

The Legal Protection for Buyer in Deed of Selling By Using A Substitute Certificate

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Abstract. *This study aims to identify and analyze legal protection for land buyers whose certificates use a substitute certificate in the deed of sale and purchase, know and analyse legal certainty of the existence of a replacement certificate if it is charged with mortgage rights and knowing and analyzing examples of sale and purchase deeds using a replacement certificate. The approach method in this research was a normative juridical approach, the research specification was descriptive analytical. The data required includes primary data taken by the literature study method. The data analysis method used descriptive qualitative analysis method. Based on the research concluded that the legal protection for land buyers whose certificates use a replacement certificate in the deed of sale basically the same as legal protection for ordinary Land Rights Certificates. For parcels of land for which a certificate of replacement of land rights has been issued, the Land Office will cancel by law and withdraw and destroy the old certificates that have been previously issued so that one day it does not cause legal disputes. Legal certainty of the existence of a replacement certificate if a mortgage is charged is from: UUPA and Government Regulation Number 24 of 1997 concerning Land Registration in Article 32 paragraph (1) The second certificate (substitute) is a certificate of land rights issued by the Land Office as a substitute for the lost first certificate of the same parcel of land, in this case the subject of the rights the same and the object is also the same. So that the replacement certificate can also be used as collateral for one's debt to financial institutions, both banks and non-banks. The certificate is used as collateral from a*

financial institution, both bank and non-bank, then the certificate is burdened with mortgage rights, so that because of the legal guarantee of ownership of the land, someone can receive it as securities.

Keywords: Certificate; Protection; Purchase; Replacement; Sale.

1. Introduction

Indonesia is a State of Law as stated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia which reads "The State of Indonesia is a State of Law". As a state of law, of course, all actions in the life of the nation and state must be regulated by law¹. Law as a social institution has an important role in society² to create peace, justice and security as well as regulate all human actions that are prohibited or ordered. Law according to experts is a rule formed by the government (law making institution) as the implementation of the sovereignty that has been given by the people (sovereignty) which forces it to be obeyed (imperative) because there is a threat of sanctions if violated.³

Law enforcement that run effectively will bring about social change in accordance with what is expected by lawmakers. Talking about law enforcement issues cannot be separated from the notion of the legal system itself, which always includes three components that are inseparable from one another, namely structural components, substance, and culture. So that in order to enforce the law to the fullest, the three components must always be considered. Meanwhile, the notion of law enforcement is a process to make legal wishes come true. What are referred to as legal desires here are none other than the thoughts of the law-making body formulated in the legal regulations. The formulation of the mind of lawmakers as outlined in the rule of law will also determine how the law is enforced run. In reality, the law enforcement process culminates in its implementation by law enforcement officials themselves. Legal certainty is a legal protection according to law against arbitrary actions, which means that a person will be able to obtain something that is expected in an event certain circumstances. People expect legal certainty, because with legal

¹ Agrisal Ruslan, Rifan, and Umar Ma'ruf, Community Legal Awareness in the Sale and Purchase of Land with Ppat Deeds in Tinanggea District, South Konawe Regency, Southeast Sulawesi, Vol. 4, No. 3, 2017, p. 428. <http://jurnal.unissula.ac.id/index.php/akta/article/viewFile/1817/1366>. Accessed October 15, 2021, 11:31 am

² Sukarmi, S., & Victoria, Argo. (2018). Cash Waqf in Sustaining of Indonesian Society "In Legal & Economic Perspective". *AL-ITQAN: JOURNAL OF ISLAMIC SCIENCES AND COMPARATIVE STUDIES*, IRKHS-IIUM, Malaysia, 2(1), 83–97. <https://doi.org/10.31436/al-itqan.v2i1.43>

³John Austin, 1998, *The Province of Jurisprudence Determined* Edited by David Campbell and Philip Thomas, London: Routledge Taylor & Francis Group.p. xii.

certainty, people will be more orderly in doing things. The law is in charge of creating legal certainty because it aims to order society.⁴

Implementing a law is not merely textual legislation, but in carrying out the law must be with determination, empathy, dedication, commitment to the suffering of the nation to dare to find other ways to prosper the people in accordance with what has been mandated by the 1945 Constitution. Progressive law starts from a basic assumption, law is an institution that aims to deliver humans to a just, prosperous life and make humans happy. The law does not reflect the law as an absolute and final institution, but is determined by its ability to serve humans.⁵ State control is to protect the prosperity of the people in relation to the use of the earth, water and the wealth contained therein. As far as land is concerned, a national policy in the field of land is made which is intended to achieve the goal of people's prosperity, including in the form of redistribution of land ownership and restrictions on ownership of agricultural land, so that land control or ownership is not concentrated in a certain group of people⁶.

The Republic of Indonesia as an agrarian legal state, where land plays an important role in development. The land issue is a vital problem in the implementation of development for the Indonesian nation. Therefore a system of land law politics is very necessary. Land certificates are strong evidence for land rights holders. Land certificates provide certainty of legal protection for the holder. One of the problems for certificate owners is what if their certificate is damaged or lost. Government Regulation Number 24 of 1997 concerning Land Registration provides a way out for the certificate holder, namely the existence of a replacement certificate. So that the holder of the land rights still has legal certainty and protection for their land.⁷To guarantee legal certainty and protection for holders of land rights, the Government provides a new institution that was previously unknown in customary law, namely the registration institution. Land registration is very useful for holders of land rights, especially to

⁴Muhammad, Rusli, 2013 *Lembaga Pengadilan Indonesia Beserta Putusan Kontroversial*. UII Press, Yogyakarta. p.17.

⁵Rahardjo, Satjipto Rahardjo, 2009. *Hukum Progresif Sebuah Sintesa Hukum Indonesia*, Yogyakarta: Genta Publishing.p. 1.

⁶ Ilham and Djauhari, "Application for Ownership Derived from State Land at the Land Office of Semarang City", Vol. 4, Number 3, p. 360, September 2017, url:<http://jurnal.unissula.ac.id/index.php/akta/article/download/1808/1357>. Accessed On October 16, 2021, Time: 22:58

⁷ [https://www.ndaru.net/wp-content/uploads/peraturan-government-number-24-tahun-1997-ttg-pen Listan-tanah.pdf](https://www.ndaru.net/wp-content/uploads/peraturan-government-number-24-tahun-1997-ttg-pen-Listan-tanah.pdf) accessed on June 3, 2021, at 12:15.

obtain proof of ownership of rights by issuing a certificate of land rights which serves as a strong evidence⁸.

In this regard, over time the ownership of land rights holders to land certificates often results⁹ in problems regarding their certificates, even though land certificates are strong evidence of ownership of land rights. Such problems are for example the destruction of certificates of land rights caused by accidental damage due to natural disasters or damage because the paper is worn out or the certificate is torn due to the carelessness of the holder, so that the certificate cannot be used or read. In addition to the destruction of the certificate, another problem faced by the certificate holder is the missing whose whereabouts are unknown, so that it is very detrimental to the holder of land rights. The issuance of a replacement certificate due to loss is not much different from the issuance of a certificate of land rights or the issuance of a replacement certificate due to damage. However, in the issuance of a replacement certificate due to loss, research must be carried out first on the juridical data regarding the plot of land and announcements in the mass media.

2. Research Methods

The approach method that will be used in this research is the normative juridical approach. This research specification on descriptive analysis. The data collection method was by using literature study. The data analysis used in this research was qualitative data analysis.

3. Results and Discussion

3.1 Legal Protection for Land Buyers Whose Certificates Use Substitute Certificates in the Sale and Purchase Deed

A land certificate is a document that proves a person's ownership of a land or evidence for the holder of a legal right to the land. A land certificate, which is an important document, must be stored properly and carefully, just like any other securities. Although the land certificate has been stored properly, something unexpected happens so that the original land certificate is lost, it does not mean the land rights are also lost because basically the original land certificate held by

⁸ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). Code of Ethics and Position of Notary in Indonesia. *Sultan Agung Notary Law Review* 2 (4), 397-407, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536>

⁹ Karuni Nuranidhira, Irdha and Winanto, Juridical Analysis of the Legal Consequences of Making a Land Sale and Purchase Deed that is not in accordance with the Procedure for Making a Land Deed, *KIMU* 4, 2020, p. 756. [urls:http://jurnal.unissula.ac.id/index.php/akta/article/download/2532/1894](http://jurnal.unissula.ac.id/index.php/akta/article/download/2532/1894). Accessed on October 15, 2021, at 12:22

the owner is only a copy of the land book stored in the Land Office or Agency Office. National Land Agency (BPN) in the area where the land is located. A person whose land certificate is lost, then as the holder of the land rights can submit an application to the Land Office or BPN Office which is in charge of the land to issue a replacement certificate. The management of the lost land certificate is carried out at the BPN Office which will issue a replacement certificate if all requirements and procedures are met¹⁰.

Another problem is related to the loss of certificates of land rights, for example the destruction of certificates of land rights caused by accidental damage due to natural disasters or damage, because the paper is worn out or the certificate is torn due to the carelessness of the holder, so that the certificate cannot be used or read. In addition to the destruction of the certificate, another problem faced by the certificate holder is the missing whose whereabouts are unknown, so that it is very detrimental to the holder of land rights. Government Regulation No. 24/1997 regulates the issuance of a replacement certificate, which essentially can be issued by the Land Office at the request of an interested party, if the certificate of land rights is damaged, lost and is old blank. In addition to government regulation No. 24/1997, the issuance of a replacement certificate is also regulated in government regulation No. 3/1997 regarding the provisions for implementing government regulation No. 24/1997. The definition and function of a replacement certificate is basically not much different from a land rights certificate, that the certificate has a function as strong evidence, as stated in Article 19 paragraph 2 letter c of the UUPA. Therefore, anyone can easily prove himself/herself as a holder of land rights if his/her name is clearly stated in the certificate. He can then prove the conditions of the land, for example its area, boundaries, or everything related to the plot of land in question. And if in the future there is a lawsuit in court regarding the right of ownership/control over land, then all the information contained in the certificate of land rights has strong evidentiary power and therefore the judge must accept as true statements, as long as there is no other evidence who denies it or proves otherwise. But if it turns out that there is an error in it, then changes/corrections are made as necessary.

A replacement certificate is an authentic document that certifies the validity of proof of ownership of land. A replacement certificate is a valid proof of ownership so that buying and selling using a replacement certificate is also legally valid. There is also no need to register a replacement certificate because the replacement certificate is always automatically registered because the BPN is the one who issues the replacement certificate. Based on the results of the interview, it can be seen that if a certificate of land rights is recovered, then the valid one that can be used as evidence is the replacement certificate or the most

¹⁰ Op.cit.

recently issued. This indicates an acknowledgment from BPN that the replacement certificate issued by BPN is a substitute for the original or original certificate.

Based on the results of interviews with notaries, it is known that in receiving a land certificate as collateral from an individual, it is better to have the land certificate checked first. By checking, it will be known whether the certificate has been declared lost and a replacement certificate has been issued. In addition, there will be information on the BPN such as information on land block, information that is not guaranteed or encumbered with mortgage rights. In addition there is also a history of the land. Notaries also need to put more effort into checking because for incomplete data on regional BPNs, data from the land must be coordinated with Pusdatin.

Lost certificates can be requested for a replacement certificate to be issued. Loss of certificates does not result in the loss of land rights, because basically the original land certificates that we have are only a copy of the land book which is kept at the local Land Office where the land is located. So, if the land certificate is lost, then we can apply to the land office to issue a replacement certificate or also known as the second certificate. The application for replacement of a lost certificate must be accompanied by a statement under oath from the person concerned before the Head of the Land Office or a designated official regarding the loss of the certificate of right in question.

However, in the case of the issuance of a replacement certificate due to loss, the person applying for a replacement certificate is the person who removes the certificate. Theoretically, legal protection for all Indonesians requires an important and main task for the state to provide protection to the nation and its territory, including holders of land rights certificates and/or owners of land rights through existing means of power and strength, both in the form of *hamkamtibnas* and in the form of in the form of legal regulations, both concerning externally and spiritually, both private law and public law as well as regarding material and spiritual life.

As regulated in the Basic Agrarian Law Article 19 paragraph (2) letter c, namely the provision of letters of proof of rights, which act as strong evidence and Government Regulation Number 24 of 1997 Article 1 number 20 that certificates are letters of proof of rights and Article 32 paragraph (1), namely that a certificate is a letter of proof of rights that acts as a strong means of proof. So with the existence of these laws and regulations, land rights certificate holders clearly have permanent legal protection, because in the ownership of a land right there will be evidence as a right holder, namely a certificate, as well as a

substitute certificate holder in which the replacement certificate has a certificate the same function as the certificate of land rights.¹¹

So that with the articles of Act No. 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 24 of 1997 concerning Land Registration, the holders of land rights certificates and holders of certificates of replacement of land rights clearly have protection or protection permanent legal certainty, because in the ownership of a land right there will be a letter of proof of rights in the form of a certificate, as well as the holder of a certificate of replacement for land rights. So the definition of legal protection is the protection provided by the government to land rights certificate holders based on the Basic Agrarian Law and Government Regulations. Number 24 of 1997. While what is meant by legal certainty is certainty that is addressed to the holders of the rights concerned, with the intention that they obtain certainty about their rights.

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 regarding the subject, namely what the rights are, who owns it, whether or not there is a burden on it, and certainty about the object, namely its location, boundaries and extent and the presence or absence of buildings/plants on it. Legal certainty regarding land rights as aspired by the UUPA includes 3 things, namely: certainty regarding the object of land rights, certainty regarding the subject of rights and certainty regarding the status of rights. A certificate is a letter of proof of rights that acts as a strong evidence. Certificates are issued so that land rights holders can easily prove their rights, a. Outer cover; b. Inner cover; c. A copy of the land book; and D. Measurement letter.¹²

Issuance of certificates and given to those who are entitled, with the aim that rights holders can easily prove their land ownership. The certificate functions as a strong evidence tool regarding physical data (object: location, boundaries, area and presence/absence of buildings or plants on it) and juridical data (its rights, rights holders, presence/absence of burdens on it) contained therein as long as the physical data and juridical data are in accordance with the data contained in the Letter of Measurement and the Land Book of the right in question. It is said to be true data, as long as there is no other evidence that proves its untruth and does not need to be added with additional evidence. The replacement certificate is issued at the request of the applicant/registrant. The issuance of a replacement certificate is not much different from the issuance of the first certificate. That the applicant must complete the requirements for the issuance

¹¹Dalimunthe, Chadidjah, 2008. *Politik Hukum Agraria Nasional Terhadap Hak-Hak Atas Tanah*, Medan: Yayasan Pencerahan Mandailing. p.41

¹² Ibid.

of a replacement certificate, as regulated in Government Regulation Number 24 of 1997 and Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. In addition, there is an oath taking on the applicant for a replacement certificate. The oath is in the event that in the application for a substitute certificate, the applicant is authorized to someone. The power of attorney cannot take the oath.

If the data is accepted as correct, then the interests of the land owner are guaranteed, meaning that apart from knowing the status of the land parcel, who owns it, what the rights are, how wide it is, what it is used for and so on, land registration also serves to protect the owner. So that for land rights holders who have issued land rights certificates, they will get legal protection and no additional evidence is needed. This is in accordance with the provisions of Article 32 paragraph (2) PP No. 24/1997. Guarantees of legal certainty or protection for owners of land rights are closely related to the publication system adopted, namely the positive publication system or negative publication system.

In the negative publicity system, the positive tendency is a balanced system, which provides protection to the rights holder and to third parties. This is indicated by the provision of proof of registration of land rights in the form of a certificate which is proof of the basis of ownership rights over the land. Where with the certificate, the government guarantees that the holder of the right to the land is protected by the State by making a general register containing juridical data and physical data on land. Where the certificate as proof of land ownership rights is an authentic deed and has perfect evidentiary power. This means that as long as the falsity of the certificate cannot be proven within a period of 5 years, then the certificate is valid and becomes a guarantee of legal certainty and protection for the holder of the land rights. So in this system the guarantee of legal certainty still takes into account the provision that the right holder can still defend his right to a claim from another party if the claim is not proven, and vice versa for the party who is suing can have rights to the land as long as the claim is grounded and the court decided that the land was proven to belong to the plaintiff. From the foregoing, it is easily understood that the guarantee of legal certainty for the land rights can be given to parties decided by the court as well as at the land office. Apart from the publication system mentioned above.

In terms of legal protection for a Substitute Certificate, it is basically the same as the legal protection for an ordinary Land Rights Certificate. For parcels of land for which a certificate of replacement of land rights has been issued, the Land Office will cancel by law and withdraw and destroy the old certificates that have been

previously issued so that one day it does not cause legal disputes. For example, misuse of old certificates or fraud by the holder of the old certificate, which explains that the old certificate is lost, turns out to be used as collateral for a debt to someone. This will result in third parties taking legal actions (selling and buying) against the replacement certificate.¹³

3.2 Legal Certainty of the Existence of a Substitute Certificate If Encumbered by Mortgage

Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. Although legal certainty is closely related to justice, law is not synonymous with justice. Law is general, binding on everyone, is generalizing, while justice is subjective, individualistic, and does not generalize. A replacement certificate is a land certificate that is legally recognized, so it can be treated like a real land certificate.¹⁴

The original certificate is basically issued by the National Land Agency for the first time with a replacement certificate for land rights, has the same legal force, because the certificate that is declared lost will be canceled, this is regulated in the UUPA and Government Regulation Number 24 of 1997 concerning Land registration in Article 32 paragraph (1), this is done to prevent the possibility of misuse of the previous land certificate by other parties which can harm the right holder if the land certificate is actually not lost or damaged.

A land certificate is a proof of land rights owned by a person as proof of his ownership of the land. The proof of ownership is in the certificate written the name of the owner and the location of the land. In addition to the name and location of the land in the certificate, the boundaries, area, and measurement drawings are also listed. Certificates as evidence of land rights have a function as strong evidence of ownership of a plot of land.¹⁵The National Land Agency as the party appointed by the state to issue certificates administers the certification process. The function of the certificate as a strong evidence for the ownership of a piece of land, the certificate can be used as evidence if there is a dispute over ownership and boundaries before the court. Certificate as evidence of land, the certificate can be used as a strong legal guarantee for someone over the

¹³Sapi'i. (2016). Pemilihan Pembiayaan KPR (Kredit Pemilikan Rumah) Dengan Akad Murabahah (Studi Kasus Di Bank Muamalat Tbk Cabang Pembantu Samarinda Seberang), *Al-Tijary Jurnal Ekonomi dan Bisnis Islam*, Vol. 2 (No. 1)

¹⁴Endang Swi Widiyani, Notary, PPAT Notary Office Endang Dwi Widiyani, SH, M.Kn, interview, November 7, 2021, 10:00.

¹⁵Yusuf, Rifki. (2018). Peran Notaris Dalam Penggunaan Akta SKMHT Yang Tidak Diikuti APHT Terhadap Debitor Wanprestasi Terkait Pemberian Fasilitas Kredit Pemilikan Rumah Subsidi (Studi Kasus di Bank Tabungan Negara Pekalongan), *Jurnal Akta*, Vol 5, (No. 1)

ownership of a plot of land and if someone buys land that has been certified, the deed of sale and purchase is carried out in front of the Land Deed Making Officer (PPAT), then change the name of the certificate at Land Office.

Based on these results, it can be seen that legal certainty of the existence of a replacement certificate if a mortgage is charged UUPA and Government Regulation Number 24 of 1997 concerning Land Registration in Article 32 paragraph (1) The second certificate (substitute) is a certificate of land rights issued by the Land Office as a substitute for the lost first certificate of the same parcel of land, in this case the subject of the rights the same and the object is also the same. So that the replacement certificate can also be used as collateral for one's debt to financial institutions, both banks and non-banks. The certificate is used as collateral from a financial institution, both bank and non-bank, then the certificate is burdened with mortgage rights, so that because of the legal guarantee of ownership of the land, someone can receive it as securities.

4. Conclusion

In terms of legal protection for land buyers whose certificates use a replacement certificate in the deed of sale basically the same as legal protection for ordinary Land Rights Certificates. For parcels of land for which a certificate of replacement of land rights has been issued, the Land Office will cancel by law and withdraw and destroy the old certificates that have been previously issued so that one day it does not cause legal disputes. For example, misuse of old certificates or fraud by the holder of the old certificate, which explains that the old certificate is lost, turns out to be used as collateral for a debt to someone. The existence of cancellation by law for the old certificate shows that there is legal protection for land buyers who carry out legal actions (selling and buying) against the replacement certificate. And the certificate holder should have a photocopy of the certificate or currently it can be scanned into a digital document and stored in several places. This means that if the original certificate is lost or damaged, the certificate holder will find it easier to apply for a replacement certificate. Whereas the consequences of a replacement certificate, if the old certificate reappears, the land office will announce the consequences of the certificate through the mass media, the land office, the village where the land is located and through electronic media. This is intended so that the public will be more aware of the issuance of the replacement certificate and that the old certificate will no longer be valid because it will be withdrawn and destroyed. To avoid misuse of old certificates and fraud from substitute certificate applicants.

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