

THE LEGAL CERTAINTY OF CERTIFIED LAND WITHOUT OFFICIAL LAND DEED (PPAT) DOCUMENT IN PADANG JAYA SUB DISTRICT OF BENGKULU UTARA REGENCY

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ABSTRACT

This study aims to analyze and indentify the causes and factors affecting as well as the effect of Sales and Purchase of certified Land without Official Land Deed (PPAT) document in Padang Jaya sub district of Bengkulu Utara Regency. The research method used in this study was qualitative descriptive. Data collecting technique was empirical data from interview that have been conducted on September 13th to 20th, 2016. Data analysis used qualitative descriptive. The result of this study showed that the registration of land is not effective yet. The effective law in land registration depends on legal factor, law enforcement factor, infrastructures and facilities factor, society factor and cultural factor. While the factors affecting in implementation of law effectivity are constitutional factor and infrastructures and facilities factor. Overall it can be concluded that there is not law effectivity in Sales and Purchases of certified Land without PPAT document in Padang Jaya sub district of Bengkulu Utara Regency which needs legal protection and legal certainty in land registration.

Keywords: *Legal certainty, Sales and Purchases, Certified Land*

A. Introduction

1. Background

Land holds an important role with its economical, ecological and social values in human life. Land is the foundation of prosperous life in society for generations to generation and eventually become the last destination as a graveyard for most human beings. It is stated in article 33 paragraph (3) of The 1945 Constitution of the Republic of Indonesia that:

“The land, the waters and the natural resources within shall be under the powers of the State and shall be used to the greatest benefit of the people.”

It is also mentioned in article 5 of Act No. 5 of 1960 concerning on Fundamental of Agrarian Affairs (UUPA)¹ that:

“The agrarian law applicable to the earth, water, and airspace is adat provided that it is not contrary to the national interest and the interest of the State, which

are based on national unity, to Indonesian socialism, to the provisions stipulated in this Act, nor to other legislation, all with due regard to elements which are based on religious law.”

Regarding to legal certainty, it is also arranged in article 19² of UUPA that:

- (1) To guarantee legal certainty, the Government is to implement land registration throughout the whole territory of the Republic of Indonesia in accordance with provisions which are to be stipulated by way of a Government Regulation.*
- (2) The registration referred to in paragraph 1 of this Article includes the following: a. the surveying, mapping, and recording of land in a book; b. registration of rights on land and of transfers of the said rights; and c. granting documentary instruments of evidence of right, which shall serve as strong instruments of evidence.*

¹ Tim Merah Putih, Basic Agrarian Law Act No. 5 of 1960 concerning on Fundamental of Agrarian Affairs, Merah Putih Publisher (member of IKAPI), Yogyakarta, 1sted 2012, p. 6.

² *Ibid.* P. 10

- (3) *Land registration is to be implemented by taking into account the condition of the State and of the society, the needs for socio-economic movements, and the possibility of implementing it, according to the Minister of Agrarian Affairs' considerations.*
- (4) *The fees pertaining to the land registration referred to in paragraph (1) shall be regulated by way of a Government Regulation with a provision exempting the financially incapable from the said fees.*

Government Regulation No. 24 of 1997 concerning on land registration states that Sales and Purchase Land shall be proved with PPAT document. This is stated particularly in article 37 of Government Regulation No. 24 of 1997 concerning on land registration³:

- (1) *“Transfer of rights of land and property of house unit through sales and purchases, exchange, inheritance, data entry companies and legal acts of*

transfer of rights of auction can only be registered if proven by deed made by authorized PPAT according to the laws in force.”

It could give warranty and could also give protection to land owner fairly and holistically. Ownership of land can be obtained in several ways; one way to obtain ownership of the Land Rights is by the process of sales and purchase land. Sales and Purchase is the agreement to be reciprocal in which one party (the seller) promises to hand over ownership of an item, while the other party (the purchaser) promises to pay the price consisting of the sum of money in return for the acquisition of proprietary.⁴ Based on Section 1457 of the Civil Code, selling and buying is an agreement, whereby one binds himself to hand over an object and the other

³ Tim Merah Putih, Op.cit, P. 111

⁴ Baharudin, *Kewenangan Pejabat Pembuat Akta Tanah (PPAT) dalam proses jual beli tanah*, diakses dari <http://jurnal.ubl.ac.id/index.php/KP/article/viewFile/441/421>, accessed on May 5th 2016, at 10.40pm

party pays the agreed price of the object⁵.

Furthermore, the process of sales and purchase land can only be registered if evidenced by a deed of sale made by Land Deed Official (PPAT) authorized

under the provisions of the applicable legislation⁶, by way of both parties that the seller and buyer together before PPAT enter into the sale deed which previously is described between the rights and obligations between the seller and the buyer, so that both parties have clearly understood. Then both the seller and the buyer sign over the deed that has been created and prepared by PPAT witnessed by two witnesses who are not family members of both parties to do transaction.

Certified sales and purchase land without constituted by PPAT deed is happening a lot in Marga Sakti and Padang Jaya village of Padang Jaya District of Bengkulu Utara. In community life of Marga Sakti and Padang Jaya village have

still many problems that arise in the case of land, one of them is on sales and purchase certified land without constituted by PPAT deed. On the field, there's also sales and purchase certified land without constituted by PPAT deed and only in the underlying on trust between both parties the seller and the buyer in the form of land which has not been certified or are already certified. The transaction Proof is usually only in the form of receipt or mailing statements signed both parties and witnesses as well as known by head and stamp of local village the buyers only have evidence of land ownership in the form of a receipt or an affidavit and a certificate on behalf of the seller.

2. Problem Formulation

The formulation of the issues raised in this paper is: what factors were affecting the transaction of certified land without using PPAT deed and how the legal consequences in the Padang Jaya village of Bengkulu Utara.

B. RESEARCH

METHODOLOGY

This research was an empirical legal research in

⁵ Abdulkadir Muhammad, *Hukum Perdata Indonesia*, PT Citra Aditya Bakti, Bandung, 2014, Page.317

⁶ Boedi Harsono, *Hukum Agraria Indonesia (Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya)*, Djambatan, Jakarta, 2008, Page.506.

descriptive qualitative⁷ which is an analysis that is explaining or describing the applicable rules to be attributed later to the fact that occurs in the society. Sociology of law approach was later used in this study. Both moral approach and science approach to law are concerned with how the law norms create an action becomes meaningful and orderly⁸.

This study was conducted direct research to the field which was in Marga Sakti and Padang Jaya village, Padang Jaya sub district, Bengkulu Utara in order to dig deeper into the research themes of sales and purchase certified land without constituted by PPAT deed and the legal consequences that occur. After determining the setting, the author also determined the sample population to be studied. The sample consisted of: Head of the Land Office of Bengkulu Utara Regency, Head of Land Rights and Registry Section,

Head of Transfer and Imposition of Rights Sub Section, Chief of Padang Jaya District, Chief of Padang Jaya village, Chief of Marga Sakti village and the villagers of Marga Sakti and Village Padang Jaya respectively numbered of 10 people.

The data collection was done through interviewing, reviewing laws and regulations relating to the registration, and reading literatures and the opinion of the scholars from all the available data of the collection of legal materials and the interview result with all respondents. All the existing data would be processed in a way, so that the data could be analyzed meaningful and beneficial to address concerns and questions in the study. Once the data had been analyzed and then it would be concluded using qualitative descriptive analysis⁹.

C. RESULT AND DISCUSSION

1. Factors affecting the society of Padang village and Marga Jaya Sakti village in sales and purchase certified

⁷ Suratman, Philips Dillah, *Metode Penelitian Hukum*, Alfabeta, Bandung, 2014, Page.229

⁸ Achmad Ali, Wiwie Heryani, *Menjelajahi Kajian Empiris Terhadap Hukum*, Kencana Prenadamedia Group, Jakarta, 2013, Page.25-26

⁹ Suratman, Philips Dillah, *loc. cit.*

land without using PPAT deed.

According to the description of the results and discussion of the factors that affect the society of Padang Jaya and Marga Sakti village in sales and purchase certified land without using PPAT could be said that the ineffectiveness of law regulating the registration of land in the society of Padang Jaya and Marga Sakti village when it was adjusted to Soekanto Soerjono's opinion regarding to the effectiveness the theory of law. The effective rules mean to the influence state, efficacy, business success or actions in terms of starting or entering into the applicable regulation factors. There are 5 factors in the law effectiveness: 1) Law (Legislation), 2) Law enforcement, 3) Means and facilities, 4) Society, and 5) Culture. Of the five factors listed, there are only two effective factors namely:

1. Law or Act. Of all the legal regulations in

addition to the BAL, the presence of PP No.24 of 1997 on Land Registration is the rule of the most popular and most widely concern, and reference both for the public and for the officials concerned, due the substance set out in Regulation 24 of 1997 includes the technical provisions on procedures for obtaining, encouraging, registering, changing the status of ownership rights over the land. Thus these factors include as an effective one because it is sufficient and complete to be able to meet the demands of the society in land registration, especially in the transfer of rights through the transaction, so that it will achieve legal certainty and legal protection.

2. Means and facilities, the facilities and infrastructure in order to create the effectiveness of

the law are already well underway in which Land Office of Bengkulu Utara Regency in providing the carrying capacity for the sake of law enforcement had maximum working either software or hardware appliance, representative office buildings, as well as human resources namely BPN employees who have competence in their respective fields, software and hardware, representative office building, also the human resources which is employee of BPN (National Land Affairs Agency) that competent in their respective fields.

Whereas, the others three factors were, law enforcer, society, and culture do not yet effectively in meet the elements, criteria and definitions of the three factors itself. The effectiveness of the law have not be fulfilled yet

by the results and discussion of the factors that affect the society of Padang Jaya and Marga Sakti village in the sales and purchase of certified land without using PPAT's deed (Land Deed Officia)l because of there are obstacles to the enforcement of the law, namely:

1. Law enforcement factors: in which there is no penalty, warning or fine from law enforcer itself to the society of Padang Jaya and Marga Sakti village that do not comply with legislation in the sales and purchase of certified land without constitute of PPAT's deed
2. Society factor, this factor was influenced in the effectiveness of law itself which is the majority of Padang Jaya and Marga Sakti villages' society were

have low of level education, they were graduated of Junior High School so that the knowledge of law was limited, low level of legal awareness, the living standard of the majority of the work as farmers so that the society assumed that the making of deed by PPAT's deed although the registration of title transfer were very exorbitant costs.

3. Culture Factor, this factor was included as one of uneffective factors, because of it was focuses on the disciplines and peace but it was happened in the society not to be like, which is the sales and purchase of certified land without constitute of deed of PPAT's deed so that it will cause the undisciplined in the process of lands administration should

to be in every sales and purchase certified land should be registered to the PPAT's deed to have the deed of PPAT's deed that continue with the registration of title transfer land. With the implementation of the orderly administration of sales and purchase land have not been practiced yet, it can be determined that of peace for the buyer would not be created because of there is no certainty of rights and legal protection of land that was bought.

2. The effects of sales and purchase of certified land without PPAT's deed at sub-district of Padang Jaya.

The better of functioning of legal state, so it make higher of the level of legal certainty, otherwise if a country does not have a functioning of legal system autonomously, the legal

certainty will be lower. Apart from developing countries in everywhere that focus to be discussed, we will back to face the main questions such as: to what extent or degree at what level we can find legal certainty for real? What are the juridical and non-juridical factors that determine this? And what can we do to increase the level of legal certainty accordingly? Here, it can be explained that the level of legal certainty almost describes from kinds of factors, they were¹⁰:

1. Rule of Law

In the sales and purchase of certified land it has been set about the obligation to make deed of sales and purchase from PPAT's deed that was explained in the Government Regulation number 24 year 1997 about lands registration in article 37 that reads:

“Transfer of rights of land and property of house unit through sales and purchases, exchange, inheritance, data entry companies and legal acts of transfer of rights of auction can only be registered if proven by deed made by authorized PPAT according to the laws in force.”

The deed's maker above were attended by the parties of legal actions and witnessed by at least two witnesses who are qualified as act of witnesses in that acts.

According to the official of National Land Affairs Agency that the writers interviewed, the contents of Government Regulation number 24 year 1997 about land registration still in accordance to the times of today, and that regulation can be easy to understood by the employee of National Land Affairs Agency especially for the Title Deed and Land Registration, while the society is mostly do not yet understand nor do not even know about Government Regulation number 24 year 1997 of land registration.

¹⁰ Jan Michiel Otto, et.al., *Socio-Legal Studies (Series of constituent elements of building a state of law)*, Larasan Book, Denpasar., Univercity of Indonesia, Jakarta,Univercity of Leiden,Univercity of Groningen, 2012, Page.123

Law that containing moral prohibitions will be much more effective than law that is not in harmony with the moral rules, or neutral. Often we encounter of such effectiveness law that its presence is no longer needed, because of the undesirable acts it also has been barred by the power of moral and social norms. However there are also laws that try to prohibit the certain acts despite of the moral rules do not say anything about that act, such as the prohibition on arrear taxes. Such law was clearly less effective than the law that containing the understanding of moral in it.

The successful in law implementation is the law that created was reached the point the intent of the rule of law is to set the human interest. If the rule of law was complied with and implemented by the society and law enforcement, so the implementation of the law is said to be effective or successful in its implementation.

2. Agencies or Institutional

Government acts as legislators consider that "one's

ignorance of the legislations is unforgivable". This principle requires that everyone deemed to know the law after it was announced through a State Gazette or official Gazette, in spite of a fact that certain people have not read it. With risks of this principles was every legal provisions were legally declared only possible by the power of existing of power, not to the approval by individuals. This principle was held to patch the weakness of positivism of law that intentionally avoided the reality that not everyone knows law.

It was clear that the government's legal actions are law acts that committed by the government or the administration of State that intended to cause law' consequences in the field of government or the state administration, the elements of the actions of government's law includes¹¹:

1. The act was carried out by government officials by his capacity as a ruler as well as the

¹¹ Adrian Sutedi, *Op.cit*, Page.37

equipment of government with its own initiative and responsibility;

2. This act was implemented in order to in to carry out the governmental functions;
3. This act was purposed as the facilitator to rise to law consequences in the field of administrative law;
4. This related act conducted in order to maintenance of interests of the State and the citizen.

3. Social Environment (which is society and culture at Padang Jaya and Marga Sakti Village)

It means that law will only provides the guarantee on proof of ownership rights to someone, the law not provide ownership rights, so it is still considered to be less protective to their owners. It was as if proof of that the right only

strengthen someone with his (land) only.

But it is supposed besides transfer of rights by the give the right to someone, the land owners also should strengthen as the existing rights holders.

That position creates the distrust of the society in managing the rights transfer of tittle transfer by the creating of sales and purchase of deed previously in PPAT, because in the society particularly in the Padang Jaya and Marga Sakti village there was an assumption that the activity of sales and purchase of certificated land without PPAT's deed by holds a certificate "only" with the name of the previous sellers have convinced buyers to avoid a lawsuit, conflicts and disputes from third parties.

Including of they can be avoided from processing fees that

assume by the society that it was too expensive, the unclear of bureaucracy in the long of period. So, the society of Padang Jaya and Marga Sakti village reluctant in processing the deed of PPAT and then continued by the title transfer to land Offices of North Bengkulu after the transaction of sales and purchase of certified land. Therefore, almost the deed of sales and purchase makers at PPAT after practice the the sales and purchase of certified land and then continued by transfers of rights title transfer were only the people who have purposed to use the certificate by own name as collateral only (passed).

Therefore, seeing the factors of effectiveness of law that have been outlined and evidently the uneffectiveness of law in

Government Regulations number 24 year 1997 about land registration can be ascertained by the uncertainty of law in the land registration yet, this indicator was being problematic on land registration implementation, so the land registration implementation does not realizing the certainty law. Even, these factors make the emergence problems in land registration, uncertainty of law for public land should be a concern for government to immediately disseminate what and how to register land transition of sales and purchase for the first time, as well as the registration purposes. If it was allowed, it will encourage the society be not more convinced on the evidence of the right itself because for not being able to protect to their rights. Moreover,

the certified land is still considered to only be used for certain purposes, so that the society indifference to land in this country.

If it seen by the concept of certainty of law by Jan Michiel Otto, about the three factors that was outlined above which is the law provisions that have been set did not reach the point or not successful in its implementation, which is the lack of law certainty of land rights in the land registration on land title transfer at under the name Padang Jaya and Marga Sakti village.

D. CLOSING

1. Conclusion

1.1. Factors that effects to the Society of Marga Sakti and Padang Jaya villages, sub-district of Padang Jaya, North Bengkulu Regency in the sales and purchase

of certified land without PPAT's deed.

- a. Lack of societies' awareness in understanding the legislation regulations of land sector, especially in rights land registration.
- b. There are no law sanctions in the sales and purchase of certified land without using PPAT's deed.
- c. Counseling or Socialization (special) of Government Regulation number 24 year 1997 about land registration has not been done neither by BPN nor the local government of North Bengkulu.
- d. The society assumed that the cost to make PPAT's deed was expensive, and not clear of regulation on its bureaucracy.

e. Cultures factor, the societies' habits were caused they could not perform and record of their the sales and purchase practice on certified land become PPAT's deed.

1.2. The effects of Sales and Purchase Law on Certified Land without PPAT's deed based at Padang Jaya Regency

Sales and Purchase of Law on Certified Land without PPAT's deed was caused the unimplemented law on the rights transfer of title transfer at Land Office of North Bengkulu Regency from seller to buyers, so there is no rights protection and certainty law toward the buyers of land.

2. Suggestion

1. Government

In order for the law to be effective, those who work as implementation of the law or law enforcer must discharge their duty properly. They should announce the legislation broadly, they must be interpreted uniformly and consistently and to the extent of possible interpretation that may also be attempted by the society. Law enforcement officers must also work hard without knowing tired to investigate and prosecute the offenders.

The uncertainty law of land's society should be in more attention by the Government to socialization on what and how to register the land both of first time as well as sales and purchase transfer and also the purpose of registration. If allowed,

it will encourage the uncertainty of society on the right itself because it was not being able to protect the rights of land's society. Moreover, the certificate of land is still considered only for certain purposes, so that the societies will aphantetic on land of this country. Law enforcement toward the rule of legislations must be consistent and balancing in law 1 sanctions; and

2. Society

Society itself should understand and implement the rule of law as the "responsibility" that should be implemented by earnest, so that the effectiveness of the law and the protection of rights and legal certainty in the first registration and title transfer will be achieved according to

the purpose of the legislation.

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