

Legal Certainty of PPJB Land Objects Certificate Issued on The Basis of Breach of Performance (Study of Decision Number 236/PDT. G/2022/Pn.TJK)

Faiza Eferdy¹⁾, Nurlela²⁾ & Tetti Samosir³⁾

¹⁾Faculty of Law, Universitas Pancasila, Indonesia, E-mail: eferdyfaizah@gmail.com

²⁾Faculty of Law, Universitas Pancasila, Indonesia, E-mail: lela49637@gmail.com

³⁾Faculty of Law, Universitas Pancasila, Indonesia, E-mail: tettisamosir@univpancasila.ac.id

Abstract. *PPJB is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met for the sale and purchase. The problems in this study were analyzed using normative methods with qualitative analysis to obtain conclusions about Certificate Position Ownership Rights No. 00882 dated September 9, 2022 covering an area of 1,657 m² (one thousand six hundred and fifty seven square meters) is invalid and can be canceled due to administrative legal defects, cancellation or an order to record changes to the maintenance of land registration data can be made according to laws and regulations. Administrative legal defects occur due to errors in: procedures in the process of determining and/or registering land rights; procedures in the process of registering transfers of rights and/or replacement certificates; procedures in the process of registering confirmation and/or recognition of rights to land formerly owned by customary law; procedural errors in the process of measuring, mapping and/or calculating the area; overlapping rights or land rights certificates; errors in the subject and/or object of rights; and other errors in the application of laws and regulations.*

Keywords: *Certainty; Certificate; Default; Legal.*

1. Introduction

Land has a very big role for life, so in the 1945 Constitution Article 33 paragraph (3) it is stated that the Earth, water and the wealth contained therein are controlled by the state and used for the greatest prosperity of the people. Other regulations regarding land can also be seen in the Republic of Indonesia Law No. 5 of 1960 concerning Basic Agrarian Principles or commonly referred to as UUPA. Land conflicts/disputes are classic problems, and are always everywhere. The increasing population will be directly proportional to the increasing number of people's needs for land to be used as their residence/residence. However, at present, obtaining land to meet the needs of life is also not an easy thing. Various methods can be done by someone in their efforts to obtain rights to the land, one of which is commonly done is by carrying out a sale and purchase. Through this sale and purchase process, someone who needs it can have rights to the land, from the results of the sale and purchase, ownership of the land rights can be transferred/transferred from one party to another. In order to ensure the smoothness of orderly land administration, a legal breakthrough was found and until

now it is still carried out in practice, namely by making a Land Sale and Purchase Agreement (PPJB). Although the contents already regulate the sale and purchase of land, the format is only limited to a sale and purchase agreement, namely a form of agreement which is a preliminary agreement before the actual sale and purchase agreement is carried out as regulated in the legislation.

PPJB is an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be met for the sale and purchase. In the case of land PPJB, problems that may arise due to the unfulfilled elements of the sale and purchase include the land certificate not being available because it is still in process, or the price has not been paid in full or the taxes imposed on the sale and purchase of land have not been paid by either the seller or the buyer. In the PPJB, the parties who will carry out the sale and purchase are already bound and have the rights and obligations to fulfill the achievements and counter-achievements as agreed in the PPJB.

However, an agreement cannot always run according to the agreement desired by the parties. In certain conditions, various things can be found, which result in a breach of contract. As a form of obligation, the PPJB for land contains the rights and obligations of the parties who make it, so that if the things that have been agreed upon in the PPJB are violated or not fulfilled by the parties who make it, it can be said that a breach of contract has occurred. In relation to the description above, this study discusses the PPJB default resulting in some PPJB objects having been issued certificates by the seller without the knowledge of the buyer. A brief description of the case in this study explains that Defendant I, Defendant II, Defendant III are the heirs of Pawiro Rejo and Rasmini, selling a plot of land located on Jalan Pulau Pisang, Neighborhood Association 01, Environment I, Korpri Jaya Village, Sukarama District, with an area of $\pm 2,600$ (approximately two thousand six hundred square meters) in the name of Pawiro Rejo to the Plaintiff for IDR 6,421,500,000,000,- (six billion four hundred twenty one million five hundred thousand rupiah).

The Plaintiff has made payments through Defendant IV with a total of IDR 3,900,000,000,- (three billion nine hundred million rupiah), there is a shortfall with a total of IDR 2,521,500,000,- (two billion five hundred twenty one million five hundred thousand rupiah) which has not been paid to Defendant IV, this shortfall has not been paid because the Plaintiff's business conditions were affected by the Covid 19 pandemic. The delay in payment in question was the reason for the Defendant to take care of the land ownership certificate so that the Certificate of Ownership Rights No. was issued. 00882 dated September 9, 2022 covering an area of 1,657 m² (one thousand six hundred and fifty seven square meters) for which the Certificate was issued in the name of Defendant I. Where previously the basis for the PPJB object rights was proof of ownership in the form of a Statement Letter for a measurement application dated September 26, 2013, a Statement Letter of Ownership dated September 26, 2013 and a Statement Letter for Physical Control of the Land Area (Sporadic) dated September 26, 2013. Based on the background description above, the problems discussed in this research are regarding and Certificate Position Ownership Rights No. 00882 dated September 9, 2022 covering an area of 1,657 m² (one thousand six hundred and fifty seven square meters) related to PPJB was not cancelled.

2. Research Methods

This study uses a normative method (literature) by collecting secondary data in the form of laws and regulations, court decisions, books, journals, articles and the Great Dictionary of the Indonesian Language regarding the transfer of land rights through sale and purchase. The collection and processing of legal materials in normative legal research uses the literature study method, both in the form of print and electronic media. It begins with studying and reviewing legal materials related to the main problem, using theoretical thinking, then arranged systematically. Analysis of the legal materials that have been collected is carried out by means of interpretation or grammatical interpretation and systematic interpretation. Grammatical interpretation, often equated with language interpretation, is an interpretation that provides understanding of laws and regulations based on their meaning in everyday language use (Khalid, 2014). Systematic interpretation is the interpretation of legislation by connecting it with other laws, particularly in the field of agrarian law, because the formation of a law is essentially part of the entire legal system in force. It is impossible for a law to stand alone without being linked to other regulations (Juanda, 2016).

3. Results and Discussion

3.1. The Buyers in Good Faith in Sale and Purchase Binding (PPJB)

A buyer in good faith is a buyer who does not know and cannot be considered to have known of any defects in the process of transferring rights to the land he has purchased; From the results of the literature review, it can be seen that there is an agreement among the authors that "a buyer in good faith" should be interpreted as: "an honest buyer, who does not know of any defects in the goods purchased". Regarding the definition of a good faith buyer, R. Subekti (2014) formulated that a good faith buyer is a buyer who is completely unaware that he is dealing with someone who is not actually the owner, so that he is seen as the owner and anyone who obtains goods from him is protected by law. Meanwhile, according to Ridwan Khairandy (Sekarini et al., 2018), a good faith buyer is someone who buys goods with full confidence that the seller is truly the owner of the goods being sold. The meaning of "good faith buyer" as quoted from Hernoko (2008) is identified as follows:

1. A buyer in good faith is a buyer who does not know and cannot be considered to have known about any defects in the process of transferring rights to the land he has purchased.
2. The buyer can be considered to have good intentions if he has carefully checked the material facts (physical data) and the validity of the transfer of rights (legal data) of the land he purchased, before and during the process of transferring land rights. If the buyer knows or can be considered to have known about the defects in the process of transferring land rights (for example, the seller's incompetence), but he still continues the sale and purchase, the buyer cannot be considered to have good intentions.
3. In auction cases, judges' decisions basically protect auction buyers, except when the buyer abuses the situation or the rights to the land in question have been extinguished.

4. Although there are provisions that limit objections or lawsuits on registered land rights to only be filed within a period of five years, in practice this period is not binding. This is because this expiration provision does not stand alone, but rather requires the good faith of the certificate holder which must be determined by a judge (see point 2 above), in addition to the certificate must be issued legally and the land is actually controlled by the certificate holder.

The meaning of good faith in the literature is then divided into two categories, namely subjective good faith and objective good faith, although in the case of buyers in good faith, the literature in Indonesia only refers to the subjective meaning. Good faith in the objective sense is stated in article 1338 paragraph 3 of the Civil Code "an agreement must be carried out in good faith". The good faith in question is good faith in the objective sense, namely good faith at the time of the implementation of the agreement.

After the enactment of the Basic Agrarian Law, all matters governing land objects no longer refer to the Civil Code, although the Basic Agrarian Law does not contain the definition of good faith related to control or acquisition of land rights. Furthermore, Government Regulation Number 24 of 1997 mentions the term good faith in relation to physical control of land (Article 24) and holders of land rights certificates (Article 32). Article 24 paragraph (2) letter a states: "control over the land is carried out in good faith and openly by the person concerned as the person entitled to the land, and is supported by the testimony of a person who can be trusted", while Article 32 paragraph (2) states: "In the event that a certificate has been legally issued for a plot of land in the name of a person or legal entity who obtained the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand the implementation of these rights if within 5 (five) years since the issuance of the certificate they have not submitted a written objection to the certificate holder and the Head of the Land Office concerned or have not filed a lawsuit with the Court regarding control of the land or the issuance of the certificate".

Contracts or agreements are very important in establishing legal relations in the form of rights and obligations that have been agreed upon by business actors (parties) which must be obeyed and implemented in good faith in order to secure their business transactions.¹⁹ As stipulated in Article 1313 of the Civil Code which defines an agreement as follows: "An agreement is an act by which one or more people bind themselves to one or more other people." The occurrence of binding oneself to one or more other people has legal consequences, namely the emergence of rights and obligations for each party that binds themselves.

The principle of good faith buyers is regulated in Circular Letter Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Courts concerning the definition of good faith buyers as stated in the civil chamber agreement in letter a, which has been refined as follows: The criteria for good faith buyers who need to be protected based on Article 1338 paragraph (3) of the Civil Code are as follows:

1. Carry out the sale and purchase of the land object with the legal procedures and documents as determined by statutory regulations, namely:
 - a. Purchase of land through public auction or:

- b. Purchase of land before a Land Deed Making Officer (in accordance with the provisions of Government Regulation Number 24 of 1997 or
- c. Purchase of customary land/land that is not yet registered which is carried out according to customary law provisions, namely in cash and openly (in the presence of/with the knowledge of the local Village Head/*Lurah*).
- d. preceded by research on the status of the land object of the sale and purchase and based on this research it shows that the land object of the sale and purchase belongs to the seller - The purchase was made at a reasonable price.

2. Exercise caution by examining matters relating to the promised land object, including:

- a. The seller is the person who has the right/has the rights to the land that is the object of the sale and purchase, in accordance with proof of ownership, or;
- b. The land/object being traded is not in confiscated status, or;
- c. The land object being traded is not under collateral/mortgage status, or;
- d. For certified land, information has been obtained from the BPN and the history of the legal relationship between the land and the certificate holder.

There is a positive development for land buyers, namely the issuance of a Circular of the Supreme Court (SEMA) as a result of a plenary meeting to discuss legal issues by the Supreme Court related to the purchase of land purchased by parties with good intentions. In 2012, SEMA Number 7 of 2012 was issued concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court, in point 9 it is explained that it can provide protection for buyers with good intentions, even though after the transfer of rights it is known that the seller is a person who is not entitled. Furthermore, in 2016, the Supreme Court issued Circular Letter of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber in 2016 as a Guideline for the Implementation of Duties for the Court. In point 4, the formulation of the civil chamber law regulates the criteria for buyers in good faith who need to be protected, which explains that the criteria for buyers who are considered to have good faith in purchasing land, so it is very positive for all land buyers, and especially very important for the development of regulations regarding land in Indonesia.

3.2 Position of Certificate Ownership Rights No. 00882 Dated September 9, 2022 with an Area of 1,657 M2 (One Thousand Six Hundred and Fifty Seven Square Meters) Related to PPJB is not Cancelled

PPJB or sale and purchase agreement is used by buyers and sellers of property, land, or buildings as a guarantee of preliminary binding where the transaction is not yet in cash. In this sale and purchase process, the seller hands over the goods and the buyer hands

over the money with conditions that must be met by the parties. During the sale and purchase process, the parties cannot make a Deed to the Notary because the sale and purchase transaction has not been paid off so that the parties need to make a binding agreement to ensure that the parties remain bound, so a preliminary agreement is needed in the sale and purchase called PPJB.

On June 17, 2021, Defendant IV sold a plot of land belonging to Defendant I, Defendant II, Defendant III and a plot of land belonging to Co-Defendant I to the Plaintiff, for which a Deed of Sale and Purchase Agreement Number 04 dated June 17, 2021 was made, signed before Lingga Ayu Burdani, SH, M.Kn, Notary of Bandar Lampung City (Co-Defendant II). Defendant IV took legal action in the Deed of Sale and Purchase Agreement Number 04 dated June 17, 2021 based on the Deed of Power of Attorney to Sell Number 04 dated 02-17-2021 as the attorney of Defendant I, Defendant II, Defendant III who are the heirs of Pawiro Rejo and Rasmini to sell a plot of land located on Jalan Pulau Pisang, Neighborhood Association 01, Neighborhood I, Korpri Jaya Village, Sukarama District, with an area of $\pm 2,600$ (approximately two thousand six hundred square meters) in the name of Pawirorejo, and the Deed of Power of Attorney to Sell Number 09 dated 02-25-2021 as the attorney of Co-Defendant I to sell a plot of land located on Jalan Pulau Pisang, Neighborhood Association 01, Neighborhood I, Korpri Jaya Village, Sukarama District, with an area of $\pm 3,000$ (three thousand square meters). Square), in the name of Haji Insinyur Dancik (In Casu Co-Defendant I). Based on the Deed of Sale and Purchase Agreement Number 04 dated June 17, 2021, Defendant IV as the Seller bound himself to sell two plots of land located on Jalan Pulau Pisang, Korpri Jaya Subdistrict, Sukarama District—one in the name of Pawirorejo ($\pm 2,600 \text{ m}^2$) and another in the name of Haji Insinyur Dancik ($\pm 3,000 \text{ m}^2$)—to the Plaintiff as the Buyer for Rp6,421,500,000. The agreement fulfills the legal requirements of a valid contract under Article 1338 of the Civil Code and thus has binding force for both parties. The Deed stipulates that the Plaintiff may change the name on the land ownership documents starting from the rear land (in the name of Co-Defendant I), for which the transfer is in process, while for the front land (owned by Defendant I, II, and III as heirs of Pawiro Rejo and Rasmini), the administrative process has not been carried out since the Plaintiff has not completed full payment. In principle, contracts are to be carried out in good faith; however, legal issues may arise, including breach of contract. Under the Civil Code, the legal consequences for such breach include: compensation for losses (Article 1243), cancellation through court for bilateral contracts (Article 1266), risk transfer to the buyer in case of default (Article 1237(2)), liability for court costs (Article 181(1) HIR), and the obligation to fulfill or cancel the agreement with compensation (Article 1267).

Furthermore, according to Abdulkadir Muhammad (1982), Articles 1243 to 1248 of the Civil Code are restrictions that are in the nature of legal protection for debtors from arbitrary actions by creditors as a result of default. In this case, Defendant IV and the Plaintiff entered into a Sale and Purchase Agreement (Deed No. 04 dated June 17, 2021) for two plots of land with a total price of IDR 6,421,500,000, involving staged payments. The Plaintiff made two initial payments totaling Rp4,210,750,000, but failed to pay the third installment of IDR 2,210,750,000 due to financial constraints from the COVID-19 pandemic, leaving an outstanding balance of IDR 2,521,500,000. Although the Plaintiff offered a payment schedule in a letter dated November 23, 2022, no response was received from the Defendants. Meanwhile, despite an agreement that land ownership processing should begin with the rear land and only upon full payment, Defendant IV processed the certificate for the front land without the Plaintiff's knowledge, issuing it in the name of Defendant I. This violated the agreed terms, as Defendant IV was only

obligated to assist in preparing documents, not register the land in another party's name. The court ruled that the Deed of Sale and Purchase was legally valid, binding all parties, and declared the Plaintiff in default for not completing payment, ordering the overdue amount plus a 0.5% penalty to be paid

The explanation of the Panel of Judges' decision above, that it is known that the Plaintiff as the buyer has committed a breach of contract by not making the third stage payment for the PPJB land object due to the Covid-19 period. However, the Plaintiff will still make the payment in good faith. In fact, on the land object that has been bound by the PPJB, the administration of the ownership certificate has been carried out in the name of the Defendant without the Plaintiff's knowledge. The land area in question is at the front as it is known that the land area that has not been developed by the Plaintiff.

The decision of the Panel of Judges in this case, stated that the PPJB deed was valid and ordered the Plaintiff to continue the payment as agreed in the PPJB deed. The problem is that existence of certificate ownership rights No. 00882 dated September 9, 2022 covering an area of 1,657 m² (one thousand six hundred and fifty seven square meters) which has been issued in the name of Defendant 1.

According to the author, the position of the certificate is invalid because it is a form of unlawful act committed by Defendant 1, because it was processed without the knowledge of the Plaintiff as previously bound by the PPJB deed. In state administrative law, the use of administrative sanctions is the authority of the government, where this authority comes from written and unwritten administrative law rules. In general, giving the government the authority to determine certain administrative law norms is also accompanied by giving the authority to enforce these norms through the application of sanctions for those who violate these administrative law norms (Ridwan, 2008). Administrative legal defects can result in the invalidity of a land title certificate, so that it cannot be used as evidence of ownership of land rights. Several things that cause administrative legal defects as regulated in Article 62 of the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 3 of 2011 concerning the Management of Land Case Studies and Handling, namely:

1. Procedural errors in the process of determining and/or registering land rights;
2. Procedural errors in the process of registering the transfer of rights and/or replacement certificates;
3. Procedural errors in the process of registering confirmation and/or recognition of rights to land formerly owned by customary law;
4. Procedural errors in the process of measuring, mapping and/or calculating area;
5. Overlapping rights or land title certificates;
6. Subject and/or object errors of rights; and
7. Another error in the application of legislation.

Errors that occur in the administrative legal procedures as described above need to be resolved immediately if there is a request for cancellation/correction of land title

certificates issued by the Head of the BPN RI or the Head of the Regional Office, so that there is legal certainty in the administrative field regarding land title certificates.

4. Conclusion

The conclusion in this study explains that Certificate Position Ownership Rights No. 00882 dated September 9, 2022 covering an area of 1,657 m² (one thousand six hundred and fifty seven square meters) is invalid and can be canceled due to administrative legal defects, cancellation or an order to record changes to the maintenance of land registration data can be made according to laws and regulations. Administrative legal defects occur due to errors in: procedures in the process of determining and/or registering land rights; procedures in the process of registering transfers of rights and/or replacement certificates; procedures in the process of registering confirmation and/or recognition of rights to land formerly owned by customary law; procedural errors in the process of measuring, mapping and/or calculating the area; overlapping rights or land rights certificates; errors in the subject and/or object of rights; and other errors in the application of laws and regulations.

5. References

Journals:

- Hadisiswati, I. (2014). Kepastian Hukum dan perlindungan hukum hak atas tanah. *Ahkam: Jurnal Hukum Islam*, 2(1), 118-146.
- Ismail, (2011), "Sertifikat sebagai Alat Bukti Hak Atas Tanah dalam Proses Peradilan", *KANUN: Jurnal Ilmu Hukum*, Vol. 13, No. 1, 23-34.
- Juanda, Enju, (2016), "Konstruksi Hukum dan Metode Interpretasi Hukum", *Galuh Justisi*, Vol. 4, No. 2, 163.
- Khalid, Afif, (2014), "Penafsiran Hukum Oleh Hakim Dalam Sistem Peradilan Di Indonesia", *Al'Adl: Jurnal Hukum*, Vol. 6, No. 11, 12.
- Sekarini, Marsha Angela Putri & I. Nyoman Darmadha, (2018), "Eksistensi Asas Kebebasan Berkontrak Berkaitan Dengan Klausula Eksonerasi Dalam Perjanjian Baku", *Kertha Semaya: Journal Ilmu Hukum*,

Books:

- Abdulkadir Muhammad, (1982), *Hukum Perikatan*, Bandung: Alumni,
- Efendi, Jonaedi, (2008), *Rekonstruksi Dasar Pertimbangan Hukum Hakim Berbasis Nilai-nilai Hukum dan Rasa Keadilan yang Hidup dalam Masyarakat*, Ed.1, Jakarta: Prenadamedia,
- Hernoko, Agus Yudha, (2008), *Hukum Perjanjian: Asas Proporsionalitas dalam Kontrak Komersial*, Ed.1, Yogyakarta: LaksBang Mediatama,
- Manullang, E. F. M. (2017). *Legisme, Legalitas dan Kepastian Hukum*. Prenada Media.
- Nieuwenhuis, J.H., (1985), *Pokok-Pokok Hukum Perikatan*, trans. Djasadin Saragih, Surabaya: Universitas Airlangga,
- Prodjodikoro, Wirjono, (1992), *Asas-Asas Hukum Perdata*, Bandung: Sumur,

Ridwan HR, (2008), *Hukum Administrasi Negara*, Ed. I, Print-4, Jakarta: PT RajaGrafindo Persada,

Subekti, R., (2014). *Aneka Perjanjian*, Bandung: Citra Aditya Bakti,

Sumardjono, Maria S.W., (2001). *Kebijakan Pertanahan antara Regulasi dan Implementasi*, Jakarta: Kompas,

Regulations:

1945 Constitution of the Republic of Indonesia, Article 33 paragraph (3).

Article 1313 of the Indonesian Civil Code.

Article 1338 paragraph (3) of the Indonesian Civil Code.

Circular Letter of the Supreme Court Number 4 of 2016 concerning the Implementation of the Formulation of the Results of the Plenary Meeting of the Supreme Court Chambers in 2016 as Guidelines for the Execution of Judicial Duties, p. 7.

Decision Number 236/Pdt.G/2022/PN.TJK.

Government Regulation Number 24 of 1997 concerning Land Registration.

Supreme Court Circular Letter (SEMA) Number 7 of 2012 concerning the Legal Formulation of the Results of the Plenary Meeting of the Supreme Court Chamber as a Guideline for the Implementation of Duties for the Court.