

Juridical Review Of The Customary Sale And Purchase Of Land In Kalisalak Village, Limpung District, Batang District

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Abstract

A reform intended to ensure legal certainty and improve the quality of evidence is the sale and purchase of land, which was previously sufficient to be completed in the presence of the village head but now needs to be completed in the presence of the PPAT per land regulations. The issue at hand pertains to the proper methods for purchasing and disposing of customary land within Kalisalak village, as well as the challenges that may arise. This study employed an empirical juridical research design with analytical descriptive research criteria. The study's findings indicate that, despite certain barriers to customary land purchasing and selling, the community's continued practice of land transactions based on custom is still permitted as long as the "cash" and "clear" requirements are satisfied. To avoid disputes in the sale and purchase of land, the government must provide clearer regulations for oversight and implementation. Additionally, legal knowledge about these restrictions must be widely distributed. In order to acquire legal clarity regarding land rights, the PTSL program significantly benefits the community and makes obtaining property certificates simple. This research suggests that in order for current legislation to be relevant to current trends, the government should evaluate its customary land regulations

I. Introduction

Since land is the source of all that humans require to survive, it is something with a quality value that is crucial to human existence and is hence essential to its continuation. Because of this, a lot of Indonesians view the land as their mother, just as our own mother gives us life. The August 17, 1945, declaration of Indonesian independence served as the catalyst for the country's political and legal evolution.

Following the nation's declaration of independence on August 18, 1945, the Indonesian government promptly drafted the State Constitution, which serves as the foundation for government operations and the advancement of the nation and state across a range of domains, including the creation of our national legal system.

Legal development in the Indonesian legal state is founded on the source of state legal order, which is the moral ideals that include the psychological climate and national character of the Indonesian people found in Pancasila and The 1945 Constitution, as well as the outlook on life, awareness, and legal ideals. With the enactment of the Basic Agrarian Law precisely fifteen years after Indonesia's independence, legal progress was successfully completed for the first time. Based on customary law, (Law Number 5 of 1960) was enacted on September 24, 1960, and published in the State Gazette 1960-104, TLN No. 2043. The Basic Agrarian Law's Article 5, which states the following, makes this clear:¹

"Agrarian law that applies to earth, water and space is customary law, as long as it does not conflict with national and state interests based on national unity and Indonesian socialism as well as the regulations contained in this Law and other laws and regulations, everything by paying attention to the elements -elements that rely on religious law."

It is evident from reading Article 5 of the Basic Agrarian Law that Customary Law served as the foundation for and was crucial to the creation of the Basic Agrarian Law.²

The agricultural issue calls for specific attention and regulation, which should be put into place as quickly as feasible. "Earth, water, and the natural resources contained therein are controlled by the State and used for the greatest prosperity of the people," the 1945 Constitution's Article 33 paragraph (3) states. You can see how expansive this provision's meaning is from this clause. The Indonesian government can use this clause as a guide when creating new land-related and agricultural legislation and regulations.

"The provisions in Article 33 paragraph (3) are imperative, that is, they contain an order to the state that the earth, water and natural resources contained therein, which are placed under state control, be used to create prosperity for all the Indonesian people. Thus, the goal is state control over land, water and wealth nature contained in it is to realize the greatest possible the great prosperity of the Indonesian people." ³

Land serves a vital purpose because most people still only see it as a place to live and a source of income. Land, one of the fundamental components of state creation, is necessary to the country that supports the state in question and to its life and means of subsistence, particularly in states where agriculture predominates and land use is a need.

Land is a component of the earth's surface, holds significant value in people's lives, and serves as a source of life as well as a place for life and all of its activities. In addition, as a nation, land is a territorial component of state sovereignty. As a result, the Indonesian people view their land as a religious magic that must be properly managed, preserved, and used. Land has played a significant and fascinating role in Indonesian legal development throughout the country's history. This is so because human needs and lives at all societal levels—as people, as members of society, and as a country—are directly impacted by land resources.

In accordance with customary law, the process for transferring land rights is as follows: the person wishing to transfer their land rights must do so in front of the village chief, the local community, and an official who will draft a land deed utilizing the clear, cash, real concept.⁴

A genuine deed (sale and purchase deed) executed before an authorized Land Deed Making Official (PPAT) is required for buying and selling in accordance with the UUPA (Article 37 paragraph 1 PP.24/1997). Since the PP took effect, PPAT has been an excessive official. Government Regulation Number 37 of 1998 (PP.37/1998) concerning PPAT Position Regulations was established, with Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 4 of 1999 (PMNA/KBPN.4/1999) serving as the implementing regulation. This regulation is currently in effect. Number 10/1961 and later developed the regulations in the PP. Number 24/1997. Article 26 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations governs buying and selling. It states that "government regulations and other supporting regulations regulate sale and purchase, exchange, gift, gift, by will and other acts, what is meant by the transfer of ownership rights and their supervision."

Purchasing and selling land is a transaction activity that is typically carried out by the community in Kalisalak Village, Limpung District, Batang Regency. However, behind all of these transaction activities, there are many potential roadblocks or cases that may arise, as there are still a large number of community members who carry out buying and selling in a way that is improper and harmful to other parties, The public is still unaware of the law itself, therefore people carry out selling practices whenever they choose, for instance, using private deeds or purchasing and selling without the presence of an authorized official, in this case PPAT. purchase land without considering current laws. According to the foregoing explanation, attempts are still made, both legally and philosophically, to overcome and offer sanctions—both punitive and non-punitive—to those who create losses in land issues.

2. Research Method

Empirical/non-doctrinal juridical research, or research that looks at and evaluates how laws are used in society, is the kind that was used in this study. This research was conducted in an analytical and descriptive manner, taking into account the goals that needed to be met. This study is merely a factual statement because its scope is restricted to exposing an issue and the state of affairs as they already exist. The participants in this study are all those who engage in the practice of customary land transactions, namely those who do so in Kalisalak village, Limpung District, Batang Regency, either privately or in accordance with customary law. Purposive sampling was used to determine the study's sample. Purposive sampling was used in this study to learn more about the customs surrounding land sales and purchases among the residents of Kalisalak village, Limpung District, Batang Regency. Moreover, the respondents to this study determined the sample that was utilized as the research object after that. One member of the local community and the head of the Kalisalak village office, who had completed a land sale and purchase in accordance with customary law, were among the respondents.

3. Results and Discussion

The customary law governing buying and selling among the people of Kalisalak village, Limpung sub-district, Batang district, states that such transactions may only take place in the presence of the village head and must be made in full, real currency. If the parties are present, the land being sold or purchased, and the agreed-upon price are met, the sale and purchase is still valid despite being governed by Government Regulation Number 10 of 1961, which has been further refined by Government Regulation Number 24 of 1997 concerning Land Registration. According to Government Regulation No. 18 of 2021, Article 97, land certificates, compensation certificates, village certificates, and other similar documents issued by the head of the village or district and intended to provide information about land ownership and control, are only to be used as a guide for land registration. Article 19, Basic Agrarian Law, provides the legal foundation for land registration. This provision's main thrust establishes that the government must oversee and administer *rechtskadaster* land registration across Indonesia, with government laws controlling its execution.

The Kalisalak village government is conducting a Complete Systematic Land Registration Program (PTSL) in order to provide legal certainty over land ownership by its citizens. This initiative is driven by the large number of Kalisalak village residents whose land has not been certified, whose proof of land ownership is still in the form of Letter C, or whose land transfers have been completed without authorization. The majority of land rights that are recorded in Kalisalak village are property rights that are still accompanied by a Letter C proving ownership. The majority of these properties are either inherited through the inheritance system, acquired through customary purchasing and selling, or acquired in the village chief's presence. Some properties are also inherited from parents or siblings. Land ownership rights, Business Use Rights (HGU), Building Use Rights (HGB), Use Rights, and Waqf Land—which are the subjects of land registration—are, in fact, among the land rights that can be asked for certification. However, it is typically a land ownership certificate custom during the methodical land registration process in Kalisalak village.

The Complete Systematic Land Registration (PTSL) program is being implemented in stages, which include counseling and socialization, figuring out the number and location of plots, gathering and processing legal information about land plots, gathering physical information, inspecting the land and making decisions about land rights, publishing legal and physical information, maintaining land rights records, and issuing and delivering land rights certificates. The people who live in Kalisalak Village have been buying and selling land for many generations, and they often do it using a cultural method. Thus far, the villagers of Kalisalak Village have either done land sales and purchases in front of the village chief or according to the traditional method. By merely calling at least two witnesses to the transaction—the village chief, village authorities, and community leaders. Due in large part to a lack of documentation in the form of land certificate ownership, there have not yet been any land-related problems in the community.

The following challenges are frequently encountered throughout Kalisalak Village's traditional land purchase and sale process:

1. The applicant's name does not match the name of the basic ownership or base of land rights to be sold. The land that is being sold is inherited, and the ownership documentation has not been altered. Therefore, it takes time, effort, and money to gather heirs who are entitled to buy and sell land because the SPPT proof that will be used as the basis for buying and selling land is not in the seller's name; rather, it is still in the name of his predecessor and is currently jointly owned by his children and grandchildren on 1 (one) plot of land.

2. In actuality, disagreements about what constitutes customary law vs agricultural law sometimes lead to disputes in society. The lack of clarity surrounding the relationship between community/individual rights to property and the state's right to regulate land serves as another catalyst for conflict.

3. Do not have clear proof of land ownership.

Because there is still a lack of public awareness regarding the function that PPAT plays in land transactions, land deals are frequently completed solely in the presence of the village chief. Owing to the numerous issues that occur when buying and selling customary land, as previously said, a solution that can put an end to ambiguity and clarify the application of customary law in this context is required. Apart from that, the village chief should engage in the following actions to help create legal certainty of land rights, particularly in resolving land-related disputes:

1. Carrying out outreach activities

Inviting community members to register their land while also educating them about the value of land certificates as evidence of legitimate land ownership. The study's findings demonstrate that although the counseling has been implemented, it has not been done so efficiently or according to a plan and is still only done seldom.

2. Providing administrative services in the land sector

In the course of their everyday responsibilities, the village chief and other employees are always available to offer administrative support to any member of the community in any field, including the land sector. For instance, in terms of overseeing the acquisition and sale of land. Counseling is a part of administrative service duties in the land sector. It takes the form of recommendations to make the public aware of the importance of promptly registering their land rights. It can also take the form of maintaining land registration data in the event of a transfer, deletion, encumbrance, etc.

3. Procurement of a Complete Systematic Land Registration Program (PTSL) In

order to obtain land certificates, the community now has more ease and relief thanks to PTSL. The PTSL program is very beneficial to the community and makes it easier for the community to obtain land certificates in order to obtain legal certainty regarding land rights, as there is still a lot of land in Kalisalak Village that has letter C status due to inheritance or private sale and purchase.

4. Hold a certificate for the National Agrarian Operations Project (Prona) Prona is the legalizing of land holdings or the entire land administration

process, encompassing land registration, adjudication, and certificate issuance. The objective of this initiative is to expedite the realization of individuals' fundamental rights so as to acquire legal assurance of property ownership. The Prona Approach and Complete Systematic Land Registration (PTSL) employ distinct methodologies. While data collecting on land getting PRONA certificates is distributed equally among all villages and subdistricts within a district, PTSL is implemented village by village, district by district, and city by city with a consolidated budget in one location.

4. Conclusion

This study concludes with a review of the customs surrounding the purchase and sale of land in Kalisalak Village, Limpung District, Batang Regency. In particular, the practice of purchasing and selling land in Kalisalak Village in accordance with community custom is still practiced because it is a straightforward process with reasonable costs. Additionally, the validity of purchasing and selling land rights in accordance with community custom is maintained as long as the "cash" and "clear" requirements are satisfied. Aside from that, the PTSL program is highly advantageous to the community and gives them a chance to acquire land certificates, which ensure legal clarity about their property rights. Customary land sales and purchases are hampered by things that emerge from its unwritten position as a law and by laws that are not made by the government. In order to prevent coerced decisions and ensure that, in the event of a controversy during implementation, the resolution is contingent upon the parties' good faith. Therefore, in order to avoid disputes while purchasing and selling land, the government must oversee and enforce clearer regulations and raise public awareness of the law.

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