

The Legal Protection of the Implementation of the Sale of Uncertified Land Through the Village Head

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Abstract. *The sale and purchase of uncertified land refers to customary law. Therefore, a study of buying and selling land that has not been certified like this is very important for research because it is not in accordance with statutory regulations. The purpose of this research is to examine the reasons for buying and selling land that has not been certified through the village head in Tasikmalaya district, the legal certainty of buying and selling land that has not been certified through the village head in Tasikmalaya district, and legal protection for land buyers who have not been certified. . This study uses a sociological approach. The specifications used are analytical descriptive. The data used is in the form of primary data obtained by interview results and secondary data obtained by literature study. Qualitative analysis was analyzed using the theory of legal certainty, the theory of legal objectives and the theory of legal protection. The results obtained from this study are that the sale and purchase of uncertified land in Tasikamalaya district is still often carried out by village communities, especially regarding the transfer of rights to land that has not been certified with based on a letter of payment of tax owed on land as proof of ownership of the land, and proof of the transfer with a payment receipt and a statement that there has been a transfer of land rights through a sale and purchase issued by the village head. So with this matter that legal protection for buyers should be guaranteed certainty, order, and legal protection which has the core of truth and justice.*

Keywords: Certified; Land; Purchase; Sale.

1. Introduction

Land is an important thing for humans to support life in society, land where humans carry out their daily activities. Land as part of the earth's surface, has a very important meaning in human life, both as a place or space for life with all

its activities, as a source of life, even as a nation land is an element of territory in the sovereignty of the State. Along with population growth, the need for land will certainly increase because everyone needs land to live and continue their life, while the amount of land that can be controlled by humans is very limited and land values can increase greatly. Therefore, over time it seems as if the land is becoming narrower because demand is always increasing.

The need for land continues to increase from time to time, this is due to the increase in development activities where land is not only used as a residence but also used as a place to carry out a business. For farmers in rural areas, land is the main source of livelihood and livelihood. So that it must be considered the designation and maximum use for the prosperity of the people, both individually and in mutual cooperation. It is stated in Article 33 paragraph (3) of the 1945 Constitution that: "Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

The relationship between humans and land has a close relationship where humans from birth to death need land. Land for the Indonesian people has an eternal relationship, which must be maintained, managed, and put to good use because humans obtain food by utilizing the land. So that many people are trying to have land rights, the acquisition of land rights is more often done by transferring rights, namely through a sale and purchase transaction. In this case, one of the legal acts of transferring ownership rights to land is the sale and purchase of land. In the customary practice of buying and selling land at this time it is hoped that there will be legal certainty that can guarantee the continuation of these activities through land registration, buying and selling is a civil domain.

Buying and selling in Article 1457 in the Civil Code which states: "buying and selling is an agreement, by which one party binds himself to surrender an object, and the other party to pay the price that has been promised." The word buying and selling in the everyday sense can be interpreted, where someone releases money to get the desired item voluntarily. According to Boedi Harsono, "In Customary Law the act of transferring rights (sale-purchase, grants, exchange) is a legal act in cash." Sale and purchase in land law with payment of the price at the same time in cash.¹

Since the enactment of the Basic Agrarian Law (UUPA) in 1960, the meaning of buying and selling land is no longer an agreement as in Article 1457 jo 1458 of the Indonesian Civil Code, but a legal act of transferring rights forever in cash and then further regulated in Regulations Implementation of the UUPA, namely Government Regulation Number 10 of 1961 which was amended by Government Regulation Number 24 of 1997 concerning Land Registration,

which stipulates that the sale and purchase of land must be evidenced by a deed drawn up by and before the Land Deed Making Officer (PPAT), as stated in Article 37 paragraph (1) Government Regulation Number 24 of 1997 which reads:

“Transfers of land rights and ownership rights to flats through buying and selling, exchanges, grants, entering company data and legal actions for transferring rights due to auctions can only be registered if proven by a deed drawn up by an authorized PPAT according to the provisions of laws and regulations. applicable”.

The principle of the rule of law is that there is a guarantee of legal certainty, especially in the land sector. So to obtain legal certainty of land. This matter must be registered as regulated in Article 19 and Article 23 paragraph (1) of the Basic Agrarian Law in conjunction with Government Regulation Number 24 of 1997 concerning Land Registration, which is contained in Article 37 paragraph 1. This is reinforced by Government Regulation Number 37 of 1998 concerning Regulations for Land Deed Making Officials (PPAT) in Article 2 paragraph (1) which reads as follows:

"PPAT has the main duty to carry out some land registration activities by making deeds as evidence that certain legal actions have been carried out regarding land rights or ownership rights to apartment units which will be used as the basis for registering changes to land registration data resulting from said legal action".

Based on the applicable rules, the deed of the Land Deed Making Official is obtained through registration at the local Land Office according to the location of the land, as evidence that a sale and purchase of a land right has taken place.

There are some people who understand and know these regulations, but most of the people there are also not aware of these regulations, landowners only feel they own land based on generations without carrying out land registration to have legality based on certificates of ownership. Regarding land issues in Indonesia, land certificates are proof of ownership but there are still many lands that have not been registered or do not have certificates. In general, lands that have not been registered or do not have certificates are found in rural areas, where the ownership rights to land owned by community members are tax returns payable (SPPT). In the main principles that form the basis of laying down the law, The Basic Agrarian Law is based on the concept of thought on the customary laws that apply in Indonesia. In a number of ways, of course, there is a difference in application with the concept of law which is based on the concept of thought in Western law. In terms of buying and selling land, for example, Customary Law adheres to the principle of "bright and cash". Bright

means that the legal act of buying and selling is carried out in the presence of the customary leader (official) who handles land issues (or customary leader) while in cash, it means that the rights from the seller to the buyer take place immediately, at the time of payment from the buyer to the seller. This is different from buying and selling land in the concept of western law. Western law divides into two legal actions, namely legal acts of sale and purchase agreements, where the seller and the buyer promise each other to carry out a sale and purchase subject to the provisions of Book III of the Civil Code concerning engagement and levering, where a legal action occurs to transfer material rights from the seller to the buyer which is subject to the provisions of book II of the Civil Code concerning objects. For land objects, the levering is done by Transfer of Names to the relevant officials.

Differences in the practice of buying and selling land have occurred in Indonesian society since the colonial era. For indigenous peoples, who do not adhere to written law, the transfer of land rights is also carried out by adopting the concept of customary law. Thus, the transfer of land (land rights) in practice is carried out in various ways, including carried out before the Land Deed Making Officer (PPAT), or in a sale and purchase agreement on sealed (stamped) paper or even just in the form of a receipt. From a regulatory standpoint, even though the national land law adopts a customary law system, it has been explicitly and clearly regulated in Government Regulation Number 24 of 1997 concerning Land Registration, that the sale and purchase of land objects must be carried out before the authorized official, in this case the Land Deed Making Officer. (PPAT). 4 If the transfer of land rights due to a sale and purchase is made before the PPAT, then you will have strong evidence for the transfer of rights to the land in question, because the PPAT deed is an authentic deed. Even though the PPAT administration is closed, the PPAT is required to submit the relevant deed to the local Land Office to be registered. This is intended to be known by the public, so that everyone is considered to know it.

At present there are still residents of Pasirbatang Village and Rajadatu Village in the Tasikmalaya Regency area who apply customary law, which results in a relationship between legal subjects (community) and legal objects (land) that still exist and are inherent in social life. Currently, the practice of buying and selling land that has not been certified under the hand is still mostly carried out by the village community. The sale and purchase transaction of land that has not been certified is carried out on the principle of trust between the seller and the buyer with the knowledge of the Village Head and proof of ownership of the land rights obtained from the Village book C, a book in the form of a register in the Village office or owned by the Village which contains details detailed data on the former form of land tenure in the village concerned. In the C Village book, the origins of land ownership will be seen. Until now, some members of

the community still apply the C Village book as proof of land ownership rights and as material evidence for a citizen in applying for a Land Certificate. Even though the sale and purchase agreement made orally does not have legal force.

The people of Pasirbatang Village and Rajadatu Village, Tasikmalaya Regency, still do not understand the Officials in charge of land affairs so that the sale and purchase transactions of land that have not been certified under the hand are still popular with the community. There is also a lack of knowledge, namely carrying out the buying and selling process through short routes in cash and instantly. The meaning of cash and instantaneous is when the process of buying and selling transactions occurs and after the payment is made, there is also a transfer property rights to the object of sale and purchase. Buying and selling immovable objects (land or buildings) requires an authentic deed as legal proof of the sale and purchase, namely the Sale and Purchase Deed (AJB). Because the activity of buying and selling land or buildings is different from buying and selling in general. but at this time there are village people in the Tasikmalaya Regency area who are still carrying out the process of buying and selling land that has not been certified and has not been included in the PPAT deed so that land registration can be carried out. Meanwhile, this can lead to legal consequences, namely the occurrence of disputes regarding ownership of land, especially with third parties.

The practice of buying and selling land at this time is expected to have legal certainty that can guarantee the continuation of these activities through land registration. The function of land registration in buying and selling according to the National Land Law is to expand and strengthen evidence that there has been a transfer of rights between the seller and the buyer. By registering the transfer of rights, it becomes perfect proof that there has been a transfer of rights from the seller to the buyer.

The Village Head has a very important role and position in Village Administration. The village head is the leader of the administration of government affairs in the village. The running of the wheels of government and development within the village area is organized and responsible for a village head. A Village Head has a fairly broad scope of duties and responsibilities. So that many people entrust various arrangements to their Village Head, including to carry out land buying and selling transactions.

There is a discrepancy based on the provisions of Act No. 5 of 1960 concerning the Basic Agrarian Regulations (UUPA) of 1960 and Government Regulation Number 24 of 1997 concerning Land Registration in buying and selling land that has not been certified, a buyer must obtain legal certainty for purchasing land that has not been certified through the Village Head by registering the right to land to authorized officials. As described above, the author is trying to find a

legal settlement regarding the sale and purchase of land that has not been certified, which so far is still often carried out by the people of Pasirbatang Village and Rajadatu Village in the Tasikmalaya Regency area.

2. Research Methods

The approach used in this study is a descriptive analysis approach. The research approach method used in this thesis is a sociological juridical legal research method. The specification of this study uses descriptive analysis, which describes the problems that become the object of research based on the data obtained when the research was carried out. The type of data used in this study is primary data which includes the UUPA, PP on Land Registration, and other regulations. As well as secondary data containing books, journals and other documents. Collecting research data with interview and study techniques documents or library materials. The data analysis method used in analyzing the data is qualitative analysis.

3. Results and Discussion

3.1. Reasons for the Occurrence of Sale and Purchase of Uncertified Land Through the Village Head in Tasikmalaya Regency

Most of the Tasikmalaya Regency area is a hilly area, especially in the eastern area of the Regency. Some are mountainous, as seen in the northwest where the Galunggung mountains are located. Only 13.05% of the district is located in the lowlands with elevations from zero to 200 meters. While the average height of this district is 200 to 500 meters. The rest rises to the height of the peak of Mount Galunggung 2.168 meters. This district is traversed by a chain of volcanoes in Java Island, where this area naturally has rich and fertile soil, and provides an abundance of water resources. Tasikmalaya Regency is also located low in the cavity of the mountain slopes, which supplies more rainfall catchment and water catchment areas. This advantage is supported by the tropical rainforest climate where Tasikmalaya Regency gets heavy rain. The average daily temperature of Tasikmalaya Regency varies, ranging from 20° to 34°C in the lowlands and 18° to 22°C in the highlands. Tasikmalaya Regency covers an area of 2,563.35 square km.⁶

Government Provincial Regions, and Regency/City Regional Governments can carry out Village arrangement carried out by the Village Government based on Act No. 6 of 2014 concerning Villages. Village Administration is the organizer of government affairs and the interests of the local community in the system of government of the Unitary State of the Republic of Indonesia.

Village Government. 8 This aims to realize the effectiveness of Village

Government administration, accelerate the improvement of Village community welfare, accelerate public service improvements, improve the quality of Village Government governance, and increase Village competitiveness.

Village government is also one that regulates land transaction issues in their area. Land in Indonesia has been controlled for generations in the concept of religious individualistic communalism. Land is a basic human need, functions as a place to live as well as for business activities (factor of production) and therefore it is necessary to create legal certainty for each holder of land rights as well as for the general public, through a process of systematically recording each plot of land regarding data physical as well as juridical data, and this kind of activity is known as land registration

Based on Government Regulation Number 24 of 1997 concerning Land Registration, the Village Head has authority in the land sector, especially in land registration, which is regulated in Article 8, Article 24, Article 26 paragraph (2) and Article 39 stipulates:

- [1] As a member of the Adjudication Committee, namely assisting the implementation of systematic land registration (Article 8 paragraph (2)).
- [2] The Village Head has the authority to make a history of the origin of land information before the land is registered to make a certificate of ownership of the land (Article 24 paragraph (2) letter b and Article 26 paragraph (2)).
- [3] Authorized to make a statement confirming the proof of rights with the person concerned who controls the land parcel (Article 39 paragraph (1) Letter b number 1).
- [4] Make a statement that the land has not been certified by the land office, or for land located in an area far from the position of the land office. (Article 39 paragraph (1) letter b number (2)).

The village head can also be a motivator and able to socialize to the community about registering their land, both for land registration for the first time, as well as in the context of maintaining land registration data. power of attorney from the community so that the implementation of land registration can be carried out smoothly. The position of the Village Head in terms of data maintenance for buying and selling can only be asked as a witness, which means not obligated by the Village Head as a witness in the land registration of data maintenance, especially due to buying and selling

Land registration is regulated in Articles 19, 23, 32 and 38 of the UUPA, which are further regulated in Government Regulation No. 24 of 1997 concerning Land Registration. Land registration is an activity that is carried out continuously and continuously to maintain physical and juridical data on a particular plot of land. In this case buying and selling is a legal act of transferring land rights which is included in the scope of the land registration, because buying and selling land contains a legal consequence, namely the change in juridical data regarding the status of land ownership and even physical data.

Land registration is one of the efforts of the Government which is carried out continuously to provide guarantees of legal certainty regarding subjects, objects and certainty regarding the status of land rights and to provide legal protection to holders of land rights for the community in the form of providing proof of rights in the form of certificates. A certificate is a letter of proof of title as referred to in Article 19 Paragraph (2) letter c of the BAL for land rights, management rights, waqf land, ownership rights to flats and mortgage rights, each of which has been recorded in the relevant land book.

Many letters were proof of land ownership before the UUPA came into effect, but after the UUPA came into effect these letters were only proof of ownership and proof of tax payments so they needed to be certified. The conversion of land rights to these letters was carried out in order to unify and simplify the National Agrarian Law. Because that is one of the goals of enactment of the BAL. And also what is proof of legal ownership in the eyes of the law is a certificate.

Based on the results of research conducted in Pasirbatang Village and Rajadatu Village, Tasikmalaya Regency:

First, the transfer of land rights through buying and selling that occurred in Rajadatu Village, residents who carried out land sale and purchase transactions without certificates but used the land certificate as proof of their land ownership rights. Meanwhile, the SPPT for land is not proof of ownership of land rights. This land sale and purchase transaction without a certificate occurred between Mrs. Lisdiana and Mr. Engkus. Where was the land without a certificate located in Kp Sindanggalih, Rajadatu Village, with a land area of 130 m² which was sold to Mr. Engkus. The proof of land ownership is based on the SPPT of Mrs. Li Sumiati's land belonging to Mrs. Lisdiana. From the proof of the transfer of land rights transactions that were given by the buyer to the seller only with proof of the land payment receipt signed by the parties. Then the buyer came to the village where the land was located to notify that there had been a transfer of rights over the land and then a certificate was issued knowing the village head from the village.

Second, the transfer of land rights through buying and selling that took place in Pasirbatang Village. The transfer of land rights due to this sale and purchase occurred between Mrs. Aat and Mr. Aam. Where Mr. Aam bought some of the land on the edge of his house which was indeed Mrs. Aat's land. Which in the sale and purchase transaction is the same as the case between Mrs. Lisdiana and Mr. Engkus proof of land ownership with the SPPT and making a statement knowing the Village Head from the Village.

In general, the community makes land buying and selling transactions including land buying and selling under the hands because the Village Head only makes a statement that there has been a transfer of land rights, this is what the buyer follows up on.

The reasons for the residents of Pasirbatang Village and Rajadatu Village in the Tasikmalaya Regency area to buy and sell land are as described above:

1. Because the process is quite simple, unlike buying and selling land before a PPAT, which has too many procedures, is difficult and takes a long time.
2. The process of transferring rights before the village head was considered strong enough, cheap in terms of costs, faster and easier to administer.

Because most of the land plots do not have certificates and most of the land sales and purchases are carried out only before the Village Head, not before the PPAT or the Camat as the Temporary PPAT. From the results of an interview with the Head of Pasirbatang Village, Mr. Yudi Saparila, this kind of thing happened because:

1. Because the people do not understand the importance of the Land Title Certificate, they are ignorant of the rights and obligations as sellers and buyers of land so that it is based solely on mutual trust between the seller and the buyer;
2. The community is afraid of collecting fees from the village;
3. The community is not ready for the cost of transferring their rights or because they also do not have the funds to pay Income Tax (PPH) or Land and Building Acquisition Fees (BPHTB);
4. The community thinks that buying and selling before a PPAT requires a lot of money, takes a long time and is a convoluted process;

So that the perception in the community that the transfer of land rights through

buying and selling is sufficient to be done before the Village Head and does not need to have a certificate, there are even people who still transfer land rights without notification to the Village.

According to the author, the transfer of land rights through buying and selling carried out before the village head was also caused by the fact that the village head had not put too much pressure on giving an understanding of the existence of the Agrarian Law Legislation regulated in the UUPA and its implementing regulations, especially Government Regulation Number 24 of 1997 concerning Land registration. This resulted in the transfer of land rights through buying and selling carried out by the community not in accordance with applicable regulations so that it could result in not guaranteeing legal certainty in society.

The purpose of law has universal characteristics such as order, tranquility, peace, prosperity and happiness in social life. Dr. Wirjono Prodjodikoro. SH argued that the purpose of law is to establish safety, happiness and order in society. He said that each member of society has diverse interests. Its form and number of interests depend on the form and nature of humanity that exists within the bodies of the members of their respective communities. In carrying out its function as a means of control and social change, the law has the aim of creating an orderly, peaceful, just society that is supported by legal certainty so that the interests of individuals and society can be protected.

Utilistic Theory, According to this theory the law aims to produce the maximum benefit to humans in realizing pleasure and happiness. Adherents of this theory are Jeremy Bentham in his book "Introduction to the morals and legislation". This opinion is focused on things that benefit many people and are general in nature without regard to aspects of justice. More emphasis on the purpose of law in providing benefits to the most people in society.

Ethical Theory, The ethical theory was first put forward by the Greek philosopher, Aristotle, in his work ethics and rhetoric, which stated that law has a sacred purpose to give everyone what is due. According to this theory, law is solely for the sake of justice. The content of law is determined by our ethical beliefs which are fair and which are not. This means that the law according to this theory aims to realize justice.

Ethical theory emphasizes that law is solely for achieving justice, where the law contains ethical beliefs about what is fair and unfair. The main focus of this theory is on the nature of justice and norms to act concretely in certain circumstances.

Mixed Theory According to Apeldoorn, the purpose of law is to regulate order in

society in a peaceful and just manner. Mochtar Kusumaatmadja explained that the need for order is a basic requirement (fundamental) for an orderly and peaceful society. And in order to create a peaceful society, conditions for a just society must be created by balancing the interests of one another, and everyone (as much as possible) must get what is due. Thus this opinion is said to be a middle way between ethical and utilitarian theories because it places more emphasis on the purpose of law not only for justice alone, but also for the benefit of the people.

The author concludes based on the analysis above that the universal purpose of law, as Gustav Radbruch's opinion is, is justice, benefit and legal certainty in the governance of social life. Associated with the transfer of rights to land that has not been certified through buying and selling carried out by the people of Pasirbatang Village and Rajadatu Village in the Tasikmalaya Regency Region is not in accordance with applicable legal regulations which can result in not ensuring legal certainty in society so that the legal objectives are not realized. Where the law has the goal of creating an orderly, peaceful, just society that is supported by legal certainty so that the interests of individuals and society can be protected.

3.2. Legal certainty of sale and purchase of uncertified land through the village head in Tasikmalaya district

Land in Indonesia has been controlled for generations in the concept of religious individualistic communalism. Act No. 5 of 1960 concerning Basic Agrarian Regulations (UUPA) as a form of unification of national land law in Indonesia, was born on September 24, 1960 after 15 years of the Republic of Indonesia Merdeka. One of the goals to be achieved is to achieve legal certainty of land rights by holding land registration activities throughout the territory of the Republic of Indonesia.

Land control can be through buying and selling, buying and selling land is a common thing. But it seems that there are still some people who don't really understand how or the implementation process transfer of land rights through buying and selling that is correct based on applicable regulations so that legal certainty is guaranteed. The validity of buying and selling land based on laws or government regulations must include a sale and purchase deed issued by the Land Deed Making Officer (PPAT). To ensure legal certainty and order in buying and selling land, the land sale and purchase process can only be carried out on land that is owned based on land rights, meaning that land objects are legalized with proof of ownership of land rights. Thus it can be seen that the seller is a person or party entitled and lawful to be sold. 14 Land that has not been certified can in fact be changed hands or can be bought and sold.

Land registration is regulated in Articles 19, 23, 32 and 38 of the UUPA, which are further regulated in Government Regulation No. 24 of 1997 concerning Land Registration. Land registration is an activity that is carried out continuously and continuously to maintain physical and juridical data on a particular plot of land. In this case buying and selling is a legal act of transferring land rights which is included in the scope of the land registration, because buying and selling land contains a legal consequence, namely the change in juridical data regarding the status of land ownership and even physical data.

Every deed carried out by the legal community must have legal certainty. Legal certainty is part of and is needed as an effort to uphold justice. Because with legal certainty, every action that occurs under the same conditions will receive sanctions. As for expediency attached to the law as a tool to direct society which of course should not violate justice. The purpose of law is legal certainty as well as justice for society as according to Aristotle and Aguinias Grotius who teach that legal certainty and justice are the goals of the legal system. The provisions in Article 19 paragraph (2) of the UUPA emphasize that presenting a valid proof of rights (certificate) as a strong means of proof,

Based on its position, the land is divided into certified land and uncertified land. Certified land is land that has rights and has been registered at the land office while land that has not been certified is customary land that has not been registered with the Office of the State Land Agency or land that does not yet have certain rights. Usually, state-owned land that has been controlled and worked on by the community for generations has evidence of a land certificate from the Village Head as initial evidence before being certified or a letter of notification of tax payable (SPPT) which is a Decree of the Head of KPP regarding tax payable. Sale and purchase of land that has not been certified is legal according to the fulfillment of all requirements according to the provisions of the legislation in force. So that buying and selling land that has not been certified will have legal consequences in the form of handing over the object of sale and purchase, namely in the form of land to the buyer and payment of the sale and purchase price to the seller.

As stated in the elucidation of Article 24 of Government Regulation Number 24 of 1997 concerning Land Registration,¹⁵ there are written evidence to be able to prove ownership of land that can be used for registration of old rights and is a complete document for the purposes of land registration, including deed of transfer rights made under the hand with testimony from the Customary Head/Village Head made before the enactment of Government Regulation Number 24 of 1997 concerning Land Registration.¹⁶

The sale and purchase of land rights that occurred among villagers in Tasikmalaya Regency, that: The parties in the sale and purchase transaction of

land that has not been certified are only based on receipts for payment of the price of the land in question, where the receipt is held by the buyer. This evidence cannot be registered for land registration, because evidence of the transfer of rights to the land in question must be made with a PPAT deed beforehand. Meanwhile, the PPAT is demanded to be more selective in making the deed by ensuring that the making of the deed is safe and does not have the potential for legal problems in the future. It is better for the buyer to ask the seller of the land in question to be equipped with:

1. Proof of title as referred to in Article 24 paragraph (1) PP 24/1997 or a statement from the village head stating that the person concerned controls the land as referred to in Article 24 paragraph (2) PP 24/1997 is made.
2. A statement stating that the land parcel in question has not been certified by the Land Office or for land located in an area far from the domicile of the Office Land and rights holders concerned are strengthened by the Village Head.
3. A statement/statement of no dispute from the right holder or the village.

Where is the description above so that after the land sale and purchase transaction is carried out the land can be directly registered by the buyer which indeed if the seller does not want to bear the tax costs on the sale of the land in question, it is the buyer who should bear the tax burden of the buyer so that the registration of the certificate can be carried out in order to provide legal protection and legal certainty over the ownership of the land in question.

One of the objectives of land registration as stipulated in Article 3 of Government Regulation No. 24 of 1997, is to provide legal certainty and protection to rights holders over a parcel of land, apartment units and other registered rights so that they can easily prove themselves as the holder of the rights in question. In order to provide legal certainty and legal protection, the right holder concerned is given a certificate of land rights. Land title certificates are the result of the land registration process, namely land registration includes several series of activities that end with the issuance of letters of proof of rights that apply as a valid means of proof.

Land is a property object that is prone to disputes. The process of buying and selling is not easy, because it requires a black and white agreement involving many parties. Therefore, knowledge of the law of buying and selling land is important for anyone who intends to carry out a land sale and purchase transaction. Each country applies different regulations regarding the law of

buying and selling land. In Indonesia, the rules for buying and selling land refer to several legal instruments, namely the Civil Code (KUH Perdata), the Basic Agrarian Law (UUPA) and PP No. 24 of 1997 concerning Land Registration.

According to Adrian Sutedi, in buying and selling land, there are conditions that must be met in buying and selling, these conditions are divided into two, namely material requirements and formal requirements, this can be described as follows:

1. Material requirements

The material requirements will determine the validity of the land sale and purchase, including:

- a. The buyer has the right to buy the land in question
- b. The seller has the right to sell the land in question
- c. The land title in question may be traded and not in dispute.

2. formal terms

After all the material requirements have been met, the PPAT (Land Deed Making Officer) will make a sale and purchase deed based on Article

37 paragraph 1 Government Regulation Number 24 of 1997 concerning land registration. Buying and selling that is carried out without being before the PPAT is still valid because the Basic Agrarian Law is based on customary law (Article 5 of the Basic Agrarian Law), whereas in customary law the system used is a concrete/concrete/real/real system. Nevertheless, in order to realize legal certainty in any transfer of land rights, Government Regulation no. 24 of 1997 as an implementing regulation of the Basic Agrarian Law, which has determined that any agreement that intends to transfer land rights must be proven by a deed drawn up by and before the PPAT.¹⁷

Based on Article 39 paragraph (1) of Government Regulation Number 24 of 1997 it is stipulated that the Land Deed Making Officer (PPAT) refuses to make a deed if:¹⁸

1. Regarding land parcels that have been registered or ownership rights to flats, the original certificates of the rights in question were not delivered to him or the certificates submitted were not in accordance with the registers at the Land Office.

2. Regarding land parcels that have not been registered therein, it is not conveyed as follows:
 - a. Proof of right as referred to in Article 24 paragraph (1) or a statement letter from the Village Head stating that the land concerned controls the land parcel as referred to in Article 4 paragraph (2).
 - b. A certificate stating that the land parcel in question has not been certified by the Land Office or for land located in an area far from the Land Office, a certificate from the right holder in question, confirmed by the Head of the Village.

If you want to buy and sell community land, you must meet the conditions described above. So that in buying and selling land carried out by the community, legal certainty of land ownership can be guaranteed and the implementation of orderly land administration can be carried out.

After conducting research in the village of Tasikmalaya, the sale and purchase of land rights is still in the condition that the land has not been certified, this often happens in the community. Proof of land ownership that is held still uses evidence of Land Tax Returns (SPPT), this evidence is no longer relevant because the government only recognizes one proof of land rights, namely a certificate. So there is no guarantee of legal certainty for buying and selling land.

Letter of Notification of Taxes Payable (SPPT) on land which is the basis for rights that are widely used in various regions by the community. Particularly in the village area of Tasikmalaya Regency, they consider that the SPPT is included in the form of written proof of ownership of land rights. This SPPT for land is a Decree of the Head of KPP regarding the tax payable. Land ownership rights like this are the initial process or basis for rights to obtain a transfer certificate of land rights. However, by pocketing the SPPT for the land, the community feels that their rights are safe and protected without carrying out the process of re-registration of the name of the land rights.

Communities are still reluctant to register their land rights, for various reasons. Starting from the length of the process to take care of land registration, lack of knowledge/understanding of the importance of proof of land ownership and other reasons that indeed the land has been divided but the certificate is still one parent. In order to guarantee legal certainty and order in the sale and purchase of land rights, it is necessary to have formal requirements for the seller or owner of land rights. The formal requirements for the object of buying and selling land rights are in the form of proof of land ownership related to land

rights, and also related to the procedure for transferring land rights. Procedures for buying and selling land rights have been determined according to applicable regulations, namely Act No. 5 of 1960 concerning Basic Agrarian Regulations and Government Regulation No. 10 of 1961 which was amended by Government Regulation no. 24 of 1997 concerning Land Registration.

The transfer of land rights through buying and selling land according to the BAL, buying and selling is an agreement in which one party binds himself to surrender an object, and the other party to pay the price that has been agreed upon. Buying and selling as described above when viewed from Government Regulation Number 24 of 1997 concerning Land Registration as an implementing regulation of Article 19 of the UUPA, the sale and purchase of land rights can be considered not having strong legal force, because the sale and purchase is not proven by a deed of sale and purchase . Because to make a sale and purchase deed, one of them must have the original certificate of the land first. The certificate is the main handle of the holders regarding the legal certainty of the land rights they hold.

Based on PP No. 24 of 1997, the transfer of land and objects on it is carried out with a PPAT deed. The transfer of land from the owner to the beneficiary is accompanied by a juridical transfer (juridiche levering), namely a transfer that must comply with statutory formalities, including the fulfillment of conditions; carried out through established procedures; using documents; made by/before PPAT

In land law, land buying and selling transactions can be carried out by the PPAT, the Camat can also be appointed as a PPAT in areas where there are not enough PPATs. all territory of the State. Therefore, in areas where there are not enough PPATs, the Camat needs to be appointed as a temporary PPAT. For the Village community, the procedure or mechanism for transferring land rights through buying and selling is carried out before the Temporary PPAT, in this case the Camat is sufficient by completing the following:

1. Sellers and Buyers come to the Temporary PPAT office (Camat) bringing:
 - a. Piece of Land
 - b. Land Certificate for those who have not been certified
 - c. Copy of KTP of Seller and Buyer
 - d. SPPT Land
 - e. Certificate of Land Not in Dispute

2. After the above requirements are complete, a sale and purchase deed is made by the Provisional PPAT (Camat) which is signed by each party and witnessed by 2 (two) witnesses and approved by the Provisional PPAT (Camat).
3. Submission of the title certificate back to the Semarang District Land Office authorized by the owner to the PPAT.
4. In making a deed of sale and purchase, the Camat as the Temporary PPAT (Camat) will ask the Village Head as one of the witnesses in making the deed.

In order for sale and purchase transactions to be accounted for, the land sale and purchase deed (PPAT Deed) is a very important matter based on PP No. 24 of 1997 concerning Land Registration which functions to prove that there has been a transfer of ownership rights to land and land ownership. And the presence of witnesses is also absolutely important, because if one of the sellers and buyers disobeys, and it becomes a dispute, then these two witnesses will explain to the judge that they really have bought and sold land and according to the provisions of the UUPA, registration is a valid proof. strongly regarding the legitimacy of buying and selling which is carried out especially in relation to third parties who have good intentions. Administration of registration is open so that everyone is assumed to know it

Sale and purchase of land is basically one of the transfer of land rights to another party, namely from the seller to the buyer with a number of payments, according to article 1457 of the Civil Code, the meaning of sale and purchase is, "an agreement with which one party binds himself to surrender something for goods and other parties to pay the promised price

The sale and purchase regulated in the Civil Code (BW) is obligatory, which means that the new sale and purchase agreement places reciprocal rights and obligations between the two sides of the seller and the buyer, namely placing the seller with the obligation to hand over ownership rights to the goods he is selling and at the same time give him the right to receive delivery of the agreed price and on the other hand places an obligation on the buyer to pay the price of the goods in exchange for his right to demand the transfer of ownership rights to the goods he has purchased. Or in other words, buying and selling which is adhered to by the Civil Law of buying and selling has not separated property rights

According to customary law, the sale and purchase of land is not a legal act which is an obligatoir agreement, but in the form of a transfer of rights with cash payments, meaning that the price agreed upon is paid in full at the time

the sale and purchase in question is carried out. Buying and selling land is an act of transferring land rights in a clear and cash manner. It clearly means that the act of transferring rights must be carried out in the presence of the customary head, whose role is as an official who is in charge of the regularity and legitimacy of the act of transferring rights so that the act is known to the public. Cash means that the act of transferring rights and paying the price is carried out simultaneously. Therefore, cash is possible means that the land price is paid in cash, or only partially paid (cash is considered cash).

Buying and selling according to customary law and Boedi Harsono is a legal act of transferring rights in cash. 24 Selling and buying land in customary law is a legal act of transferring land rights by paying the price at the same time in cash. So by handing over the land to the buyer and paying the price to the seller at the time the sale and purchase is made, the sale and purchase action is complete in the sense that the buyer has become the new right holder.

According to Maria S. W Sumardjono, the characteristics of buying and selling land according to customary law are:

1. Cash, meaning that the handover of land rights by the land owner (seller) is carried out simultaneously with the payment of the price by another party (buyer).

With the legal action of buying and selling, immediately there is a transfer of land rights. The price paid at the time of transfer of rights does not have to be paid off or in full and this does not reduce the nature of the cash earlier. If there is a difference/remaining from the price, then this is considered as the buyer's debt to the seller who is subject to the law of debt and credit.

2. Real, meaning that the expressed will or intention must be followed by actions that clearly show the purpose of the sale and purchase, for example by receiving money from the seller, and making an agreement before the village head.
3. Clearly, it means that the legal action must be carried out before the Village Head as a sign that the action does not violate the applicable legal provisions.

AP Parlindungan stated that, prior to the enactment of the UUPA, our country still had dualism in agrarian law, this was based on the fact that two types of law were still in effect which became the basis for our land law, namely customary law and western law so that there were two types of land, namely land customs and lands west.²⁶

Legal certainty regarding land rights listed in the provisions of Article 19 paragraph (1) 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 Regulations." Chapter 19 paragraph (1) of the UUPA is addressed to the Government as an instruction so that in all regions of Indonesia land registration is carried out which is *recht cadastral* in nature, meaning that it aims to guarantee legal certainty. Meanwhile, to achieve legal certainty, it is necessary to implement the law itself.

Guarantees of legal certainty over land rights can be obtained for right holders by obligatory inventory of data relating to each transfer. The proper implementation of land registration is the basis and embodiment of orderly administration in the land sector. In order to achieve such administrative order, every land parcel and apartment unit, including the transfer, encumbrance and write-off must be registered.

The purpose of land registration is to provide legal certainty and legal protection to holders of land rights. What is protected by holding land registration is the holder of a certificate of land rights, because by carrying out land registration it means that legal certainty, certainty of rights and orderly administration of land will be created so that all parties are properly protected, both certificate holders, land rights holders, third parties who obtain rights to land and the government as administrator of the State.

According to the authors of the transfer of land rights through buying and selling, as the results of the research above show that buying and selling land carried out by the village community fulfills customary law requirements, namely direct, cash and clear. Where it is direct, that is, the transaction is carried out directly, in cash the agreed price has been paid in full or in part and delivery occurs when the money and goods are as agreed upon, clearly it is a sale and purchase whose actions are not carried out illegally. So that the statement that there has been a transfer of land rights through a sale and purchase/sales statement letter issued by the Village Head is valid and legally binding because it has fulfilled the conditions for buying and selling in customary law.

So that the legal force of buying and selling land based on a statement that there has been a transfer of land rights through a sale and purchase issued by the Village Head is valid and has legal force for land that has not been certified. However, after the sale and purchase takes place on the basis of a land certificate issued by the village head, the buyer is obliged to immediately take care of the land registration at the land office where the land is located, because the land certificate issued by the village head is not proof of

ownership. land rights according to UUPA No. 5 of 1960 and its implementing regulations, especially PP No. 24 of 1997 but only as proof of physical possession of land rights by someone.

In order to achieve legal certainty over land rights obtained by the community regarding the implementation of the transfer of land rights through buying and selling, intensive and integrated socialization of Land Law is needed for both village officials and community members. Village apparatus understanding of land law is also very necessary in overcoming the problem of buying and selling land which is carried out privately, because the Village Head and his apparatus are part of the Government Apparatus at the lowest level so that they have a very important role in supporting the achievement of legal certainty over land rights. land among the people.

The Head of the Land Office in carrying out land registration including making a sale and purchase deed of land in accordance with applicable laws and regulations can be assisted by the Village Head as a Government apparatus. Because of this, the Village Head is expected to be a motivator for community members holding land rights so that they have the awareness to buy and sell land before the PPAT and/or sub-district head as PPATS and not before the Village Head. Furthermore, the Village Head can become a motivator and socialize to the community to register their land both sporadically and in the context of maintaining land registration data. Because the Village Head in his daily life is always in contact with the community and is a role model,

The theory of legal certainty is one of the objectives of law and it can be said that legal certainty is part of the effort to realize justice. Legal certainty itself has a real form, namely the implementation and law enforcement of an action that does not look at who the individual is doing. Through legal certainty, everyone is able to predict what he will experience if he takes a certain legal action.

Legal certainty is also needed to realize the principles of equality before the law without discrimination. From the word certainty, it has a meaning that is closely related to the principle of truth. That is, the word certainty in legal certainty is something that can be strictly syllogized in a formal legal way.

With legal certainty, it will guarantee that someone can carry out a behavior that is in accordance with the provisions of the applicable law and vice versa. Without legal certainty, an individual cannot have a standard provision to carry out a behavior. In line with these objectives, Gustav Radbruch also explained that legal certainty is one of the objectives of the law itself.

Gustav Radbruch explained that in the theory of legal certainty that he put

forward there are four fundamental things that have a close relationship with the meaning of legal certainty itself, namely as follows:

1. Law is a positive thing which means that positive law is legislation.
2. The law is based on a fact, meaning that the law is made based on reality.
3. Facts contained or listed in the law must be formulated in a clear manner, so as to avoid mistakes in terms of meaning or interpretation and can be easily implemented.
4. Positive law should not be easily changed.

Gustav Radbruch's opinion regarding legal certainty is based on his view of legal certainty which means legal certainty itself. Gustav Radbruch argued that legal certainty is a product of law or more specifically a product of legislation.

Based on Gustav Radbruch's opinion regarding legal certainty, law is a positive thing that is able to regulate the interests of every human being in society and must always be obeyed even though this positive law is considered unfair. Furthermore, legal certainty is a definite condition, terms and conditions.

In essence, the law must be certain and fair. That is, a law that is certain is a guideline for behavior and fair is a guideline for behavior that must support an order and be considered reasonable. Only by being certain and fair, then the law is implemented in accordance with the function it has.

Analysis above, the author can conclude that the transfer of land rights that have not been certified through buying and selling before the village head in Tasikmalaya Regency does not yet have legal force as stated by Gustav Radbruch in the theory of legal certainty, because the transfer of land rights through buying and selling is considered valid if according to The applicable laws and regulations, namely UUPA No. 5 of 1960 and its implementing regulations, especially PP No. 24 of 1997 concerning Land Registration.

3.3. Legal Protection for Uncertified Land Buyers

Based on the results of an interview with the Head of Pasirbatang Village regarding the transfer of land rights through buying and selling that occurred between Village residents, he explained that:

"The purchaser of the land that has not been certified, based on the receipt of payment for the land price and a statement letter that there has been a transfer

of land rights through buying and selling from the village head concerned, is not can be guaranteed. The legal force is if land registration is not immediately carried out, because proof of land ownership is based on regulations, namely land certificates. Then, the transfer of land rights is made before the PPAT and/or sub-district head as PPATS first. If the seller does not want to bear the tax costs on the sale of the land in question, the buyer should be willing to bear the tax burden and bear the costs of registering the land in order to provide legal protection and legal certainty for the ownership of the land in question.

It is also important that after the land sale and purchase transaction is carried out, the buyer can immediately register it, which is true if the seller does not want to bear the tax costs for the sale of the land in question, it is better for the buyer to ask the seller of the land in question to be completed with:

1. Proof of title as referred to in Article 24 paragraph (1) PP 24/1997 or a statement from the village head stating that the person concerned controls the land as referred to in Article 24 paragraph (2) PP 24/1997 is made.
2. A statement stating that the land parcel in question has not been certified by the Land Office or for land located in an area far from the position of the Land Office and the right holder in question, confirmed by the Village Head.
3. A statement/statement of no dispute from the right holder or the village.

In Article 19 paragraph (2) letter c of the UUPA it is stated that the end of land registration activities carried out by the Government is the issuance of a letter of proof of title, which is valid as a strong means of proof. UUPA does not mention the name of the certificate of proof of land rights that is registered. Whereas in article 13 paragraph (3) Government Regulation No. 10 of 1961 it is stated that the certificate of proof of land rights that is registered is called a certificate, namely a copy of the land book and measurement letter after being sewn together with a cover paper whose shape is determined by the Minister of Agrarian Affairs.

Legal protection should be obtained by all legal subjects without any differences. As stated in one of the articles in the 1945 Constitution, namely Article 27 paragraph (1) which states: "Everyone has the right to recognition, guarantees, protection, and fair legal certainty and equal treatment before the law."

In the Big Indonesian Dictionary (KBBI) what is meant by protection is the

method, process and act of protecting. Whereas law according to KBBI, what is meant by law is regulations or customs that are officially considered binding, which are confirmed by the authorities or the government. Legal protection is protection provided by the government regarding dignity, recognition of human rights owned by legal subjects according to provisions law from arbitrariness or a collection of legal rules that protect something from other things.

"Satjipto Rahardjo in his book entitled *The Science of Law* said that something Legal protection can be interpreted as providing protection for human rights that are harmed by other parties, and the purpose of legal protection is to give people a sense of comfort and security to enjoy all their rights granted by law.

The theory put forward by Satjipto Rahardjo can also be interpreted that legal protection is something that protects legal subjects from harmful things done by other legal subjects. According to Satjipto Raharjo, "The law protects a person's interests allocating a power to him to act in the framework of his interests." The allocation of this power is carried out in a measurable manner, in the sense that it is determined by its breadth and depth." Such powers are called rights. However, not every power in society is usually referred to as a right, but only certain powers are the reasons for attaching that right to someone.

ProtectionThe law given to each holder of land rights is a consequence of land registration which creates a certificate. For this reason, every person or legal entity is obliged to respect the rights to the land. As a right protected by the constitution, the use and utilization of land belonging to another person or legal entity must be carried out in accordance with applicable laws and regulations, which basically cannot be done arbitrarily. In other words can be said that legal protection is a legal remedy that must be provided by law enforcement officials to provide a sense of security, both mentally and physically from disturbances and various threats from any party. Legal protection can be divided into 2 (two), namely:

1. Preventive Legal Protection Protection provided by the Government with the aim of preventing violations before they occur. This is contained in statutory regulations with the intention of preventing a violation and providing signs or limitations in carrying out an obligation.
2. Repressive Legal Protection Repressive Legal Protection is the final protection in the form of sanctions such as fines, imprisonment and additional punishment given when a dispute has occurred or a violation has been committed.

With the need for land that continues to increase resulting in disputes land

appear. From problem the how verification and protection of land buyers who have not been certified. The principle of a rule of law is to guarantee certainty, order and legal protection with the core of truth and justice. Certainty, order, and legal protection require that legal traffic in people's lives requires evidence that clearly determines the rights and obligations of a person as a legal subject in society. that there has been a transfer of land rights issued by the village head. However, if the buyer wishes to register the land, the certificate cannot be used as a reference for registration at the Land Office. but the parties must first register the land. Especially regarding the sale and purchase of uncertified land. Therefore, for legal actions on land without proof of certificate must be completed with as described above.

4. Conclusion

This is because there is still a transfer of land rights that have not been certified through buying and selling because people do not understand the importance of certificates of land rights, ignorance of the rights and obligations as sellers and buyers of land so that it is based solely on mutual trust between sellers and buyers; The community is afraid of collecting fees from the village; The community is not ready for the cost of transferring their rights or because they also do not have the funds to pay Income Tax (PPH) or Land and Building Acquisition Fees (BPHTB).

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