

Juridical Analysis of the Sale and Purchase of Uncertified Plots in the Conception of Legal Certainty

Wahyu Hanggono^{*)}, Taufan Fajar Riyanto^{**)} & R. Sugiharto^{***)}

^{*)} Faculty of Law, Sultan Agung Islamic University (UNISSULA), E-mail: wahyu13541@gmail.com

^{**)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: taufanfajar@unissula.ac.id

^{***)} Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), E-mail: sugiharto@unissula.ac.id

Abstract. *This study aims to examine the juridical analysis of the sale and purchase of uncertified plots of land in Palangkaraya City in the conception of legal certainty, as well as to examine the legal responsibility for the parties to the sale and purchase of uncertified plots of land in Palangkaraya City. This research method uses an empirical juridical approach. The research specifications used are library research and field research. The data sources used are primary data obtained from interviews. Based on the results of the study, it can be concluded: 1) that the sale and purchase of uncertified plots in Palangkaraya City still causes many legal problems, especially regarding land ownership disputes, because the proof of ownership of the plot of land in the form of a Land Declaration Letter (SPT) and proof of sale and purchase in the form of a Land Transfer Statement (SPPT) still does not have legal force. This proves that Gustav Radbruch's theory is still not working well; 2) The legal liability carried out by the seller of the land plot is in principle in accordance with the theory of legal responsibility put forward by Hans Kelsen which states that a person is legally responsible for a certain act or that he bears legal responsibility when committing an act that is contrary to the law.*

Keywords: Land; Plot; Purchase; Sale; Uncertified.

1. Introduction

Land is one type of registered object, which can be proven by a registration mark or certificate in the name of the owner.¹ Therefore, how important it is to have a land title certificate. Because actually buying land is buying rights to the land. When a person does not have authentic proof of land ownership, then he is only referred to as a land lord, not a land owner. Owning the land does not necessarily mean owning the land. Basically, buying and selling new land is said to be a perfect legal act if the seller of the land is the owner of the land concerned². The transfer of land rights as regulated in Article 26 paragraph (1) of the LoGA explains that:

“... Buying and selling, exchanging, giving, granting in a will, giving according to custom and other acts intended to transfer property rights and their supervision shall be regulated by a Government Regulation.”

The provisions of Article 26 paragraph (1) of the BAL above do not explicitly regulate the plots of land so that they still do not provide legal certainty to the parties who make the sale and purchase. It is feared that this will create uncertainty and potentially lead to legal violations.

Buying and selling according to Article 1457 of the Civil Code (hereinafter referred to as the Civil Code) is defined as "Buying and selling is an agreement, whereby one party binds himself to surrender an object and the other party pays the promised price". When viewed from the provisions of Article 1458 of the Civil Code, the sale and purchase of land is considered to have occurred between the two parties,³ as soon as the people reach an agreement on the object of the land and its price, even though the land has not been handed over and the price has not been paid.

Sale and purchase is an agreement that binds the seller by promising to deliver an item (zaak), and another party acting as a buyer who binds himself by promising to pay the price.⁴ The term sale and purchase of land rights is only mentioned in Article 26 of the UUPA, which concerns the sale and purchase of

¹Djaja S. Meliala, (2015). *Perkembangan Hukum Perdata Tentang Benda dan Hukum Perikatan*, Nuansa Aulia, Bandung.p. 5.

²Samun Ismaya, (2011). *Pengantar Hukum Agraria*, Graha ilmu, Yogyakarta. Adrian Sutedi, 2006. *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Sinar Grafika, Jakarta, p. 79.

³Caesar Nil Atlantic, (2020). Pembatasan Kebebasan Berkontrak Dalam Perjanjian Pendahuluan Jual Beli Rumah, <http://journal.ipts.ac.id/index.php/ED/article/view/1508>, Jurnal Education and Development, Vol. 8 No.1 Edition February 2020. (Accessed on 26 April 2022).

⁴Triyana Syahfitri & Wandj, (2018). Tinjauan Yuridis Jual Beli Menurut Hukum Perdata, <https://www.ejournal.unisi.ac.id/index.php/das-sollen/article/view/971/648>, Jurnal Hukum Das Sollen. (Accessed on 26 May 2022).

property rights over land. The provisions contained in other articles do not contain words that mention buying and selling, but are mentioned as being transferred. The definition of transferred indicates a deliberate legal act to transfer land rights to other parties through buying and selling, grants, exchange and testamentary grants. So, even though the article only mentions being transferred, one of them is a legal act of transferring land rights due to buying and selling.⁵

The business of buying and selling land that has not been certified in Palangkaraya City is mostly carried out by investors by arranging plots of land to be used as plots of various sizes. Plots are basically plots of land that are quite large in size and then divided into several smaller plots of land.

The practice of buying and selling land that has not been certified in the form of plots of land in Palangkaraya City has been carried out for a long time, the peak was in 2017 - 2020 when Palangkaraya City was rumored to be the State Capital of the Republic of Indonesia. The land certificate that is used as the basis for the sale and purchase of this plot of land is in the form of a Land Certificate (hereinafter referred to as SKT) or a Land Declaration Letter (hereinafter referred to as SPT) which is made by the owner of the land plot himself, known and signed by the Head of the Neighborhood Association and/or The village head where the plot of land is located. The sale and purchase agreement between the seller and the buyer is an underhand sale and purchase agreement, where the Seller is obliged to make a Land Transfer Statement (hereinafter referred to as SPPT) to the buyer with terms and conditions according to the agreement of the parties. The SPPT made by the Seller must be signed by the seller as the one who handed over the land, and by the buyer as the recipient of the land, then it is known and/or justified by the Head of the Neighborhood Association and the Village Head where the land plot is located.

The transfer of land rights through sale and purchase with an underhand deed as happened in the city of Palangkaraya above, clearly cannot be used as a basis for registering the transfer of rights, unless an authentic agreement deed is made before the authorized official or in casu PPAT as regulated in Article 37 paragraph (1) PP No. 24 of 1997 concerning Land Registration which reads:

"The transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transferring rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed made by PPAT which authorized according to the applicable laws and regulations".

⁵Adrian Sutedi, (2006). *Peralihan Hak Atas Tanah Dan Pendaftarannya*, Sinar Grafika, Jakarta, p. 76.

The implementation of the sale and purchase agreement for land plots that have not been certified still refers to the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement. Therefore, it is very important to conduct a study of the practice of buying and selling land parcels that have not been certified as this is very important because they have the potential to violate the laws and regulations.

This study aims to analyze the sale and purchase of land plots that have not been certified in Palangkaraya City in the conception of legal certainty, as well as analyze the legal responsibility for the parties to the sale and purchase of land parcels that have not been certified in Palangkaraya City.

2. Research Methods

The approach used in this research is a sociological juridical approach. While the research specifications in writing this thesis are in the form of descriptive analytical research, which describes the problems that become the object of research based on the data obtained at the time this research was carried out. The data collection method used in this research is to find the necessary data from the actual research object through interview and documentation steps. Meanwhile, the data analysis method used is data obtained from field studies and document studies, which are basically level data that are analyzed descriptively and qualitatively.

3. Results and Discussion

3.1. Juridical Analysis of the Sale and Purchase of Uncertified Plots in Palangkaraya City in the Conception of Legal Certainty

Since the discourse of moving the State Capital from DKI Jakarta to Palangkaraya was reopened by President Joko Widodo, many people from outside the Central Kalimantan Province have purchased land in the Palangkaraya City area with various interests. This makes the practice of buying and selling land in Palangkaraya City higher, both buying and selling land that has been certified and buying and selling land plots that have not been certified.

The head of the National Land Agency of Palangkaraya City, Budhy Sutrisno, said that the practice of buying and selling land that had not been certified in the form of plots of land in Palangkaraya City had been carried out for a long time,

peaking in 2017 - 2020 when Palangkaraya City was rumored to be the State Capital of the Republic of Indonesia.⁶

Budhy Sutrisno further explained that the land certificate which is used as the basis for the sale and purchase of this plot of land is in the form of a Land Certificate (SKT) or Land Declaration Letter (SPT) which is made by the owner of the land plot himself, known and signed by the Head of the Neighborhood Association and /or the Village Head where the plot of land is located. The sale and purchase agreement between the seller and the buyer is an underhand sale and purchase agreement, where the seller is obliged to make a Land Transfer Statement (SPPT) to the buyer with terms and conditions according to the agreement of the parties. This SPPT made by the seller must be signed by the seller as the one who handed over the land, and by the buyer as the one who received the land, then known and/or justified by the Head of the Neighborhood Association and the Village Head where the land plot is located. The following is an example of a case of buying and selling land plots that have not been certified that occurred in Palangkaraya City.

3.2. Sale and Purchase of Uncertified Plots Between Frans Ever Kilat and Khanis Yovani

The practice of buying and selling plots of land that has not been certified through an underhand agreement carries a very high risk of legal problems, as was done by one of the residents of Palangkaraya City, namely Mr. Frans Ever Kilat who practiced buying and selling uncertified plots of land located on Jalan Perintis, Panarung Village, Pahandut District, Palangkaraya City. The following information was conveyed by Frans Ever Kilat to the author, namely:⁷

“In Palangkaraya City, there are many lands that are still not certified, including the land that I own is also not certified. However, I can still sell this land by making a plot of land with an area of 200 square meters or 400 square meters. As for the land certificate that I gave to the Buyer, it was in the form of a Declaration Letter of Transfer of Land (SPPT) which was a solution to my land certificate in the form of a Land Declaration Letter (SPT)”.

The land owned by Frans Ever Kilat on Jalan Perintis is 500 meters long and 300 meters wide (150,000 square meters or 15 hectares). Then from the total land area, on December 23, 2019, Frans Ever Kilat sold 350 lots to Mr. Khanis Yovani, the rest were also sold to other residents in January - July 2020.

⁶Interview with Budhy Sutrisno, Head of the Land Agency of Palangkaraya City, on December 14, 2021, 10.18 WIB.

⁷Interview with Frans Ever Kilat, Land Plot Seller in Palangkaraya City, on December 15, 2021, at 14:37 WIB.

The sale and purchase of land plots carried out by Frans Ever Kilat with Khanis Yovani is only bound in a private land sale and purchase agreement signed by the parties and witnesses, then known and/or justified by the Head of the Neighborhood Association and the Head Village of the place where the land is located. Therefore, in September 2020 problems began to arise, namely when Khanis Yovani, one of the buyers of the land plot, carried out cleaning activities on the land he bought. Several people came from the community who stopped the land clearing activity on the grounds that the land was theirs on the basis of ownership, namely the Land Declaration Letter (SPT) which was made in 2013, which was known and signed by Village Panarung, Palangkaraya City.

Any disturbance or objection from another party claiming to be the owner of the land made Khanis Yovani as the buyer of the land plot to file an objection to Frans Ever Kilat and request that the problem be resolved immediately. This incident by Khanis Yovani has also made a Public Complaint (Dumas) to the Central Kalimantan Police for alleged criminal acts of fraud, alleged criminal acts of forging letters, and alleged criminal acts in the housing and settlement sector (Article 145 paragraph 2 of Act No. 1 of 2011 concerning Housing and Settlements), where with the complaint from Khanis Yovani, the Central Kalimantan Police immediately carried out an investigation.

Based on the results of an investigation conducted by Sub-Directorate IV Harda at the Central Kalimantan Police, it is known that the land owned by Frans Ever Kilat with a length of 500 meters and a width of 300 meters (15 hectares) was obtained by buying part of the land owned by Mr. Amat Tuyan whose rights The ownership is in the form of a Declaration Letter for Working on Land dated October 18, 1986 made on seal paper, which is known and signed by the Pahandut head village and Pahandut Head District. In the Statement of Working on Land belonging to Mr. Amat Tuyan, it is explained that the origin of the land is state land, and the size or area of the land being cultivated is 650 meters long and 400 meters wide (26 hectares). The sale and purchase of land between Frans Ever Kilat and Amat Tuyan was made privately on April 26, 2011 and the sale and purchase receipt is also attached as proof of receipt of the money. Before reselling the land to the wider community, in 2019 Frans Ever Kilat cut plots of land in the form of plots using heavy equipment in the form of excavators which aims to form plots of land that are ready to be built so as to attract public interest in buying. Based on the results of the investigation, Sub-Directorate IV Harda at the Central Kalimantan Regional Police stated that the elements of the alleged fraud crime committed by Frans Ever Kilat were not fulfilled. Similarly, regarding the alleged violation of Article 145 paragraph (2) of Act No. 1 of 2011 concerning Housing and Settlement Areas, which states that individuals are prohibited from building a ready-to-build environment, in fact Frans Ever Kilat is not proven to have a housing development permit on the plot of land he sells.

Thus, the elements of a criminal act as referred to in Article 145 paragraph (2) of Act No. 1 of 2011 concerning Housing and Settlement Areas are also not fulfilled. Therefore, Sub-Directorate IV Harda at the Central Kalimantan Police recommends that the issue of buying and selling land plots between Frans Ever Kilat and Khanis Yovani can be settled in a civil manner, either through deliberation, mediation, or through the Palangkaraya District Court.

3.1. Sale and Purchase of Land Plots Not Certified By PT. Graha Cipta Nugraha Kencana

PT. Graha Cipta Nugraha Kencana is a company engaged in the construction of housing units in Palangkaraya City. The business activities carried out are building ready-to-occupy houses of various types and sizes according to consumer desires, and also providing vacant land in the form of lots for consumers who are interested in buying land. The location of housing development carried out by PT. Graha Cipta Nugraha Kencana is located on Jalan Kecipir Ujung through Jalan Marina Permai, which administratively belongs to 2 (two) village areas, namely Panarung Village and Menteng Village.

Location of housing development PT. Graha Cipta Nugraha Kencana, which is located on Jalan Kecipir Ujung, has an area of 6.70 hectares which was obtained in mid-2018 from a resident of the Palangkaraya community through an underhand sale and purchase with a title in the form of a Land Declaration Letter (SPT).⁸

Not all of the land with an area of 6.70 hectares is built for housing because there are quite a lot of interest in land plots in Palangkaraya. So that of the available 6.70 hectares, PT Graha Cipta Nugraha Kencana only allocates 4.35 hectares for housing development, while the remaining 2.35 hectares is allocated for sale by plot. Therefore, a Land Declaration Letter (SPT) whose status is upgraded to a Building Use Rights Certificate (SHGB) is only land used for housing construction, while land allocated for sale by plot is not upgraded.⁹

Initially, the business activities carried out by PT Graha Cipta Nugraha Kencana did not encounter any problems. But then at the end of 2020 problems began to emerge, namely especially regarding the sale and purchase of land plots that he did. When most of the buyers of the land plots began to manage the increase in the status of land rights from a Land Declaration Letter (SPT) to a Certificate of Ownership (SHM), it turned out that at the Palangkaraya City Land Office there

⁸Results of Interview with Feisal Dwi Tyas, Project Manager of PT. Graha Cipta Nugraha Kencana, on February 12, 2022, at 09.35 WIB.

⁹Results of Interview with Jumadi, Legal PT. Graha Cipta Nugraha Kencana, on February 23, 2022, at 15.20 WIB.

were blocks from several Palangkaraya residents who claimed to be the owners of the land. the plot of land. So with this problem, the National Land Agency of Palangkaraya City recommends that the problem be resolved first through deliberation or mediation.

Efforts to deliberation and mediation have been carried out several times by the parties, both at the village level and at the sub-district level. However, these efforts have not yet reached an agreement between the parties.

3.2. Juridical Analysis of the Sale and Purchase of Land Plots Not yet Certified in the Conception of Legal Certainty

The validity of the sale and purchase of land when viewed from the law or government regulations, the sale and purchase of land which is considered valid, namely the sale and purchase of land is carried out in the presence of the official making the land deed or buying and selling with an authentic deed legalized by the authorized official.¹⁰This is in accordance with PP No. 24 of 1997 concerning Land Registration.

Article 37 point 1 states that the transfer of land rights and ownership rights to flat units through buying and selling, exchanging, grants of income in the company and other legal acts of transferring rights. Except the transfer of rights through auction can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations. Therefore, people should buy and sell with ownership rights in the form of certificates and buying and selling is done through an authentic deed or a deed legalized by an authorized official so that buying and selling has perfect evidentiary power for the realization of legal certainty.

Based on the results of the author's research in Palangkaraya City, that the community includes people who still use the applicable Dayak customary law rules. This can be seen from the way of life of the people who still carry out the practice of buying and selling plots of land that have not been certified and the basis of their rights is still in the form of a Land Declaration Letter (SPT), which later as evidence that a sale and purchase has taken place between the seller and the buyer is only made a Declaration Letter of Handover of Land. (SPPT) whose contents explain that the Seller is the person who handed over a piece of land to the Buyer as the recipient of the parcel of land. This Land Sector Transfer Statement (SPPT) is made under the hand signed jointly by the seller and the

¹⁰Hartika Sari Christiany Umboh, 2019. Tinjauan Yuridis Terhadap Perjanjian Jual Beli Tanah di Desa Pinamorongan Kecamatan Tareran Kabupaten Minahasa Selatan, <https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/25882/25524>, *Lex Privatum*, Vol. VII No. 2 February 2019. (Accessed on 29 May 2022), p. 7.

buyer along with the witnesses, and is known by the local head village and head district.

The head of the National Land Agency of Palangkaraya, Budhy Sutrisno, explained that of the total people of Palangkaraya City who own new plots of land about \pm 65% already have certificates and in the process of buying and selling their land using a deed of sale and purchase, while about \pm 35% of other land owners still have not. have a certificate and the practice of buying and selling that they do under their hands.¹¹ This proves that the people of Palangkaraya City are still not aware of the consequences of not having certified land plots, even though socialization has been carried out by the government on a regular basis, either through meetings held specifically for this purpose or delivered when the opportunity arises.

Based on the results of the research, the sale and purchase of uncertified plots as described above, has caused many problems and/or land ownership disputes against other parties who also claim to be land owners with proof of ownership of a Land Declaration Letter (SPT). This phenomenon proves that the sale and purchase of uncertified plots of land has a very high risk of legal problems, because in practice the sale and purchase of plots of land has not been able to guarantee legal certainty, both to the seller himself and to the buyer.

According to Utrecht, legal certainty contains two meanings, namely first, the existence of general rules that make individuals know what actions may or may not be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general rules individuals can know what the state may charge or do to individuals.¹²

This legal certainty comes from Juridical Dogmatic teachings which are based on a positivist school of thought in the legal world, which tends to see law as something autonomous, independent, because for adherents of this thought, law is nothing but a collection of rules. For adherents of this school, the purpose of law is nothing but guaranteeing the realization of legal certainty. Legal certainty is realized by law with its nature which only makes a general rule of law. The general nature of the rule of law proves that the law does not aim to achieve justice or benefit, but merely for certainty. Without legal certainty, people don't know what to do and eventually anxiety arises. But too much emphasis on legal certainty, obeying the rule of law is too strict as a result of

¹¹Results of an interview with Budhy Sutrisno, Head of the Land Agency of Palangkaraya City, on December 14, 2021, at 10.18 WIB.

¹²Iyan Nasriyan, (2019), Asas Kepastian Hukum dalam Penyelenggaraan Perpajakan di Indonesia, <https://journal.uniku.ac.id/index.php/logika/article/view/2402/2008>, *Logika: Journal of Multidisciplinary Studies*, Vol. 10 No. 02 December 2019. (Accessed on 29 May 2022).

being rigid and will cause a sense of injustice. Whatever happens the rules are like that and must be obeyed or implemented. The law often feels cruel if implemented strictly "lex dura, set tamen scripta".

The sale and purchase of land is basically one of the transfers of land rights to other parties, namely from the seller to the buyer with a number of payments, according to Article 1457 of the Civil Code, the meaning of buying and selling is, "an agreement in which one party binds himself to surrender a property right for an item and another party to pay the price that has been promised".¹³ The sale and purchase of land carried out after the enactment of the LoGA, which is very important to note are:

The subject in the sale and purchase of land is an Indonesian citizen (Article 9 of the LoGA which is the principle of nationality).

- The objects in the sale and purchase of land are:
 - Land with ownership rights, land use rights, building rights, management rights for land that has been certified.
 - Uncertified land

Uncertified land is land that has never been registered at the Land Office, but the land is de facto under the control of the land owner, such as having a house on it or being planted with plants.¹⁴

The deed of transfer of rights made by and/or before the PPAT is a formal requirement in the process of buying and selling. Making a deed of sale and purchase before and/or by PPAT is one of the procedures that must be carried out in the transfer of rights for the realization of legal certainty as mandated by Government Regulation Number 24 of 1997. This deed of sale and purchase is used as evidence that there has been a transfer of rights, henceforth registered at the Land Agency Office where the land is located, then a name transfer will be carried out, which will eventually issue a land title certificate with the buyer's name (deletion from the original owner to the new owner).

Legal certainty in buying and selling land that has not been certified depends on how the parties agreed at the time of the sale and purchase transaction. Is it the

¹³R. Subekti and R. Tjitrosudibio, (2006). *Kitab Undang-Undang Hukum Perdata (Burgerlijk Wet Boek)*, Pradnya Paramita, Jakarta. p. 366.

¹⁴Slamet Khudhori & Umar Ma'ruf, (2018), Peran Pejabat Pembuat Akta Tanah (PPAT) Dalam Membuat Akta Jual Beli Tanah Menggunakan Cek/Bilyet Giro Sebagai Alat Pembayaran, http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/akta/article/viewFile/25_27/1889, Jurnal Akta, Vol 5 No 1 March 2018, p. 19. (accessed on 30 May 2022).

seller or the buyer who will be responsible and bear the costs for taking care of the first land registration at the local Land Office. The resulting agreement regarding the responsibility of who will take care of this land registration will determine the sale and purchase price of the plot of land, the method of payment to be made, and the time of delivery of the plot of land.¹⁵

Gustav Radbruch in the theory of legal certainty mentions 4 basic things related to the meaning of legal certainty, namely:¹⁶

- The law is positive, meaning that positive law is legislation.
- The law is based on facts, meaning that it is based on reality.
- Facts must be formulated in a clear way so as to avoid mistakes in meaning, as well as being easy to implement.
- Positive law should not be easily changed.

According to the author, that based on the juridical analysis above, the implementation of the sale and purchase of uncertified plots in Palangkaraya City still does not fulfill the meaning of legal certainty as conveyed by Gustav Radbruch because the sale and purchase is only based on the Land Transfer Statement (SPPT) and the agreement in under the hand that has no evidentiary power. Meanwhile, in the legal certainty theory presented by Gustav Radbruch, legal certainty is a product of law or more specifically from legislation, therefore positive law that regulates human interests in society must always be obeyed even though positive law is less fair.

In relation to the legal certainty of the rights to the uncertified plots of land conveyed by Gustav Radbruch, every acquisition of rights that occurs from a legal act must be made with an authentic deed. This is important to provide legal certainty for the party who obtains the right so that he can defend his right from lawsuits by any party. Without an authentic deed, legally the acquisition of the right has not been recognized and in fact the right to the plot of land still exists with the party who transferred the right. To protect the party obtaining the right, the authentic deed made at the time the acquisition of the right is carried out is a strong means of proof.

¹⁵Results of an interview with Budhy Sutrisno, Head of the Land Agency of Palangkaraya City, on December 14, 2021, at 10.18 WIB.

¹⁶Fence M.Wantu, (2011). *Kepastian Hukum, Keadilan dan Kemanfaatan*, Pustaka Pelajar, Yogyakarta. p. 59.

The form of transfer of ownership rights to land that has not been certified through sale and purchase in its implementation in Palangkaraya City is land that does not have a certificate, based on the legal certainty theory presented by Gustav Radbruch, the Land Declaration Letter (SPT) should be converted first in order to obtain legal certainty regarding the title certificate ownership of the land. After that, the buying and selling process can be carried out and the name transfer of the land to be in the name of the buyer.

The principle of the rule of law is to guarantee certainty, order and legal protection, which are based on truth and justice.¹⁷Certainty, order, and legal protection demand that legal traffic in people's lives requires evidence that clearly determines a person's rights and obligations as a legal subject in society.¹⁸

Legal certainty regarding land rights is contained in the provisions of Article 19 paragraph (1) of the UUPA, which reads: "To ensure legal certainty by the Government, land registration is carried out throughout the territory of the Republic of Indonesia according to the provisions stipulated by Government Regulation". Article 19 paragraph (1) of the UUPA is addressed to the Government as an instruction so that in all regions of Indonesia land registration is held with a *recht* cadastral nature, meaning that it aims to guarantee legal certainty. Meanwhile, to realize legal certainty, it is necessary to implement the law itself.

Based on the juridical analysis above, the author can conclude that the sale and purchase of uncertified plots of land in Palangkaraya City still causes many legal problems, especially regarding land ownership disputes, because the proof of ownership of the plots is in the form of a Land Declaration Letter (SPT) and proof of sale and purchase is made in the form of The Land Transfer Statement (SPPT) still does not have legal force. This proves that the sale and purchase of land plots that have not been certified in Palangkaraya City has not been able to provide legal certainty guarantees as stated by Gustav Radbruch in the theory of legal certainty, because the sale and purchase of land that is considered valid according to law is the sale and purchase carried out in the presence of the official making the land deed or buying and selling with an authentic deed ratified by the authorized official in accordance with the provisions of PP no. 24 of 1997 concerning Land Registration.

¹⁷Bambang Eko Muljono, (2014), Keabsahan Akta Notariil Ditinjau Dari Undang- Undang No. 2 Tahun 2014 Tentang Perubahan Atas Undang- Undang No. 30 Tahun 2004 Tentang Jabatan Notaris, <http://jurnalhukum.unisla.ac.id/index.php/independent/article/view/22/22>, Jurnal Independent, Fakultas Hukum Universitas Islam Lamongan, Vol 2 No. 2. (Accessed on 30 May 2022).

¹⁸Supriadi, (2006). *Hukum Agraria*, Sinar Grafika, Jakarta, p. 170.

3.3. Legal Liability for the Parties to the Sale and Purchase of Uncertified Plots in Palangkaraya City

Procedural land registration is very important, this is because this factor is a supporter of the implementation of sustainable development and the development carried out is a conscious effort made by the community to achieve a better life.

The consequence of state recognition of the rights of a person or a legal community is that the state is obliged to provide legal certainty to the ownership (land) of the community through a land registration process that results in several kinds of rights such as Ownership Rights, Building Rights, Cultivation Rights, Management Rights, and Rights. Use and other rights regulated in Act No. 5 of 1960 concerning Basic Regulations on Agrarian Principles. Protection of legal certainty for land rights is an absolute requirement in the business world for smooth investment, as a form of providing legal certainty.¹⁹

According to Julius Inggrit Parlindungan Situngkir, as Notary/PPAT in Palangkaraya, the problems that occurred between Frans Ever Kilat as the seller and Khanis Yovani as the buyer, in this case Khanis Yovani had done his obligation, namely to pay all land prices and Frans Ever Kilat as the seller had also transferred the rights to the land were given to Khanis Yovani, but it turned out that the land contained a dispute with another party, so that Khanis Yovani as the buyer suffered a loss because he had paid the price of the land but the land contained a dispute. Therefore, Frans Ever Kilat as the seller can be said to have committed an unlawful act in accordance with Article 1365 of the Civil Code.²⁰

The provisions of Article 1365 of the Civil Code above regulate the liability resulting from an act of violating the law either because of doing or not doing. The consequences of unlawful acts legally have consequences for the perpetrators and people who have legal relationships in the form of work that cause unlawful acts. So, the consequences arising from an unlawful act will be realized in the form of compensation for the victims who experience it.

According to Hans Kelsen's theory of legal responsibility, a concept related to the concept of legal obligation is the concept of legal responsibility. That a person

¹⁹Indra Yudha Koswara, 2016, Land Registration as a Form of Legal Certainty in the Context of Dealing with Public Economy ASEAN (MEA), <https://journal.unsika.ac.id/index.php/positum/article/view/525/488>, *Positum Law Journal*, Vol. 1 No. 1, December 2016, p. 27. (Accessed on 01 June 2022).

²⁰Results of the First Interview with Julius Inggrit Parlindungan Situngkir, SH., Notary/PPAT in Palangkaraya, on March 7, 2022, 14:47 WIB.

must be held responsible because he made a mistake by harming others,²¹ means that he is responsible for a sanction in the case of a conflicting legal act. Usually, in the case of sanctions aimed at direct perpetrators, a person is responsible for his own actions.

The form of responsibility given by Frans Ever Kilat as the seller of the land plots to the buyers, namely by asking for help from the Panarung Village to check the truth and authenticity of the Land Declaration Letter (SPT) on behalf of Abdul Hadi, and friends who have claimed to be landowners and have stopped the activities of the buyers of land plots in carrying out land clearing. Therefore, on March 17, 2021, the Panarung Village Head issued a Certificate Number: 074/156.3/PNRG/III/2021, which stated that the Land Declaration Letter (SPT) in the name of Abdul Hadi and his friends was not registered in the Village. Panarung. So, armed with a statement from the Panarung Village Head, Then Frans Ever Kilat submitted an application for Land Registration on behalf of Khanis Yovani and on behalf of several other residents to the Palangkaraya Land Office with the aim of obtaining legal certainty over the land rights of the plots he had sold. Frans Ever Kilat in an interview with the author explained as follows:

"On February 22, 2022 ago I sent a letter to the Panarung Village Head to question the truth and authenticity of the Land Declaration Letter (SPT) on behalf of Abdul Hadi, Cs. I did this because I was confused as to why there was another letter on my land. Meanwhile, I have controlled the land since 2011 and during that time no one else has controlled the land other than me. Then on March 17, 2022, the head village of Panarung replied to my letter explaining that the SPT on behalf of Abdul Hadi, Cs was not registered at the Panarung Village Office. Furthermore, based on my agreement with Mr. Khanis Yovani, I submitted an application for registration of land rights at the Office of the National Land Agency of Palangkaraya City,

Based on Government Regulation Number 24 of 1997 concerning Land Registration, land registration itself aims to:

- To provide legal certainty and legal protection to holders of rights to a parcel of land, apartment units and other registered rights so that they can easily prove themselves as holders of the rights concerned;
- To provide information to interested parties including the government so that they can easily prove themselves as holders of the rights concerned.

²¹Hizkia A. M. Kaunang, (2019), Tanggungjawab Hukum Pemerintah Dalam Ketersediaan Fasilitas Masyarakat Pejalan Kaki Dan Penyandang Cacat Menurut Undang-undang No. 22 Tahun 2009, <https://ejournal.unsrat.ac.id/index.php/lexetsocietatis/article/view/27373/26929>, *Lex Et Societatis*, Vol. VII No. 11 November 2019, p. 81. (Accessed on 01 June 2022).

- For the implementation of orderly land administration.

In line with Regulation No. 24/1997, according to Boedi Harsono, the purpose of land registration is so that from the registration activity a situation can be created where:²²

- People and legal entities who own land can easily prove that they are the ones who are entitled to the land, what rights they have and which land is being entitled to. This goal is achieved by providing a letter of proof of rights to the holder of the right in question.
- Anyone who needs it can easily obtain reliable information regarding lands located in the registration area concerned (whether he is a prospective buyer or a potential creditor) who wants to obtain certainty as to whether the information given by the prospective seller or debtor is true. This goal is achieved by providing an open nature to the stored data.

It was further explained that to ensure legal certainty for holders of land rights, according to a Government Regulation, holders of registered land rights would be given a certificate as strong evidence. This is in accordance with Article 4 of PP Number 24 of 1997 which states "to provide legal certainty and protection as referred to in Article 3 letter a to the right holder concerned, a certificate of land rights is granted".

The land registration in the name of Khanis Yovani and on behalf of other Buyers carried out by Frans Ever Kilat is a form of legal responsibility that he bears as explained by Hans Kelsen in his theory of Legal Liability. In his theory, Hans Kelsen divides legal responsibilities into 3 (three), namely:

- Individual responsibility, namely an individual is responsible for his own violations.
- Collective liability means that an individual is responsible for an offense committed by another person.
- Liability by virtue of fault means that an individual is liable for an offense committed intentionally and presumably with the intention of causing harm.
- Absolute liability means that an individual is responsible for a violation committed by accident and unforeseen.

²²Boedi Harsono, (2008), *Hukum Agraria Indonesia (Sejarah, Pembentukan, Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya)*, Djambatan, Jakarta. p. 472.

According to the author, the land registration in the name of Khanis Yovani which was submitted by Frans Ever Kilat to the Palangkaraya City Land Office as described above, is in line with Hans Kelsen's theory of responsibility which states that individual responsibility is that an individual is responsible for his own violations.

3.4. Legal Liability in the Sale and Purchase of Land Plots Between PT Graha Cipta Nugraha Kencana and the Buyers

Since the enactment of Government Regulation no. 10 of 1961 concerning Land Registration, the sale and purchase is carried out by the parties in the presence of the PPAT, the certificate as proof of rights bound and issued by the Land Office, which acts as a strong evidence tool regarding the physical data and juridical data contained therein, where the data is in accordance with the data contained in the letter of measurement and the land book concerned.

If the sale and purchase of a plot of land that has not been certified is carried out, it means that authentic evidence cannot be given legal certainty because both juridically and physically the plot of land has not provided legal certainty, because it has not been registered with the Land Agency to carry out measurements as outlined in the form of physical data. in the form of Measurement Drawings, while in the juridical aspect the legal certainty of the Right Subjects has not provided guarantees. So it is very necessary to have a certificate as a strong proof of physical data and juridical data. Therefore, In the legal issues that occurred between PT Graha Cipta Nugraha Kencana and the consumers who bought the land plots, there was an obligation to immediately register the land with the National Land Agency of Palangkaraya City in order to get legal certainty. However, on the other hand, the registration of the land is hampered due to a land block from another party claiming to be the owner of the land. Regarding these problems, efforts in the form of deliberation or mediation have been carried out several times, but always fail and do not reach an agreement. As for the responsibility of the seller of the plot of land, the buyers have demanded that all problems that occur can be resolved immediately. On the other hand, the registration of the land is hampered due to a land block from another party claiming to be the owner of the land. Regarding these problems, efforts in the form of deliberation or mediation have been carried out several times, but always fail and do not reach an agreement. As for the responsibility of the seller of the plot of land, the buyers have demanded that all problems that occur can be resolved immediately. On the other hand, the registration of the land is hampered due to a land block from another party claiming to be the owner of the land. Regarding these problems, efforts in the form of deliberation or mediation have been carried out several times, but always fail and do not reach an agreement. As for the responsibility of the seller

of the plot of land, the buyers have demanded that all problems that occur can be resolved immediately.

Based on the results of the interview with Mr. Supiani who is one of the buyers of the land plot, he said as follows:²³

“I am interested in buying a plot of land from PT Graha because it is in a strategic location and has a clear land title even though it is still not certified. In my opinion, PT Graha's blocking of other parties should be resolved immediately so that we don't worry. If the completion of the block still takes a long time, PT Graha should immediately return our money or replace the land with other land that is safe and of course certified.”

Mr. H. Kurnain who is also a buyer of a plot of land from PT Graha Cipta Nugraha Kencana based on the results of interviews with the author, explained as follows:²⁴

“There are 4 plots of land that I bought from PT Graha which are located in a row. At first I thought the land was safe and did not overlap with other parties because the construction of houses by PT Graha had never been a problem. With this problem, I hope PT Graha immediately replaces our land with land that is not problematic so that there is guarantee and certainty for us to still get the land”.

The author also conducted an interview with Mrs. Fitri Handayani, who explained as follows:²⁵

“This overlapping issue has been around for a long time, therefore we demand that PT Graha be responsible for our money. If we can't replace the land with other land, we should just return our money because we need certainty”.

The essence of the information submitted by the buyers of the land plots mentioned above is that there are only 2 (two) demands for responsibility, namely that PT Graha Cipta Nugraha Kencana returns the money according to the purchase price, or it is replaced with safe and certified land. The claim for liability submitted by the buyers aims to obtain legal certainty over their rights in the sale and purchase of the land plots.

²³Results of an interview with Mr. Supiani, one of the land plot buyers at PT Graha Cipta Nugraha Kencana, on February 14, 2022, at 09.22 WIB.

²⁴Results of an interview with Mr. H. Kurnain, one of the land plot buyers at PT Graha Cipta Nugraha Kencana, on February 16, 2022, at 08.40 WIB.

²⁵Results of an interview with Ms. Fitri Handayani, one of the land plot buyers at PT Graha Cipta Nugraha Kencana, on February 20, 2022, at 08.40 WIB.

According to Hans Kelsen, responsibility is closely related to obligations, but not identical. This obligation arises because of the legal rules that regulate and provide obligations to legal subjects. Legal subjects who are burdened with obligations must carry out these obligations as orders from the rule of law. As a result of not carrying out obligations, it will result in sanctions. This sanction is a forced act of the rule of law so that the obligations can be carried out properly by legal subjects. According to Hans, legal subjects who are subject to sanctions are said to be "responsible" or legally responsible for violations.²⁶

Based on this concept, it can be said that responsibility arises from the existence of legal rules that provide obligations to legal subjects with the threat of sanctions if these obligations are not carried out. Such responsibility can also be said to be a legal responsibility, because it arises from the order of the rule of law/law and the sanctions given are also sanctions stipulated by law, therefore the responsibility carried out by legal subjects is a legal responsibility.

The concept of responsibility also applies to PT Graha Cipta Nugraha Kencana as the seller of the plot of land. Mr. Ario Andreti as the President Director of PT Graha Cipta Nugraha Kencana, whom the author met explained that it was impossible to upgrade the status of land rights from a Land Declaration Letter (SPT) to a certificate of ownership on behalf of the buyers last April 2022 PT Graha Cipta Nugraha Kencana has replaced all land parcels affected by problems with other parties. The location of the replacement land is located on Jalan Marina Permai II, Panarung Village, Palangkaraya City with the status of the right, namely the Certificate of Building Use Rights (SHGB) registered in the name of PT Graha Cipta Nugraha Kencana. Meanwhile, PT Graha Cipta Nugraha Kencana pays the certificate transfer process fee for the time being, and buyers are required to pay the fee in 12 months installments to PT Graha Cipta Nugraha Kencana. This has been mutually agreed upon by the parties in a written agreement made and signed in the presence of Julius Inggrit Parlindungan Situngkir, SH as a Notary/PPAT in Palangkaraya City. ²⁷

The process of transferring rights or changing the name of land certificates is generally carried out in every sale and purchase transaction of land and buildings. The transfer of the name of this certificate can be done by visiting the Land Office or the National Land Agency (BPN) in the regency/city where the land is located. However, before visiting the BPN office, there are other procedures that need to be carried out to fulfill the requirements for certificate transfer. The procedure involves the Land Deed Making Officer (PPAT). According to Julius

²⁶Hans Kelsen, (2008). *Pure Theory of Law*, Terjemahan Raisul Muttaqien, *Teori Hukum Murni: Dasar-Dasar Ilmu Hukum Normatif*, Cetakan Keenam, Penerbit Nusa Media, Bandung.p. 136.

²⁷Results of Interview with Mr. Ario Andreti, President Director of PT Graha Cipta Nugraha Kencana in Palangkaraya, May 13, 2022, 10.12 WIB.

Inggrit Parlindungan Situngkir, SH as a Notary/PPAT in Palangkaraya City, there are 2 (two) stages that need to be carried out in the process of managing title transfer certificates related to land sale and purchase transactions, namely:²⁸

- Making Deed of Sale and Purchase of Land

In order for the sale and purchase of land or buildings to be legally valid, the seller and the buyer must visit the Office of the Land Deed Maker (PPAT). In accordance with the provisions in Article 37 of Government Regulation Number 24 of 1997 concerning Land Leveling, the transfer of land rights must be through PPAT. Visiting the PPAT Office needs to be done to make a Land Sale and Purchase Deed (AJB). This deed is an official document that is legal evidence that there has been a transfer of land rights from the seller to the buyer. Before the AJB is made, PPAT will check the suitability of the technical and juridical data between the land certificate and the land book at the Land Office (BPN). This inspection is to ensure that the object of sale and purchase is not problematic. In addition, PPAT will check the Deposit Receipt (STTS) and PBB Tax Payable Tax Return (SPPT) or Land and Building Tax. This is to ensure that there are no arrears as well as to calculate the costs and taxes that are borne by the seller and the buyer. The seller will also be directed to pay income tax (PPh) on the transfer of land rights. The amount of income tax is equal to 2.5 percent of the gross value of the transfer of land rights, as stipulated in PP no. 34 of 2016. The responsibility of the buyer, is required to pay the Customs for the Acquisition of Land and Building Rights (BPHTB). A number of documents must also be brought by the seller and buyer for the purposes of making AJB at the PPAT Office. Documents that need to be brought by land buyers are KTP, KK, Marriage Certificate (if married) and NPWP. Meanwhile, the documents that must be brought by the seller include the Certificate of Land Rights to be sold (original), Identity Card (KTP) of the Board of Directors, Deed of establishment and legalization of the company, proof of payment of PBB, affidavit of land not in dispute, and the Company's NPWP. After all the requirements above are met, PPAT will make a Land Purchase Deed (AJB) with the approval of the seller and the buyer. AJB is usually made 2 originals and 1 copy.

- Management of Transfer of Certificate Names at BPN

A number of documents must be prepared when taking care of the transfer of title to the land certificate (transfer of sale and purchase rights) at the BPN office, namely:

- Application form that has been filled out and signed by the applicant or

²⁸Results of the Second Interview with Mr. Julius Inggrit Parlindungan Situngkir, SH., as a Notary/PPAT in Palangkaraya City, May 18, 2022, 09.40 WIB.

his/her proxy on stamp duty.

- Power of attorney if authorized.
- Photocopy of applicant's identity (KTP & KK) and power of attorney if authorized which has been matched with the original by the counter officer at the BPN office.
- Photocopy of deed of establishment and legalization of legal entities that have been matched with the original by the BPN office counter clerk (especially for legal entities).
- Original Land Certificate.
- Deed of Sale and Purchase of Land from PPAT.
- Photocopy of the identity cards of the sellers-buyers, and or their proxies. Permit for transfer of rights if the certificate/decision contains a sign stating that the right may only be transferred if permission has been obtained from the competent authority.
- Photocopy of SPPT and PBB for the current year which has been matched with the original by the counter staff.
- Proof of SSB (BPHTB) and proof of payment of income (at the time of registration of rights).

According to Julius Inggrit Parlindungan Situngkir, SH as a Notary/PPAT in Palangkaraya City, there are several types of fees that must be paid and are the responsibility of the land buyer in the process of changing the name of the land certificate, namely:²⁹

- PPAT honorarium fees (including witnesses).
- The value of the PPAT honorarium may vary. However, there is a provision that limits the value of the PPAT honorarium to not exceed 1 percent of the price of the land sale and purchase transaction listed in the AJB.
- Land and Building Rights Acquisition Fee (BPHTB).

²⁹Results of the Second Interview with Mr. Julius Inggrit Parlindungan Situngkir, SH., as a Notary/PPAT in Palangkaraya City, May 18, 2022, 09.40 WIB.

- The buyer must pay the BPHTB of 5 percent of the selling price of the land and buildings minus the Acquired Value of the Non-Taxable Tax Object.
- Information service fee for Land Value or Property Asset Value per plot is IDR 50,000.
- The cost of checking land certificates is IDR 50,000.
- Fee for certificate transfer service at the Land Office.

The administrative fee for the transfer of title to the land certificate is determined by the formula: the selling value of the land divided by 1000. As an illustration, for land for IDR 400,000,000, the fee for processing the title transfer at the BPN Office is IDR 400,000.

Regarding the problem of buying and selling land plots carried out by PT Graha Nugraha Cipta Kencana as described above, according to Julius Inggrit Parlindungan Situngkir, SH as a Notary/PPAT in Palangkaraya City, that the replacement of land carried out by PT Cipta Nugraha Kencana from a plot of land whose rights are in the form of The Land Declaration Letter (SPT) being a land plot that has been certified is a legal responsibility carried out by PT Graha Cipta Nugraha Kencana and at the same time guarantees legal certainty to the buyers of the land plots. Meanwhile, all costs that must be paid for the occurrence of the transfer of rights are the responsibility of the buyer, although in practice these costs are temporarily paid by the seller.³⁰

In connection with the legal responsibility for the parties for the sale and purchase of land plots that have not been certified in Palangkaraya City as described above, according to the author, the legal responsibility of PT Graha Cipta Nugraha Kencana as the seller of the land plots is a liability without based on fault. , while the legal responsibility of the buyer of the land plot is liability without fault, known as risk responsibility or strict liability.

Based on the results of the research above, the authors can conclude that in an effort to resolve the problem of buying and selling uncertified land carried out by PT Graha Cipta Nugraha Kencana to buyers, it is in line with the theory of legal responsibility put forward by Hans Kelsen which states that someone is legally responsible for a certain act or that he bears legal responsibility when committing an act that is contrary to the law.

4. Conclusion

³⁰Results of the Second Interview with Mr. Julius Inggrit Parlindungan Situngkir, SH., as a Notary/PPAT in Palangkaraya City, May 18, 2022, 09.40 WIB.

The sale and purchase of uncertified plots of land that occurred in Palangkaraya City was only carried out through an underhand agreement signed by the parties and known to the local sub-district on the basis of the rights only in the form of a Land Declaration Letter (SPT), so that it has created legal uncertainty, both for the parties involved. the seller and the buyer of the plot of land. Legal uncertainty for the seller is the emergence of overlapping Land Declaration Letters (SPT) for the land plots, the legal settlement of which takes a very long time, and risks the land rights being lost because it is seized by other people. Meanwhile, legal uncertainty for the buyer is that the land plots that have been purchased cannot be utilized, and the risk of paying the land price cannot be returned by the seller. By law, the government has basically provided legal certainty for land rights holders in accordance with Article 4 PP No. 24 of 1997 which states "to provide legal certainty and protection as referred to in Article 3 letter a to the right holder concerned, a certificate of right to land rights is granted. soil". This proves that Gustav Radbruch's theory which suggests 4 (four) basic things related to the meaning of legal certainty in the implementation of buying and selling uncertified plots of land in Palangkaraya City has yet to be achieved. The legal responsibility carried out by Frans Ever Kilat as the seller of land plots that have not been certified, namely registering land rights for the first time at the City Land Office.

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