

Position of Deed of Land Deed Official on Legal Certainty for Ownership of Certificates



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ABSTRACT: The purpose of this research is to analyse how the legality of the Land Deed Makers Office position is in the process of land registration of certificates of ownership and how is the legal certainty of landowners regarding Land products for owners of land certificates. The method used in this scientific research article is the method of normative legal scientific research articles. The results of this discussion are first, by issuing certificates in registration activities it is intended that right holders can easily prove their rights. Therefore, a certificate is strong evidence as referred to in Article 19 of the Agrarian Law. Second, that there is still no legal certainty that can be given by the state to the owners of land certificates, because if they experience a loss and their assets will be executed by the court based on a decision that has permanent legal force, the community does not have any trust in them. So that the government's participation in regulating land, which includes regulations regarding the sale and purchase of land and land registration at the National Land Agency office, must also be accompanied by good bureaucracy so that the process runs smoothly.

KEYWORDS: Land Deed Official; Legal Certainty; Certificate.

A. INTRODUCTION

Based on Article 19 of the Basic Agrarian Law it stipulates explicitly and straightforwardly that as a form of fulfilling rights by the government as a form of its obligation, namely in this context to provide legal certainty for ownership of land, it is regulated and implemented in relation to land registration. Land that has been registered is then given proof of land rights, which is strong evidence regarding land ownership (land title certificate). The land registration process is carried out through three stages of activity, namely the collection and processing of physical data, the collection and processing of juridical data and the issuance of documents proof of rights. In collecting and processing juridical data, namely by examining evidence of land ownership. For old rights obtained from the conversion of existing rights at the time Basic Agrarian Law came into effect and/or these rights have not been registered according to Government Regulation Number 10 of 1061 concerning Land Registration, namely in the form of written evidence, witness statements and/or statements concerned whose degree of truth is deemed by the Adjudication Committee/Head of Land Office to be sufficient to register their rights.¹

The guarantee of legal certainty by the Government regarding land rights is carried out by issuing a certificate of proof of land rights in the form of a certificate of land rights. Land cannot be separated from human life. Everyone needs land in his life, both in carrying out daily activities and in the context of carrying out development. Given the importance of land for humans, of course it often creates its own problems and conflicts of interest in society. The availability of land to be controlled by humans is fixed and limited, on the other hand the number of people continues to increase. To guarantee the sense of security for landowners in using and utilizing their land which is free from control, occupation and ownership by other parties, the registration of said land parcels is carried out. The purpose of land registration activities according to Article 3 of Government Regulation No. 24 of 1997 concerning Land Registration, one of which is to provide legal certainty and legal protection to rights holders over a parcel of land, apartment units and other registered rights so that they can easily prove themselves as the true rights holder.

The result of the land registration activity is the issuance of a certificate of land rights as proof of rights and applies as a strong means of proof (as stated in Article 19 paragraph (2) letter c, Basic Agrarian Law). This is also confirmed in Article 32 paragraph (1) of Government Regulation No. 24 of 1997 which states that a certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the measurement letter and land title book concerned. , his authority and

¹ Muhammad Bakri, *Hak Menguasai Tanah Oleh Negara (Paradigma Baru Untuk Reformasi Agraria)* (Yogyakarta: Citra Media, 2007).

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obligations in making an authentic deed are given several obligations that must be carried out, in this case as stated in letter c it is said that one of the notary's obligations that must be carried out is that the notary must attach letters and documents as well as the fingerprints of the person appearing on the minutes of the deed. The purpose of Article 16 paragraph (1) letter c of Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Office of a Notary is to protect the notary from the many denials of the presence and signature of appearers if a dispute arises between them in the future. The technical ambiguity of the wording of the article has resulted in multiple interpretations by the notary.²

Meanwhile, the land registration system adopted in Indonesia as ordered by the Basic Agrarian Law does not use a positive land registration system, but a negative land registration system but not purely. The land registration system adopted in Indonesia is a negative land registration system with a positive tendency. The negative system is expressly stated in the elucidation of Article 32 of Government Regulation no. 24 of 1997 which states that land registration is not carried out using a positive system, but negative.³

This is reflected in the absence of compensation given in the event of an error or mistake in the framework of issuing a certificate of land rights. Positive tendencies are reflected in the existence of a land inspection committee tasked with carrying out testing and research, authorized officials have the right to refuse registration if the owner is not authorized to transfer his rights, and the issuance of certificates of land rights as proof and means of proving land ownership rights. Although a certificate of land rights is proof of rights that guarantees legal certainty in accordance with the purpose of its issuance, on the other hand the certificate does not guarantee legal certainty of ownership. As in the elucidation of Article 32 of Government Regulation No. 24 of 1997 provides an opportunity as long as there are other parties who feel they own the land, they can sue the party whose name is listed on the certificate through the General Court or the State Administrative Court when it comes to the technical administration of the issuance. There is an opportunity to file a lawsuit against another party who can prove otherwise regarding the correctness of the data contained in the certificate of land rights, of course it can lead to disputes regarding the ownership of land rights.⁴

Legal certainty over the ownership of land rights can be carried out by carrying out land registration as a solution so that certificates can be issued as proof of ownership of land rights. This is confirmed in Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, hereinafter referred to as the Basic Agrarian Law paragraph (1), which states that in order to ensure legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to provisions stipulated by Government Regulation Number 10 of 1961 concerning Land Registration and Government Regulation Number 24 of 1997 concerning Land Registration and refined again by Government Regulation Number 18 of 2021 concerning Management Rights, Rights Land, Apartment Units, and Land Registration which are part of the implementing regulations for Law Number 6 of 2023 concerning Job Creation.⁵

Based on Article 7 paragraph (1) of Government Regulation of the Republic of Indonesia Number 37 of 1998 concerning Regulations for the Position of Officials for Making Land Deeds, a Land Deed Official can hold concurrent positions as Notary, Consultant or Legal Advisor. The authority of a Notary/Land Deed Official is an authority that comes from the concept of attribution, namely authority based on applicable laws and regulations. Although Notary and Land Deed Official are two positions that have different authorities, they are held by one person as a single professional unit. Therefore, the Notary/ Land Deed Official plays a very important role in the relationship between legislation and the practical world of law, social and economics. Notary/Land Deed Official is a public official (*openbaar ambtenaar*) who is responsible for making a written statement intended as evidence of legal actions.⁶ As one of the cases as illustrated in this study, the landowner made a deed of sale & purchase and a

² Anggraeny Arief, "Pelaksanaan Asas Kontradiktur Delimitasi dalam Proses Pendaftaran Tanah Sistematis Lengkap," *Jurisprudentie: Jurusan Ilmu Hukum Fakultas Syariah dan Hukum* 5, no. 1 (8 Juni 2018): 206-15, <https://doi.org/10.24252/jurisprudentie.v5i2.5812>.

³ B Belladina, Y. Pujiwati, dan B. Rubiati, "Kepastian Hukum Produk Pendaftaran Tanah Sistematis (PTSL) Terkait Tumpang Tindih Sertifikat (Overlapping) Serta Penerapan Asas Iktikad Baik Dalam Penguasaan Pemanfaatan Lahan Overlap," *Juris and Society: Jurnal Ilmu Sosial dan Humaniora*, 119-130, 1, no. 1 (2021).

⁴ Arie Lestario dan Erlina, "Sistem Pendaftaran Tanah Yang Memberikan Perlindungan Hukum Bagi Pemegang Sertifikat Hak Atas Tanah Di Indonesia," *Notary Law Journal* 1, no. 1 (22 Februari 2022): 1-30, <https://doi.org/10.32801/nolaj.v1i1.1>.

⁵ Belladina, Pujiwati, dan Rubiati, "Kepastian Hukum Produk Pendaftaran Tanah Sistematis (PTSL) Terkait Tumpang Tindih Sertifikat (Overlapping) Serta Penerapan Asas Iktikad Baik Dalam Penguasaan Pemanfaatan Lahan Overlap."

⁶ Habib Adjie, *Sekilas Dunia Notaris dan PPAT Indonesia: Kumpulan Tulisan* (Bandung: Mandar Maju, 2009).

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sporadic increase to a certificate in 2003 after several years, from 2004 to 2019, to be precise, there were illegal buildings on the land.⁷

The basis for the appointment as an Official for Making Land Deeds is the Decree of the State Minister for Agrarian Affairs or the Head of the National Land Agency dated June 2, 1998, Number 8-XI-1998 concerning Appointment of Officials for Making Land Deeds and Appointment of Working Areas. In particular, the existence of a Land Deed Official is regulated in Government Regulation No. 37 of 1998 concerning Land Deed Official position regulations. Land Deed Official carries out part of the land registration activities with the task of making authentic deeds as evidence that certain legal actions have been carried out regarding land rights or ownership rights to flats units which are used as the basis for registering changes to land registration data caused by said legal actions in their work areas determined by the government (absolute competence), namely districts or cities in the same region as the working area of the land office.

So that the purpose of this legal scientific research article is to add material for analysis related to the position of the Land Deed Official for a legal certainty for ownership of the certificate. What makes this legal scientific research article different from other legal scientific research articles that are related and closely related to the theme of this analysis is that no one has specifically and concretely analyzed the legality of the position of the Land Deed Making Officer in a process of registering a Freehold Certificate and the legal certainty of the landowner for the products of the Land Deed Making Officer for the Owner of the Freehold Certificate. Like the scientific research article conducted by Tejawati which analyzes how the application of the principle of legal certainty in the position of girik against a certificate of land rights.⁸ Other legal scientific research articles, namely by Yasa and Bagiastra which analyze how to regulate ownership of land rights and how legal certainty is regarding the position of land certificates due to a negative publication system.⁹ The next legal scientific research article as a differentiator is by Atikah who analyzes the position of a land certificate as proof of ownership of land rights in the land law system and how the legal power of a land certificate as proof of ownership of land rights.¹⁰ Then the next scientific research article from Saraswati, Utama and Santika which analyzes the legal position of the deed of the Land Deed Making Officer which is used as the basis for issuing certificates after experiencing the next transfer of rights and what are the responsibilities of the Land Deed Making Official for words that have undergone the next transfer of rights related to their obligation to keep a deed.¹¹ So that the formulation of the problem in this study is how is the legality of the position of the Land Deed Making Officer in the process of land registration of certificates of ownership and what is the legal certainty of the land owner regarding the products of the Land Deed Making Officer for the owner of the land certificate.

B. METHOD

This research uses a type of normative juridical research, namely research to examine a norm or provision that applies. It can also be said as research conducted by examining library materials or secondary data.¹² The type of research used is doctrinal research.¹³ The nature of this research is analytical prescriptive, namely research that describes certain objects and explains things related to or systematically describes the facts or characteristics of certain populations in certain fields factually and accurately.¹⁴ The

⁷ Andi Muhammad Rahmat, "Perlindungan Hukum terhadap Notaris yang Beritikad Baik Membuat Akta Jual Beli Saham dalam Kasus Tindak Pidana Pencucian Uang," *Lentera Hukum* 6, no. 1 (28 April 2019): 97-116, <https://doi.org/10.19184/ejhl.v6i1.9669>.

⁸ Desy Nurkristia, "Asas Kepastian Hukum Dalam Kedudukan Girik Terhadap Sertipikat Hak Atas Tanah," *Jurnal Suara Hukum* 3, no. 2 (30 September 2021): 251-73, <https://doi.org/10.26740/jsh.v3n2.p251-273>.

⁹ Putu Astika Yasa dan I Nyoman Bagiastra, "Kedudukan Sertipikat Hak Atas Tanah terkait Berlakunya Sistem Publikasi Negatif di Indonesia," *Jurnal Magister Hukum Udayana* 10, no. 4 (Desember 2021): 827-40.

¹⁰ Noor Atikah, "Kedudukan Surat Keterangan Tanah Sebagai Bukti Kepemilikan Hak Atas Tanah Dalam Sistem Hukum Pertanahan Indonesia," *Notary Law Journal* 1, no. 3 (13 Juli 2022): 263-89, <https://doi.org/10.32801/nolaj.v1i3.29>.

¹¹ Made Putri Saraswati, I. Made Arya Utama, dan Ida Bagus Agung Putra Santika, "Kedudukan Hukum Akta Ppat Setelah Terbitnya Sertipikat Karena Peralihan Hak Atas Tanah," *Acta Comitatus* (Tesis, Bali, Universitas Udayana, 2018), <https://doi.org/10.24843/AC.2018.v03.i01.p03>.

¹² Burhan Ashshofa, *Metode Penelitian Hukum* (Jakarta: Rineka Cipta, 2013), <https://opac.perpusnas.go.id/DetailOpac.aspx?id=850013>.

¹³ Dyah Ochtorina Susanti dan A'an Efendi, *Penelitian Hukum* (Jakarta: Sinar Grafika, 2014).

¹⁴ Sarifuddin Azwar, *Metode Penelitian, Cetakan Kesembilan* (Yogyakarta: Pustaka Pelajar, 2009).

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approach used is a statute approach and a conceptual approach.¹⁵ So that this research is analyzed to find out how the position of the Land Deed Official is regarding legal certainty for certificate ownership.

C. RESULT AND DISCUSSION

LEGALITY OF THE POSITION OF THE LAND DEED OFFICIAL IN THE PROCESS OF REGISTRATION OF LAND CERTIFICATE OF PROPRIETARY RIGHTS

The Role of the Land Deed Official in the Matter of Land Registration at the Land Office based on the Sale and Purchase Deed

In legal traffic, an agreement made in writing is a means of written evidence, for example, as previously mentioned, namely a deed drawn up by a notary. Written evidence in the form of a deed is a signed letter containing events which become a means of proof. So the deed must be signed to be included in the meaning of the deed. According to the form, the deed can be divided into 2 (two) parts, namely the authentic deed and the deed under the hand. A private deed can be made in such a way based on the agreement of the parties and what is important is that the date can be made at any time, while an authentic deed must be made by an authorized official for that. Since the Dutch era, there have been certain officials assigned to make records and issue certain deeds regarding a person's civil rights, such as births, marriages, deaths, wills, and agreements between parties, where the results or excerpts from the records are considered as authentic deeds. The real meaning of an authentic deed is: "An authentic deed is a deed in which the form has been determined by law, made by or before public officials who have the power to do so at the place where the deed was made." Regarding the definition of an authentic deed set forth in Article 1868 of the Civil Code, which says that; an authentic deed is a deed that is (made) in the form determined by law, made by or in the presence of public officials who oversee it, at the place where the deed was made.¹⁶

Land ownership rights as a type of property rights are very important for the State, nation, and people of Indonesia as a society that is developing towards industrial development. However, land which is the main life of humans will be faced with various things, which is land limitations; a shift in the pattern of relations between landowners and land; land on the one hand has grown as an economic object; land on the one hand must be used and utilized for the greatest possible welfare of the people. Based on Article 1 paragraph 3 of the Constitution of the Republic of Indonesia which states that Indonesia is a state of law, the consequence is that every Indonesian citizen must obey government regulations in the form of binding laws. Legal certainty is a principle which states that the law must be clear to its subjects so that they can adapt their actions to the existing rules and so that the state is not arbitrary in exercising power.¹⁷

Legality of Sale and Purchase Deed made by Land Deed Officials in the Transfer of Property Rights Certificates

The imbalance between the limited supply of land and the human need for land is very large, resulting in various problems. These problems cause the community's need for land to increase and encourage an increase in land buying and selling activities as a means and form of the process of transferring land rights. Based on the provisions of Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Provisions in conjunction with Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration states that the transfer of land rights through buying and selling can only be registered if proven by a deed drawn up by an authorized Land Deed Making Officer (PPAT) according to the provisions of the applicable laws and regulations.

To guarantee legal certainty in the sale and purchase, the land sale and purchase process can only be carried out on land owned based on land rights. That is, land objects are legalized with proof of ownership of land rights. With these provisions in place, a transfer of land rights must be carried out by signing the deed of the Land Deed Official and must be registered with the Land Office to obtain valid evidence. Without a deed made by the Land Deed Official, the transfer of land rights is not considered valid because it is not in accordance with applicable regulations. However, it is undeniable that in people's daily lives, land buying and selling activities are often carried out by sellers and buyers underhanded. Buying and selling under the hand is only proven by proof of a receipt of payment in full as proof that buying and selling activities have occurred. Legal actions carried out between the seller and the buyer only with proof of a receipt and without being made before a notary, of course, this action will be very detrimental to the buyer if one day a problem arises. This is because the buyer does not have legal certainty regarding the legal status of the transfer of rights over the land he has purchased. Normatively, it means that the certificate that has been purchased has no evidence of the transfer of rights over the land in question because it was not made before the Land Deed Official even though the land has been handed over to the buyer.

¹⁵ Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana, 2008).

¹⁶ Umar Ma'ruf dan Dony Wijaya, "Tinjauan Hukum Kedudukan Dan Fungsi Notaris Sebagai Pejabat Umum Dalam Membuat Akta Otentik (Studi Kasus Di Kecamatan Bergas Kabupaten Semarang)," *Jurnal Pembaharuan Hukum* 2, no. 3 (2015): 299-309, <https://doi.org/10.26532/jph.v2i3.1507>.

¹⁷ Sidharta Sidharta, *Moralitas Profesi Hukum Suatu Tawaran Kerangka Berpikir* (Bandung: Refika Aditama, 2006).

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The deed of sale and purchase made and signed before the Land Deed Making Officer proves that a legal action has been taken to transfer rights over a land accompanied by payment of a price and proves that the recipient or buyer has become the new right holder by having proof of ownership of the land. Juridically, the transfer of land rights can be done in writing with a deed drawn up by an authorized official and registered with the national land agency. This step is closely related to the procedure for transferring land rights because the procedure determines the legality of the transfer of rights. Thus, the legality of the transfer of land rights is largely determined by formal and material requirements, procedures, and related parties, both the authority to transfer and the authority of officials to act.

Legal procedures for the transfer of a land right can be traced both before and after the enactment of the Basic Agrarian Law. In Article 37 paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that the transfer of rights to land and ownership rights to apartment units through sale and purchase, swaps, grants, income in the company and other legal acts of transfer of rights, except for the transfer of rights through an auction can only be registered if proven by a deed drawn up by an authorized Land Deed Official according to the provisions of the applicable laws and regulations. According to the provisions of the said regulation, the transfer of land rights must be proven by a deed drawn up by the Land Deed Official. Thus, there is an absolute element that must be fulfilled in transferring land rights, namely the existence of a deed of transfer of land rights made by the Land Deed Official.

An agreement must have a subject and an object in buying and selling, where the subjects are the parties who are bound to carry out legal actions, namely buying and selling land. An agreement must also have a certain object, which can be the object of sale and purchase are movable and immovable property, one example of the object of buying and selling immovable property is land. Seen from the point of view of the concept of ownership, parties who legally have land rights, whether registered or unregistered, can transfer their land rights. Transferring land rights, meaning transferring land rights owned by other parties, with the intended transfer, the rights will be transferred. The right in question is a legal relationship that is inherent as a party with authority or power to take legal action. In legal terminology, the words right mean a legal right, or a basis for carrying out a legal action.

the main requirement is that there must be evidence of land rights, namely written (formal) proof of ownership in the form of a certificate (for land that has been registered), as well as supporting evidence (for land that has not been registered or has not been certified). The evidence in question can be in the form of deed of sale and purchase, grants, inheritance fatwas, decrees granting land rights that meet legality requirements according to applicable laws and regulations. Juridically, the transfer of land rights is carried out in writing with a deed drawn up by an authorized official and registered with the national land agency (district/city land office). This step is closely related to the procedure for transferring land rights, because the procedure determines the legality of the transfer of rights. Thus the legality of the transfer of land rights is largely determined by the formal and material requirements, procedures, and authority of the relevant parties, both the authority to transfer, and the authority of officials to act. The legal procedure for the transfer of a land right can be traced both before and after the enactment of the basic agrarian law (UUPA). 5 The legal requirement for buying and selling land according to customary law is that both the seller and the buyer must fulfill material and formal requirements. The material requirement is that the seller and buyer must be legal subjects according to the law of the land being traded. While the formal requirements are that the sale and purchase is carried out in the presence of the village head (customary head) where the land being traded is located.

Notary as the party who has the authority to make a deed of binding agreement in a sale and purchase transaction should still heed the rights and obligations attached to the party declared as the buyer and furthermore, namely the seller based on legally recognized laws. In addition, the parties involved in the transaction must complete various predetermined conditions and various other considerations. If the deed made has been successfully issued, the notary status in this context can apply as legal counsel for all parties whose status is as a user of notary services in the case of making the deed. Today's reality shows that most Indonesian people do not understand and understand the issue of land registration and the urgency of land certification. Article 19 of the Basic Agrarian Law stipulates that parties whose status as the government are required to register land parcels whose territory is still within the reach of the Republic of Indonesia in line with Government Regulations set by the authorities. Parties who have rights to certain parcels of land are required to register the rights relating to the land. The reality that occurs in land sale and purchase transactions that do not have certificates in general often invites conflicts in the community, because the agreement made by two parties as buyers and the other party as sellers is only done verbally. In addition, the next problem or conflict is a transaction activity that is deliberately carried out by selling land that does not belong to the seller anymore because it has been sold to someone else before and only has a pill (through the land agency of the Land Deed Official) because the land is not owned by the state and the mechanism for buying and selling land rights is directed to contain a parcel, namely a certificate obtained at the Land Deed Official.

Recognition of land ownership becomes an important thing, so that the owner can transfer his land to others either through the process of buying and selling, exchanging, granting, giving by will, inheritance, and others, so that the ownership status of the land must be clear who the real owner is according to law. Based on Article 23 paragraph 1 of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles which explains that property rights, as well as their transfer, abolition and encumbrance

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with other rights must be registered according to the provisions referred to in Article 19, namely, to ensure legal certainty by the government, land registration is held throughout the territory of the Republic of Indonesia according to the provisions regulated by Government Regulations. Paragraph 2 reads that the land registration includes mapping measurements and land bookkeeping; registration of land rights and transfer of such rights; provision of letters of proof of rights, which act as a strong evidentiary tool.

To ensure legal certainty for the transfer of land rights through sale and purchase, it is necessary to have formal requirements for sellers or owners of land rights to be land ownership related to land rights and related to procedures for transferring rights to the land. The procedure for buying and selling land rights has been determined according to applicable regulations, namely Law No. 5 of 1960 concerning Basic Regulations of Agrarian Principles and Government Regulation No. 10 of 1961 amended by Government Regulation No. 24 of 1997 concerning Land Registration As stipulated, the sale and purchase of land must be proven by a deed made by and before the Land Deed Officials. Land Deed Officials are notaries and sub-districts, but until now there are still many transfers of land rights through sales and purchases that are not made by and before Land Deed Officials, especially in villages, the sale and purchase of land rights is only carried out through deeds under the hands made by both parties known and signed by the village head. This is still justified but must be registered with the Land Agency to obtain a land title certificate. The process of buying and selling land rights that have been registered or have been certified has a low legal risk, because the ownership rights and legal subjects of the seller are clear and clear, however, for land that has not been registered ownership rights or has not been certified, has higher legal risks and vulnerabilities.

For the object of sale and purchase of land rights that have not been registered or have not been certified, more emphasis is placed on foresight and prudence, so that it is clear and clear that the seller is a legitimate party and has the right to sell. This can be observed from the formal requirements attached as a basis for rights. On the other hand, the mechanism and procedure for buying and selling land also differ from land rights that have been registered or that have certificates. The transfer of land rights by way of sale and purchase can be authorized to another person by giving the power to sell. The legal conditions for granting power of attorney are given formally in accordance with provisions subject to civil law, whether made by and/or before a notary or under hand, as formulated in Article 1792 of the Civil Code whose substance states that power of attorney can be given and received in a general deed, in a writing under the hand, even in a letter or orally. A certificate of land title is not an absolute certified piece of evidence, but its existence is very important if needed in proof. Especially if the certificate has exceeded a certain period, which is 5 (five) years so that ownership of land rights becomes certain. If a certificate has strong evidentiary power, it can be used as evidence by the holder of land rights from a lawsuit filed by another party. Among Indonesian people, especially those who live in rural areas, not all of them are familiar with the Land Deed Officials. In the perspective of land law, the sub-district head as the head of the sub-district area ex officio is to serve as the Temporary Land Deed Officials.

Then it can be known that the making of deeds related to land is the authority of the notary, this is especially regulated in Article 15 paragraph (3) in points e and f. And according to the description above, it is known that the Land Deed Officials is not authorized to make land deeds outside his working area, except regarding exchange deeds, separation deeds in the company, deeds of division of joint rights to land, and rights to apartment units that are not located in one working area of the Land Deed Officials

LEGAL CERTAINTY OF LANDOWNERS ON THE PRODUCTS OF LAND DEED OFFICIALS FOR LAND CERTIFICATE OWNERS

Legal Relationship between Land Deed Making Officer and Owner of Title Certificate based on Sale and Purchase Deed

The National Land Law stipulates that the transfer of ownership rights to land (Sale and Purchase), exchanges, grants between Indonesian Citizens and Foreign Citizens or Indonesian Citizens with Legal Entities not appointed by the government (such as Limited Liability Companies) will be subject to sanctions from the provisions of Article 26 paragraph (2) of the Basic Agrarian Law. Legal certainty of land ownership data will be achieved if Land Registration has been carried out, because the purpose of Land Registration is to provide legal certainty and legal protection to land rights holders. Both certainty about the subject (i.e., what the rights are, who owns it, whether there is a burden on it) and certainty about the object, namely its location, boundaries and extent and the presence/absence of buildings/plants on it. To provide legal certainty guarantees, those who register their land will be given a document of proof of rights that serves as a strong evidentiary tool.

In the provisions of the National Land Law, in this case Government Regulation Number 24 of 1997 concerning Land Registration, only certificates of land rights are legally recognized as proof of ownership of land rights that guarantee legal certainty and are protected by law. The issuance of certificates and given to those who are entitled, aims to make it easy for rights holders to prove ownership of their land. The certificate serves as a strong proof tool regarding physical data (object location, boundaries, area and presence / absence of buildings or plants on it) and juridical data (rights, who holds rights, presence / absence of burdens on it) contained in it as long as the physical data and juridical data are in accordance with the data contained in the Letter of Measurement and Land Book of the rights concerned. It is said to be true data if there is no other evidence to prove its untruth and there is no need to supplement it.

Based on the understanding in Article 1 number 20 of Government Regulation No. 24/1997, a certificate is a certificate of proof of rights as referred to in Article 19 paragraph (2) letter c of the Basic Agrarian Law for land rights, management rights, waqf land,

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property rights over apartment units and dependent rights, each of which has been recorded in the relevant land book. Article 19 paragraph (2) point c of the Basic Agrarian Law specifies that the provision of a valid proof of right letter as a strong evidentiary tool, regarding physical data and juridical data contained therein, as long as the physical and juridical data are in accordance with the data contained in the relevant measuring letter and land right book, it is said to be so because as long as there is no other evidence proving its incorrectness, So the information contained in the certificate must be considered true with no need for additional evidence, while other evidence is only considered as preliminary evidence and must be corroborated by other evidence. So, a certificate is a letter of proof of rights which is a strong proof of the type of rights, subjects of rights and land.

Considering the importance of registration of transfer of land rights, especially because buying and selling, must be carried out in accordance with the provisions of applicable legal regulations. The binding of the sale and purchase must be clear so that the process of transferring land rights can be carried out at the Land Office, a Sale and Purchase Deed is needed as evidence of the occurrence of the land sale and purchase act. However, there is a sale and purchase of land that cannot be immediately made a land sale and purchase deed by the Land Deed Officials. This is because the sale and purchase process require other legal acts before registration of land rights transfer. Other legal acts such as division of fields in the case of partial sale and purchase of land, decrease in land rights in cases such as land splitting (partial sale of land parcels); legal subjects i.e. prospective buyers are not in legal standing to own property or agricultural land (absente); sale and purchase of land for which payment has not been paid off; other reasons so that the preparation of the Sale and Purchase Deed cannot be carried out; Certificate of Ownership in the Company. To ensure legal certainty for the sale and purchase of land that still requires other legal acts, it is generally carried out to bind the sale and purchase into a deed. This is so that each party gets legal protection for the sale and purchase of land carried out. The deed of binding the sale and purchase of the land cannot be used as a basis for land registration because basically it is still temporary before the land concerned has finished the sale and purchase process, because the conditions for registration of the transfer of land rights are used by the Deed of Sale and Purchase made before the Land Deed Officials.

In practice, buying and selling land using the Sale and Purchase Binding Deed sometimes experiences problems when registering the transfer of land rights with the Sale and Purchase Deed made by the Land Deed Making Officer. These obstacles include the seller dies so that the heirs do not want to sign the Deed of Land Sale and Purchase, or the landowner himself cancels the sale and purchase of land that has been made. Legal protection is in principle the protection of legal subjects, namely persons and / or legal entities into a form of device either prefactive or repressive, whether oral or written. Legal protection is an effort to provide protection of human rights that are harmed by others and this protection is given to the community so that the community can enjoy the rights provided by law or in other words legal protection is a variety of legal remedies that must be provided by law enforcement officials in order to provide a sense of security, both mentally and physically from various disturbances and various threats from any party.¹⁸ Dual document ownership can occur when the issuance of girik or certificate is inconsistent with the UUPA. The law requires a land certificate in every land sale and purchase transaction. Girik cannot be used as proof of land sale and purchase because it is proof of payment of land and building tax. However, many girik or land cultivation certificates are used as legal proof of ownership.

Legal Effects of Transfer of Title Certificate based on the Deed of Sale and Purchase made by the Land Deed Officials if it does not apply the Precautionary Principle

The context of legal protection in this article is the legal protection of the parties in the sale and purchase binding deed before the Sale and Purchase Deed is made by the Land Deed Making Officer. The parties to the sale and purchase binding deed get legal protection from the evidentiary power of the deed. However, the deed of binding sale and purchase still has a weakness, which is not as much evidence of the transfer of land rights due to sale and purchase as the Deed of Sale and Purchase. In every case of land, the position of the people is always weak. Several cases show that people usually do not have legal documents such as certificates. People claim land based on historical facts only. If even with legal documents such as certificates, sometimes you cannot prove legal ownership of the land, especially by relying solely on historical aspects, it will certainly be much more difficult to get recognition. According to the provisions of Article 9 paragraph (2), the Basic Agrarian Law contains provisions that mention guarantees for every individual to own land. Referring to these provisions, the National Land Agency should be able to issue legal documents for the benefit of the people. However, reality has not favored the people much. The lack of clarity in the laws and regulations makes the position of the people marginalized. More and more, land dispute cases are also caused by the lack of public awareness or understanding of laws and other legal regulations in the land sector, the lack of coordination between agencies related to land problems and often there is not even the same perception about the understandings contained in existing land regulations as well as regulations in the land sector there are still many that need to be perfected so that does not cause obscurity.

¹⁸ Philipus M. Hadjon, *Perlindungan Hukum Bagi Rakyat di Indonesia: Sebuah Studi tentang Prinsip-Prinsipnya, Penanganannya oleh Pengadilan dalam Lingkungan Peradilan Umum dan Pembentukan Peradilan Administrasi Negara* (Surabaya: PT. Bina Ilmu, 1987).

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Based on the right to control from the state, the state in this case is the government can give land rights to someone, several people together or legal entities. Granting rights means granting authority to use land within the limits regulated by laws and regulations. From the description above, the rights to the land are granted in different types of rights. The existence of various land rights is an object that must be registered. According to Government Regulation Number 24 of 1997 the object of land registration includes plots of land owned with property rights, business use rights, building use rights and use rights; land management rights; waqf land; property rights to flats; rights of dependents; and state land.

Systematic land registration is prioritized because this method will accelerate the acquisition of data on land parcels to be registered rather than through sporadic land registration. But because the initiative came from the government, it took time to meet the necessary data, manpower and equipment. Therefore, its implementation must be based on a work plan that includes a rather long period of time and a continuous annual implementation plan, due diligence so that it runs smoothly. As a breakthrough / government effort in this case, the National Land Agency to accelerate the increase in the number of registered land plots to achieve orderly land administration and orderly land law organizes land registration through Self-Help Mass Certification (SMS). Land Registration through Self-Help Mass Certification (SMS) is basically the same as Sporadic Land Registration because it is carried out on the initiative of the community itself as the holder of land rights. The difference is that Land Registration through Self-Help Mass Certification (SMS) is carried out simultaneously at the initiative of the community itself as the holder of land rights at their own expense and the process is carried out like systematic land registration.

Certificates have many functions for their owners. Of all the existing functions, it can be said that the main and foremost function of the certificate is as strong evidence, as stated in Article 19 paragraph (2) point c of the Basic Agrarian Law, therefore, anyone can easily prove himself as the holder of land rights if his name is clearly listed in the certificate. Furthermore, it can prove the state of the land such as its extent, boundaries, or everything related to the plot of land in question. If in the future there is a lawsuit in court about the right of ownership/control over land, then all the information contained in the certificate of title to the land has strong evidentiary power and therefore the judge must accept as true information, if there is no other evidence to deny it or prove otherwise. But if it turns out that there is an error in it, then changes/corrections are made as necessary. In this case, it is not the court who has the right to make corrections, but the issuing agency, namely the National Land Agency, by means of which the aggrieved party submits a request for a certificate change by attaching a court decision stating the existence of the error. In addition to the main functions mentioned above, certificates have many other functions that are subjective depending on the owner. Call it, for example, if the owner is an entrepreneur, then the certificate becomes something very meaningful when he needs a source of financing from a bank because the certificate can be used as collateral for providing loan facilities to support his business.

The Land Deed Making Officer who makes the sale and purchase deed is very important because the Land Deed Making Officer is the official who makes and authorizes the sale and purchase or other transfer of land. The importance of the position of the Land Deed Making Officer in issuing a sale and purchase deed requires legal responsibility for the act made. That is why the Land Deed Making Officer must follow the procedures established by the Law and various government regulations related to the transfer of ownership of land and land registration. All these procedures must be followed in order that the deed of transfer of rights made by the Land Deed Making Officer is valid according to law. Making a deed that is not in accordance with the procedure for making a deed of the Land Deed Making Officer may pose a risk to the certainty of land rights arising or recorded based on the deed.

The legal act of the Government/National Land Agency in registering land and issuing certificates as legal acts to create new legal conditions and give birth to new legal rights and obligations towards certain persons or legal subjects must meet the requirements and must not contain elements of error both regarding technical aspects of land registration and juridical aspects. Article 52 of the Basic Agrarian Law has mandated law enforcement, and the field of land registration may be subject to criminal sanctions for certain acts. The implementation of regulations of this provision are formulated in Articles 42 to 44 of Government Regulation Number 10 of 1961. The criminalization policy in Government Regulation 10/1961 expressly specifies that criminal sanctions for violation of the boundaries of a land parcel are expressed with boundary marks according to the provisions set by the Minister of Agrarian Affairs. Errors in physical data and juridical data in land registration will result in the loss of elements of legal certainty of land rights, so that people entitled to the land will be harmed. Errors will also result in misinformation in the National Land Agency as a means of state completeness which consequently also means creating disorderly land administration. The National Land Agency according to Parsons theory contains two main meanings, namely First, it is a unity of several sub-systems of land registration or definition elements in the land registration system that emphasizes its components or elements, Second, it is a bureaucratic procedure in general, namely, to achieve the purpose of bureaucratic definition that emphasizes procedures. Land registration system which explains that the bureaucratic system is the components or subsystems of land registration that interact with each other, where each part can work independently (independent) or together and interconnected to form a unity so that the goals or objectives of the land registration system can be achieved.

The transfer of land rights in the form of sale and purchase must meet several conditions determined by applicable laws and regulations. If the conditions that have been determined are not met, it will have consequences on the legality of buying and

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selling land rights through the sale and purchase of land rights. The terms of sale and purchase of land rights through sale and purchase consist of material conditions and formal conditions. Material requirements are aimed at the subject and object of the right to be traded, where the holder of land rights must have the right and authority to sell land rights, the buyer is a person who qualifies as a subject of land rights and the land to be traded is not disputed. The facts in the field of buying and selling that occurred in Harapan Jaya Village have met the material requirements. The formal requirement in the case of buying and selling land rights is the formality of the sale and purchase transaction. These formalities include the deed that proves the sale and purchase agreement and the official authorized to make the deed. Buying and selling land through deeds under hand due to cost issues, the process of buying and selling land involving Land Deed Making Officials requires a lot of money, where not all communities have the same economic situation. The second factor is the lack of public knowledge about the procedures for buying and selling and maintaining land registration data. Another factor is the absence of communication networks both telephone and internet so that people lack information about land.

This means that the information contained therein has legal force that must be accepted as true as long as and if there is no evidentiary evidence to the contrary. If it turns out that in the land registration there is incorrect data, changes and corrections will be made to the error.

D. CONCLUSION

The official authorized in making deeds is the Land Deed Making Officer. Land Deed Making Officer by making a deed Land Deed Making Officer in areas where there are not enough Land Deed Making Officials. So, if in an area there are two Land Deed Making Officials who are recognized based on laws and regulations but must also see the origin and function of these Officials. The legal consequence of the land sale and purchase agreement carried out before the Land Deed Making Officer is the emergence of an obligation and right between the parties, namely the selling party and the peimbeili as well as the transfer of rights to land that becomes obyek selling beili. The sale of land beili carried out before the Pejabat Peimbuat Deed Land is proven by the deed of sale of beili. The beili sale deed is one of the otheintic deeds. Deingan is issued a certificate in the registration activity so that the rights holder can easily prove his rights. Oleih kareina is a certificate as strong evidence as referred to in Article 19 of the Basic Agrarian Law.

The certificate is issued for the purpose of proving the relevant right holder in accordance with the physical data and juridical data that have been registered in the land book. The issuance of a land title certificate then provides legal certainty and legal protection to prevent legal lawsuit disputes that occur in the future due to parties who feel disadvantaged due to the issuance of a land certificate. The liability of government institutions that issue land certificates that turn out to be problematic can still be held civil and claims for compensation. The public, which by law must be protected as buyers of good faith, apparently does not get that protection. When a district court that derives formal legitimacy from the state executes a supreme court ruling, the public does not accept it. Even non-legal support is obtained both from parliamentary institutions, local governments, and other state bodies such as national commissions engaged in advocating community interests. This is an irony in a country based on law, where there is no trust in existing legal institutions. So that the role of the government must be accompanied by a good bureaucracy so that the procedures as regulated run properly.

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