is the normative juridical method. This research uses an approach to the principles of law and legislation. The data used are primary data and secondary data. Sources of data collected through the study of documents or library materials. The data obtained were processed through editing and coding, then analyzed using qualitative analysis. Furthermore, the data is presented descriptively. Based on the results of the study, the authors conclude: 1) Legal certainty over the position of AJB which has been signed by the parties, witnesses and PPAT, because of the lawsuit, the AJB for 7 days has ended. And the parties must wait for a decision that is inkrah before continuing the process of registering the transition to BPN Padang Pariaman 2) Protection of the holders of land rights who have made the sale and purchase transactions are, not immediately abolished their rights to the land. It's just that the buyer does not have to pay the entire value of the sale and purchase until a judge's decision is made, and until the process of transferring rights can be carried out. If the judge's decision is in favor of the plaintiff, the buyer's money will be returned.

**Keywords:** *Sale and Purchase Deed; Legal Protection; Padang Pariaman Regency National Land Agency; PPAT*

### **Research Background**

Land has a very strategic function in the context of carrying out a development. In addition to functioning as a means of development, land is also interpreted as an honor for the owner of the land. Human life cannot be separated from the function of the land, starting from humans living until humans

die, they still use the land. So, it is not uncommon for land to become the object of a dispute with interested parties.

The availability of land is also a factor in disputes between communities, due to the relatively increasing human population and relatively permanent land supplies, so that the need for land is also increasing over time. However, the availability of land that is relatively permanent, not a few certain subjects use and utilize land that is not in accordance with existing provisions and rules, in fact the land can be used as an increase in people's welfare.

In connection with this, Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia explains that: "Earth, water and natural resources contained therein are controlled by the State and shall be allocated as much as possible for the prosperity of the people". There is a guarantee from the state to provide prosperity for the community through the use of the land, so that land is not only seen from an economic value. control of land rights can assess the social status of a person or group.

From the beginning of independence until 1960, Indonesian land law used the Civil Code which was based on Western law. Until 1960, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles was enacted whose basic values came from the Indonesian nation itself. Agrarian law has a very important function to build a just and prosperous society, as stated in the general explanation of the Basic Agrarian Law (UUPA) that in the Republic of Indonesia, the structure of life, including the economy, is an agrarian pattern of earth, water, and space as a gift from God Almighty has a very important function to build a just and prosperous society. So that the establishment of the UUPA to create legal certainty in order to realize these ideals.

A certificate of ownership of land is a proof of rights held and owned by the community which is stated as a form of legal certainty over the ownership of a land. But not necessarily, if the land has been certified, then the land becomes the absolute ownership of the holder of land rights. Likewise, if there is a legal action on the land, it is possible that the land can be sued by a third party, which is known as a negative publicity system with positive tendencies, meaning that the certificate of land rights is only as proof of rights and information for the land owner and social, which does not rule out the possibility of being sued by anyone and at any time, on the basis and evidence that is truly accountable.

The acquisition of land rights in the community is more often carried out by transferring rights, namely through buying and selling. Transfer of rights/transfer of rights, is a legal act that aims to transfer rights, including: buying and selling, grants, exchange, separation and distribution of joint assets and income in companies or inbreng. Buying and selling in the everyday sense can be interpreted, where someone releases money to get the desired item voluntarily.

According to Law (BW) Article 1457 it is explained that the sale and purchase of land is an agreement in which the seller binds himself (meaning he promises) to surrender the rights to the land in question to the buyer who binds himself to pay the seller the price he has agreed upon. So that it can be stated that the sale and purchase of land is an agreement in which one party binds himself to pay the agreed price and the other party surrenders the land and land rights with the obligation to transfer land rights before the Land Deed Maker Official (PPAT).

Since the promulgation of the Basic Agrarian Law (UUPA) Number 5 of 1960 concerning the Basic Agrarian Regulations, the meaning of buying and selling land is no longer an agreement as in Article 1457 jo 1458 of the Indonesian Civil Code, but a legal act of transferring rights forever. cash in nature and then further regulated in the Implementing Regulations of the LoGA, namely PP No. 10 of 1961 which has been amended by Government Regulation No. 24 of 1997, concerning Land Registration.

The sale and purchase of Land Rights is carried out before the Land Deed Making Official (PPAT) as evidence that there has been a sale and purchase of land rights and then the Land Deed Maker

Official (PPAT) makes the Sale and Purchase Deed which is then followed by registration at the local Land Office according to the location. soil. As the executor of land registration, PPAT is obliged to immediately submit the deed he made to the Land Office so that the Head of the Land Office can immediately carry out the registration process for the transfer of rights, especially due to sale and purchase. The functions of the PPAT deed made are:

1. As evidence that the relevant legal act has been carried out
2. As one of the absolute conditions for the transfer of rights

The process of buying and selling land between the seller and the buyer, both of them must come to the PPAT office to make a deed of sale and purchase of land (AJB), then the requirements needed to make the deed of sale and purchase include: original certificate of land rights to be sold, identity card resident, proof of payment of land and building tax, letter of approval from husband/wife for those who are married and family card from the seller, while the requirements for prospective buyers are enough to bring identity cards and family cards.

Problems regarding this land have occurred a lot, due to very fast human growth and the existence of land that is relatively fixed. So that there are many mutual claims of land rights, especially in Pariaman Regency. This problem occurs in the Old Market, Batang Anai District, Padang Pariaman Regency.

The transfer of land rights is carried out by the First Party Developer and the Second Party as the Customer. In the pre-transfer process of land rights, there were no problems, until finally the certificate was checked at the National Land Agency of Padang Pariaman Regency, there was no lawsuit and also did not become a debt guarantee. So that it is classified as a safe certificate and the transfer of land rights to the certificate can be carried out.

After all the requirements are complete, PBB, BPHTB, and PPH have been paid by the parties, then the Sale and Purchase Deed is signed at the Land Deed Making Officer, Burhanuddin, S.H.M.Kn with the work area of Padang Pariaman Regency, so that the transfer of rights should be processed at BPN Padang Pariaman as it should be. However, what happened was, before the process of transferring land rights was registered at BPN Padang Pariaman, it turned out that one week before the registration of the transfer of rights there was a claim for land rights that was reported by a third party who sued the Parent Certificate for the land, and sued the right holder before the developer. in the District Court Class 1B Pariaman.

As a result of the lawsuit, the transfer of rights cannot be continued and cannot be processed until a decision has permanent legal force from the Class IB Pariaman District Court. Thus, it has an impact on the position of the Sale and Purchase Deed which is the basis for the transfer of land rights from the developer to the customer.

Based on this description, a dispute over land rights arose, so, the authors are interested in conducting a study regarding: "**Legal Certainty of the Position of the Sale and Purchase Deed due to the Land Rights Lawsuit in Padang Pariaman Regency.**"

### ***Research Methods***

The approach method used in this study is empirical juridical. What is meant by empirical juridical research is legal research regarding the enforcement or implementation of normative legal provisions in accordance with the reality or facts that occur in society.

In empirical research, what is studied initially is secondary data and is continued in research using primary data in the field or on the community or the parties involved in an agreement that occurs. It is

called primary data because what is being studied is the position of the Sale and Purchase Deed due to a claim for land rights in Padang Pariaman Regency.

### **Research Result**

The PPAT Deed (Land Deed Official) is an authentic deed because the PPAT deed is regulated in the General Elucidation number 7 of Law Number 4 of 1996 concerning Mortgage Rights which states:

"According to the applicable laws and regulations, PPAT is a public official who is authorized to make a deed of transfer of land rights and other deeds in the context of assigning land rights, the form of which is determined as evidence that certain legal actions have been carried out regarding land located within their respective working areas. -each. In the position as mentioned above, the deeds made by PPAT are authentic deeds".

The PPAT Deed is also regulated in Government Regulation Number 24 of 1997 concerning Land Registration, Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Making Officials and Government Regulation Number 24 of 2016 concerning Amendments to the Position Regulations of Land Deed Maker Officials. Provisions regarding the form of the PPAT deed are not stipulated in the law as the Notary Position Act (UUJN) because there is no law governing the PPAT position but is determined by a Ministerial Regulation and Regulation of the Head of the National Land Agency. The Ministerial Regulation is part of the Legislation, as stipulated in Law Number 12 of 2011 concerning the Establishment of Legislative Regulations.

Thus, the PPAT deed becomes perfect written evidence because it is an authentic deed made by an authorized public official based on the provisions of the applicable laws and regulations. Therefore, its authenticity is guaranteed in accordance with the provisions of laws and regulations, namely Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Maker Officials, and Government Regulation Number 24 of 2016 concerning Changes to Position Regulations. Land Titles Registrar.

In principle, the deed is made as evidence that serves to ensure that a legal action has taken place by the parties in the deed. Therefore, a PPAT must clearly state what legal actions were carried out by the parties in the deed. The deed made by the PPAT may not contain formulas that can cause a dispute because it is incomplete and clear. Because the deed of sale and purchase made by the temporary PPAT is an authentic deed.

After all the terms and conditions in the preparation of the deed are met. Then proceed with the process of making and signing the deed of sale and purchase by PPAT. The making of the deed of sale and purchase must be attended by the parties who carried out the legal action or the person authorized by them with a written power of attorney in accordance with the applicable laws and regulations, where the power of attorney for the seller must be by a notarial deed while the power of attorney for the buyer can be made with a deed under the control of this matter as mandated in Article 101 paragraph 1 of the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

The deed is made in the presence of two witnesses and a witness of approval. after that the PPAT official is obliged to read the Sale and Purchase Deed to the parties concerned (seller and buyer) and provide an explanation of the contents and purposes of making the deed and the procedure for transferring the rights. The PPAT deed is then made in two original sheets, one sheet is stored at the PPAT office and one sheet is submitted to the head of the local Regency/City land office for registration purposes. Meanwhile, the parties concerned (seller and buyer) are given a copy.

The PPAT is obliged to submit the PPAT deed and other documents required for the registration of the transfer of land rights in question to the head of the local district/city land office no later than seven working days after the signing of the deed in question. The documents submitted are:

1. Application for registration of transfer of rights signed by the right recipient (buyer) or his proxy;
2. A written power of attorney from the recipient of the right (buyer) if the applicant for registration of the transfer of rights is not the recipient of the right (buyer);
3. Deed of sale and purchase by PPAT who at the time of making the deed was still in office and his working area included the location of the land concerned;
4. Proof of identity of the party transferring the rights (the seller);
5. Proof of identity of the party receiving the rights (buyer);
6. Proof of payment of the payment of the fee for the acquisition of land and building rights (BPHTB) in the event that the duty is payable;
7. Proof of payment of income tax (PPh) in the event that the tax is payable.
8. Proof of payment of SPPT PBB
9. and other necessary accessories

The local district/city land office is required to provide a receipt for the submission of the application for registration of the transfer of rights along with the PPAT deed and other attached documents which are received to the PPAT concerned.

Judging from the research that the author did on the Sale and Purchase Deed in which the AJB was made based on the procedures established by the legislation. Starting from the pre-deed, until the AJB registration is carried out at BPN Padang Pariaman, in accordance with the applicable rules and regulations.

It's just that when the AJB registration was carried out, there was a lawsuit against the master certificate (initial certificate) of the fractional certificates that had been issued, which was sued by someone. This caused the cessation of the land registration process for the transfer of land rights at BPN Padang Pariaman Regency. As a result of the lawsuit, the AJB that has been issued and has been legally signed by the parties, witnesses and PPAT cannot be registered until the lawsuit has received a court decision that is refusing. In this case, the AJB made is the AJB Mr. Burhanuddin, S.H., M.Kn always PPAT in Padang Pariaman Regency. So that the position of the AJB up to now cannot be registered at BPN Padang Pariaman, regarding the lawsuit that has not been completed in court. So that the land registration process for maintaining the data is stopped instantly.

The problem that occurs in the research that the author has compiled is land that has been acquired by BPN Padang Pariaman, but in the course of the process of transferring rights to the buyer, after obligations such as checking certificates, and has been declared safe, free from lawsuits and not a guarantee. In a debt and taxes on the transfer of rights have been made, it turns out that there is a lawsuit over the land rights, which results in the process of transferring the rights to the land being unable to continue until there is a court decision that has a permanent legal determination.

This is a weakness in the legal certainty of land rights in Indonesia, because it has a negative impact on those who already have rights to the land. If a right has been granted by the state through a BPN official in a City/Regency, this right should not be reclaimed by any party to prevent land disputes that are always increasing.

The legal protection that can be received by the current right holder, until finally having a permanent law on the lawsuit is, the State provides an opportunity for the right holder to prove that the land is really his land, the result of his control and not derived from the confiscation of rights. on land, and is not land resulting from previous disputes. With the evidence held by the right holder, it can be considered by the judge in carrying out the trial.

In this case too, the right holder is not alone in doing the proof, there is also the BPN as the party that has the authority to issue certificates of land rights. BPN is also trying to prove that the granting of land rights to the right holder is a right thing and does not violate the law, based on the evidence that has been attached by the incumbent when the land registration was carried out at BPN Padang Pariaman.

Legal protection for rights holders with AJB on a plot of land where there is a lawsuit after the AJB is issued by PPAT. The holder of land rights in this case is still registered in the name of the seller, while the sale and purchase transactions have been carried out by the parties and have fulfilled the elements and conditions of the sale and purchase, so that the transfer of rights should be able to be carried out and registered at BPN Padang Pariaman. However, the process could not be continued because there was a lawsuit over the land certificate. So, even though there is a lawsuit on the land, the seller in this case has allowed the buyer to control and occupy the land, and the seller has not received payment for the land until the land rights case is completed and a court decision agrees to accept the agreement of the parties.

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