

Legal Implications Of Ownership Of Multiple Land Rights Certificates By Buyers In Good Faith (Study of Decision Number 940 PK/Pdt/2020)

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Abstract. *The emergence of these cases of duplicate certificates certainly makes people worried that if they buy land, it turns out that the certificate is double or multiple. This issue becomes interesting when linked to a person's good faith legally as regulated in Article 1338 paragraph (3) of the Civil Code (KUHPerduta). This study aims to understand and analyze the legal considerations of the Judge in adjudicating land rights sale and purchase disputes in decision Number 940 PK/Pdt/2020 and the legal implications for the ownership of dual land rights certificates by buyers in good faith. This type of research uses normative juridical research, namely legal research that positions law as a system of norms using case approach methods, statutory approaches and conceptual approaches. The results of the study indicate that the judge's legal considerations in adjudicating the land rights sale and purchase dispute in decision number 940 PK / Pdt / 2020, the reason for the review cannot be justified, because after examining the Review Memorandum dated May 20, 2020 and May 28, 2020 and the Counter Review Memorandum dated June 10, 2020 in connection with the considerations and decisions of the judex juris, there was no error by the judge or a clear error and the new evidence (novum) submitted was not decisive in the a quo decision. The legal implications for the ownership of dual certificates of land rights by buyers in good faith cause great losses. In this case, Melyanti as a buyer feels very disadvantaged because she has to return the land title certificate due to the decision of the Panel of Judges stating that Melyanti is not a buyer in good faith.*

Keywords: Double Certificate; Good Faith Buyer; Ownership.

1. Introduction

The Republic of Indonesia is a state based on law (*rechstaat*), not based on power (*machtstaat*). This is clearly stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which states "The State of Indonesia is a state based on law." The rule of law aims to ensure that the law is enforced without exception, meaning that all actions by citizens and government agencies must be based on applicable law. Every citizen has the same position before the law and is obliged to uphold the law. Each community has various interests, so that in fulfilling these interests, communities establish relationships that are regulated by law to create balance in community life.¹

One way to create balance in community life is through land availability. This is formulated in Article 33 Paragraph (3) of the 1945 Constitution, which states that:

"The earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people."

Land plays a vital role as a living resource. Therefore, its regulation and use must adhere to specific norms related to land management, population growth, and evolving human thought. Consequently, systems, patterns, structures, and procedures for determining human attitudes toward land have also evolved. Along with changes and developments in mindset, legal certainty and the certainty of land rights have become paramount, ultimately serving as the legal basis for ownership of existing or future land.²

Law Number 5 of 1960 concerning Basic Agrarian Regulations (hereinafter referred to as UUPA), implements the provisions of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. As stated in Article 2 paragraph (1) of UUPA, namely:

"Based on the provisions in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia and matters as referred to in Article 1, the earth, water and space, including the natural resources contained therein, are controlled at the highest level by the State, as the organization of power of all the people."

For Indonesians today, land is their most valuable asset and a source of life. Therefore, every inch of land is defended to the last drop of blood if their land rights are compromised. To prevent disputes, land registration is necessary.

Article 19 of the UUPA states that to guarantee legal certainty of land ownership, the government shall conduct land registration throughout the Republic of Indonesia. Land registration has the following stages:

1. Land measurement, mapping and bookkeeping;
2. Registration of land rights and transfer of these rights;
3. Providing a certificate of proof of rights which acts as strong evidence.

One form of land ownership is the issuance of physical evidence by the National Land Agency (BPN), a single institution specifically authorized by law to manage land matters. The BPN is an institution under the supervision of the Ministry of ATR/BPN, with specific duties and functions, namely carrying out government duties in the land sector in accordance with statutory regulations.³

2. Research Methods

The approach methods used in this research are the case approach, the legislative approach and the conceptual approach.⁴

a. Case Approach

Researchers will examine cases that have become court decisions that have permanent legal force, namely Decision Number 940 PK/Pdt/2020.

b. Legislative Approach

The approach taken is by analyzing the rules and regulations relating to the legal implications of ownership of dual land title certificates by good faith buyers.

c. Conceptual Approach

The conceptual approach is used to understand the concept of legal implications regarding the ownership of dual land title certificates by buyers in good faith, then aligned with legal theory so that it is combined into a concept.

3. Results and Discussion

3.1. Legal Considerations of the Judge in Adjudicating Land Rights Sale and Purchase Disputes in Decision Number 940 PK/Pdt/2020

³Maya Anas Taqiyyah and Atik Winanti, 2020, "Legal Protection for Holders of Dual Land Certificates Based on Government Regulation No. 24 of 1997", *Justitia Journal: Journal of Law, Legislation and Social Institutions*, Vol. 5 No. 1, p. 78

⁴Peter Mahmud Marzuki, 2011, *Legal Research Methods*, Kencana Prenada Media Group, Jakarta, p. 93

Land buying and selling has unique characteristics and patterns that differentiate it from those regulated in the Civil Code. Prior to the enactment of the UUPA, agrarian law existed, creating two regulations regarding land buying and selling: one under Western law and the other under customary law. However, on September 24, 1960, the government issued a new legal product, Law Number 5 of 1960 concerning Basic Agrarian Regulations, later known as the UUPA.

Following the enactment of the UUPA, agrarian law, also known as land law, was unified, and land sales and purchases are regulated by the UUPA. There are no articles explicitly describing a sale and purchase, but they are referred to as transfers. The term "transfer" refers to a deliberate legal act to transfer land rights to another party through a sale, gift, exchange, or bequest.⁵

Land buying and selling is not explicitly and specifically regulated in the UUPA. In fact, there are no regulations specifically governing the implementation of land buying and selling. Although the UUPA does not define the concept of buying and selling, it is implicitly stated in Article 26 of the UUPA, which states:

1. Buying and selling, exchanges, gifts, gifts by will, gifts according to custom and other acts intended to transfer property rights and their supervision are regulated by the government.
2. Every sale and purchase, exchange regulation, grant, gift by will and other acts intended to directly or indirectly transfer ownership rights to a foreigner, to a citizen who in addition to Indonesian citizenship has foreign citizenship or to a legal entity, except as stipulated by the Government Regulation referred to in Article 21 paragraph (2), is void because the land law falls to the state with the provision that the rights of other parties burdening it remain in force and all payments received by the owner cannot be claimed back.

However, because Article 5 of the UUPA states that our national land law is customary law, the sale and purchase of land under the UUPA is in accordance with customary law. According to customary law, land sale and purchase is an act of transferring land rights that is transparent and cash, transparent meaning that the act of transferring rights must be carried out before the customary chief, who acts as an official who guarantees the order and legality of the act of transferring rights so that the act of transferring rights is known to the public.

In the Civil Code, buying and selling is defined as an agreement in which one party binds himself to hand over an object and the other party to pay the promised price.

⁵Husnul Munfarid, et al., 2014, "Legal Implications of Land Purchases Not Carried Out Before a PPAT on the Process of Registration and Transfer of Land Rights (Analysis of Decision No. 18/Pdt. G/2012/PN. Lmg)", Doctoral Dissertation, Brawijaya University, p. 6

In civil law, buying and selling is regulated in the Civil Code in Article 1457, Article 1458, Article 1459. The point of similarity between customary law and civil law regarding buying and selling is that buying and selling contains a specific economic objective, namely transferring ownership of an item from a certain person to another person.

In 1961, the government issued a new legal product as an implementing regulation for the UUPA, namely Government Regulation Number 10 of 1961 concerning Land Registration, which has now been amended to Government Regulation Number 24 of 1997 concerning Land Registration (PP Land Registration). This regulation, in addition to regulating land registration, also regulates land transfer, as seen in Article 37 of this Government Regulation, which states that:

"The transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, donation, income in a company and other legal acts of transfer of rights, except for transfer of rights through auction, can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations."

Article 37 can be interpreted that the transfer of land rights through sale and purchase must be carried out before a PPAT which is then proven by a Deed of Sale and Purchase made by the PPAT. The Deed of Sale and Purchase made by the PPAT is used as evidence that a legal act has been carried out in the form of a sale and purchase of a plot of land between the seller and the buyer and then the deed is used as a requirement for registering and transferring land rights.

The sale and purchase was carried out before a PPAT, fulfilling clear requirements (not an illicit legal act, which is carried out secretly). The deed of sale and purchase was signed by the parties proving that there had been a transfer of rights from the seller to the buyer accompanied by the price, fulfilling the cash requirements and showing that the legal act in question had been carried out in real terms. The deed proves that the legal transfer of rights has been carried out indefinitely and the price has been paid. Because the legal act carried out is a legal act of transfer of rights, the deed shows that the buyer is the new recipient of the rights.⁶

Based on the legal act of buying and selling land as evidenced by a PPAT deed and registration of the transfer of land rights at the land office and the issuance of strong evidence of ownership in the form of a land rights certificate in the name of the recipient of the rights, containing an extract from the land book and a measurement letter, the transfer of rights can be said to have occurred perfectly.

⁶Boedi Harsono, 2003, *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Contents and Implementation*, Djambatan, Jakarta, p. 296

Land sale and purchase that is not carried out before the PPAT is not a sale and purchase that results in the transfer of land rights to the buyer. Strictly speaking, this act does not give rise to a sale and purchase, at most it only gives rise to a sale and purchase agreement that must still be followed by a real sale and purchase, namely a sale and purchase agreement that must be carried out before the PPAT, if it is desired that the rights will be transferred to the party who has paid the price of the land. Because every transfer of land rights must be carried out and recorded before the PPAT in order to obtain a land sale and purchase deed as evidence to transfer and register the transfer of land rights at the Land Office where the land is located in accordance with the contents of Article 37 of the PP on Land Registration.⁷

This study examines a land ownership dispute based on a land sale and purchase right. The following is a chronology of the case, leading up to the judicial review decision:

1. Parties to the Litigation

- a. Suswanto P
- b. Rosehan Anwar T1
- c. Melyanti Kurniawan T2
- d. Basri Jaya Santana, SH, M.Kn (Notary/PPAT) T3

2. Object of Dispute

2 (two) plots of land located in the Cantigi Block, Sukaresik Village, Sidamulih District (formerly Pangandaran District), Pangandaran Regency (formerly Ciamis Regency), West Java Province, listed in the Freehold Certificate (SHM) No. 80 and SHM No. 81.

3. Case Chronology

- a. Suswanto and Rosehan Anwar have collaborated to purchase two plots of land located in the Cantigi Block, Sukaresik Village, Sidamulih District (formerly Pangandaran District), Pangandaran Regency (formerly Ciamis Regency), West Java Province, as stated in the Land Ownership Certificate (SHM) No. 80 and SHM No. 81.

⁷Efendi Parangin, Op. Cit, p. 28

- b. The purchase price of the Dispute Object was Rp. 30,000,000 (thirty million rupiah), where the majority of the purchase money came from the Plaintiff, namely Rp. 27,000,000 (twenty seven million rupiah), while Rosehan Anwar's money was only Rp. 3,000,000 (three million rupiah).
- c. The name of the rights holder in SHM No. 80 and SHM No. 81 is registered in the name of ROSEHAN ANWAR.
- d. Due to mutual trust, in 1994, the Original Copy of SHM No. 80 and SHM No. 81 was handed over by Rosehan Anwar to Suswanto to be taken or stored for safekeeping.
- e. Around 2010 to 2013, the Plaintiff and Defendant I planned to sell the Dispute Object, but were unsuccessful.
- f. On September 14 2013, Rosehan Anwar made a Report of the Loss of Land Certificates SHM No. 80 and SHM No. 81 at the Sidamulih Police with Number: LP/100/C/IX/2013/Sidamulih Police, Date: September 14 2013, in which Rosehan Anwar essentially stated that he had lost both certificates for the Object of the Dispute.
- g. Armed with a letter of Report of Lost Certificate from Sidamulih Police dated 14 September 2013 Number: LP/100/C/IX/2013/Sidamulih Police, Rosehan Anwar then submitted an application to the Head of the Pangandaran Regency Land Agency to issue a new Replacement Certificate for SHM No. 80 and SHM No. 81.
- h. The Head of the Pangandaran Regency Land Agency then issued a new Replacement Certificate for SHM No. 80 and SHM No. 81 on November 4 2013, which was still recorded in the name of the rights holder, Rosehan Anwar.
- i. After receiving the new Replacement Certificate for SHM No. 80 and SHM No. 81, Rosehan Anwar then sold the Disputed Object to Melyanti Kurniawan before Notary-PPAT Basri Jaya Santana, SH, M.Kn.
- j. Suswanto only found out that the disputed object had been sold by Rosehan to Melyanti when Suswanto was going to pay the Land and Building Tax (PBB) at the Sukaresik Village office, where he received information that the disputed object had changed ownership to Melyanti.

3.2. Legal Implications of Dual Land Title Ownership by Good Faith Buyers

The aim of providing certainty and legal protection for land rights is that land must be registered in order to submit an application for land rights to obtain a

certificate, therefore a certificate is valid proof of ownership and control of land which is protected by regulations as included in Article 1 paragraph (20) of Presidential Regulation No. 24 of 1997. Before entering into the mechanism for canceling a certificate due to administrative defects, we must first understand the procedures for registering land rights.

The registration of land rights based on Article 19 UUPA is aimed at the government so that land registration is carried out throughout Indonesia, likewise registration in Articles 23, 32 and 38 UUPA is aimed at all rights holders in order to create legal certainty for individuals, this is because the emergence of registration for each transfer, its deletion and burden will cause many legal problems if not registered, but the related registration is strong evidence as determined that ownership rights, likewise in the transfer, deletion and burden will certainly cause many legal problems if not registered, whereas the related registration is strong evidence that is conditional on Article 23 paragraph (1), ownership rights, likewise in the transfer, deletion and burden through other rights must be registered according to the provisions referred to in Article 19 UUPA, as well as the right to cultivate (Article 32 UUPA) and the right to build (Article 38 UUPA), as well as the requirements for granting, likewise every transfer and deletion of rights related to registration.

In general, there are 2 (two) types of publication systems in land registration that are used globally in the world, namely:

1. Positive Publication System

A positive publication system, in which the contents of land certificates and issued title deeds constitute absolute proof. This means that third parties acting on the aforementioned evidence receive absolute protection, even if the information contained therein is later proven to be incorrect. Those who suffer losses will receive compensation. In a positive publication system, the rights of those who register as land rights holders cannot be contested. In this system, the state, as the registrant, guarantees that the registration is accurate.

The characteristics of a positive publication system in land registration are:

- a. The land registration system uses a registration of titles system
- b. The certificate issued as proof of rights is absolute, namely the physical data and legal data listed in the certificate cannot be disputed and provides absolute confidence in the land book.
- c. The state as the registrant guarantees that the physical data and legal data in land registration are correct.

- d. Third parties who acquire land in good faith receive absolute legal protection.
- e. Other parties who are harmed by the issuance of the certificate will receive compensation in another form.
- f. In carrying out land registration, it takes a long time, land registration officers carry out their duties very carefully, and the costs are relatively higher.

Boedi Harsono stated that, in a positive system, land registration adheres to the principle that what has been registered is guaranteed to reflect the actual situation, both regarding the subject of the rights and the object of the rights. The government guarantees the accuracy of the registered data and, for this purpose, has examined the accuracy and validity of each file submitted for registration before being included in the land registers. Therefore, the registered subject as the holder of land rights is the legal right holder and cannot be challenged on any basis or grounds.⁸

The person whose name is registered as the rights holder in the register obtains what is called an indefeasible title. Once the registration is completed in the name of the recipient of the rights, the other person who is actually entitled loses their rights. They cannot sue for the cancellation of the legal act that transferred the rights to the purchaser. In certain circumstances, they can only sue the state for compensation. To address these compensation claims, the state provides a special fund.

2. Negative Publication System

Negative publication system, the certificate issued is a strong proof of land rights, meaning that all information contained in the certificate has legal force and must be accepted as correct information by the judge, as long as it is not proven otherwise by other means of proof.

Boedi Harsono stated that land registration using the negative publication system, where the state acts as the registrar, does not guarantee that the person registered as the rights holder is truly the rightful owner. According to this system, it is not registration but the legality of the legal act that determines the transfer of rights to the purchaser. Registration does not allow a person who acquires rights from an unauthorized party to become the new rights holder.

Under the negative publicity system, the legal protection provided to third parties is not as absolute as under the positive system. Third parties remain cautious and

⁸Boedi Harsono, 2003, *Indonesian Agrarian Law*, (Revised Edition), Djambatan Publisher, Jakarta, pp. 81-82

do not completely trust what is stated in the land registration book or the certificate of title issued by them. The negative publicity system adheres to the principle of *nemo plus juris*, meaning that a person cannot transfer or assign rights beyond what they themselves possess. A person who does not have the right to a particular plot of land on their own cannot legally register the land, let alone transfer it to another party. This principle of *nemo plus juris* provides legal protection to the true landowner whose land is certified to another party.

The characteristics of a negative publication system in land registration are:

- a. The land registration system uses a deed registration system (registration of deed)
- b. Certificates issued as proof of rights are strong, meaning the physical and legal data listed in the certificate are considered correct as long as they are not proven otherwise by other evidence. Certificates are not the only proof of rights.
- c. The state as the registrant does not guarantee that the physical data and legal data in land registration are correct.
- d. In this publication system using the expiration institution
- e. Other parties who are disadvantaged by the issuance of a certificate can file an objection with the land registration administrator to cancel the certificate or file a lawsuit in court to request that the certificate be declared invalid.
- f. The registration officer is passive, that is, he only accepts what is stated by the party requesting land registration.

If we examine and analyze how this negative publication system works, we conclude that this system basically cannot create legal certainty, let alone provide legal protection, because there is still the possibility of other parties disrupting the ownership of parties who have held land title certificates as proof that they have complied with legal orders and/or statutory regulations.

Muchtar Wahid stated that a purely negative system could create legal uncertainty. The fundamental weakness of the negative system is that land registration does not create inviolable rights. What determines whether a right and its ownership is valid or not is the legality of the legal act carried out, not its registration. Therefore, even though it has been registered in the land book and a certificate has been issued, there is always the possibility that the registered rights

holder will lose the rights to the land they control due to being sued by the party who actually has the rights.⁹

Indonesia adopts a negative land registration publication system with a positive tendency. This system is regulated by Government Regulation Number 24 of 1997 concerning Land Registration. In a negative land registration publication system, land registration officers are passive, meaning they only receive deeds and register them. Officers are not obligated to verify the accuracy of the contents of the registered deeds, so the information contained in the deeds may or may not be correct. This can create loopholes for unscrupulous individuals to seize land to which they are not entitled.¹⁰

Negative publication with a positive tendency means that a certificate is a strong piece of evidence as long as the physical and legal data contained therein are correct. From this definition, it can be interpreted that if the physical and legal data contained in a certificate can be proven legally flawed or incorrect through a court decision or applicable laws and regulations, then the certificate can be revoked. This certainly does not reflect the principle of legal certainty as has been the goal of land registration in the UUPA. Furthermore, if a party loses rights to their land due to unlawful actions by another party or an error in registration and/or recording made by the land registration officer, then this becomes the responsibility of the land owner entirely because the state does not provide compensation for the loss of land rights even if it occurs due to an error or deliberate act by the land registration officer as an extension of the state.

The land registration system which has been regulated in such a way in the UUPA and PP on Land Registration shows that legal certainty has been fulfilled as stated in the theory of legal objectives according to Gustav Radbruch. [Gustav Radbruch](#) put forward 4 (four) basic things related to the meaning of legal certainty, namely:

1. First, that the law is positive, meaning that positive law is legislation.
2. Second, that the law is based on facts, meaning it is based on reality.

⁹Muchtar Wahid, 2008, *Understanding the Legal Certainty of Land Ownership Rights*, Republika Publisher, Jakarta, pp. 75-76

¹⁰Rionald Dimas, 2021, "Publication of Land Registration in Indonesia Reviewed from the Theory of Legal Certainty", 3rd National Seminar Series, Tarumanegara University, p. 214

3. Third, that the facts must be formulated in a clear way so as to avoid errors in interpretation, besides being easy to implement.
4. Fourth, positive law must not be easily changed.

Issuing a land ownership certificate is a complex process, requiring security, precision, accuracy, and caution, involving the National Defense Agency, the institution authorized to issue it. Issuing the certificate grants the individual or institution named therein the right to retain ownership of the land. Therefore, the post-issuance process is certainly more challenging than the actual issuance process.¹¹

Certificates provide evidentiary power for the owner of land rights whose name is listed on the certificate, unless there is a physical data defect, the legal force of the certificate will be lost. With the existence of legal defects and physical data defects, it can give rise to duplicate certificates, this occurs in certificates that are not mapped correctly in the land registration map by the local Land Office. The emergence of duplicate certificates in some cases arises because the parties as owners of land rights file complaints and objections as parties who are disadvantaged by the emergence of certificates for the same object with the same number but issuance date different years, while for the measurement letter/situation drawing with the same number and date, and the same land area. The holders of land rights feel disadvantaged so they file a lawsuit against the State Administrative Decree in the land sector that has been issued by the Head of the Land Office, where the issuance of the Land Office decision has harmed the rights of the owner of the land.¹²

In legal cases involving land sales and purchases, a sale and purchase agreement is sometimes encountered that contains a double certificate. Based on the explanation above, the emergence of double certificates is caused by two factors:

1. An administrative error made by the National Land Agency Office resulted in the issuance of two certificates or two names of owners for the same plot of land.

¹¹Rani, Arvita, 2016, "The Position of the National Land Agency in Facing the Problem of the PTUN's Non-Executable Decision on the Cancellation of Land Title Certificates", *Jurnal Media Hukum*, Vol, 23 No. 1, p. 22

¹²Agus Salim, "Resolution of Legal Disputes Against Ownership Certificate Holders with the Issuance of Duplicate Certificates", *USM Law Review Journal*, Vol 2 No 2, 2019, p.183.

2. There is an element of falsification of the original certificate, meaning that there is only one certificate but by an irresponsible person or individual the certificate is duplicated or falsified to match or be similar to the original.¹³

So, the term or designation of a double certificate arises from these two things, which will certainly be detrimental to buyers who carry out sales transactions in good faith. Article 1457 of the Civil Code states that an agreement is an agreement whereby one party binds himself to hand over an object and the other party pays the agreed price, where in Western law, a sale and purchase is deemed to have taken place between the two parties. both parties at the time they reached an agreement regarding the price of the sale and purchase, apart from that, according to the panel of judges, the land object of the dispute was land that did not have a certificate, so it was categorized as customary land.

Apart from that, the regulation of good faith in Indonesia is found in Article 1338 paragraph (3) of the Civil Code which states that:

“An agreement must be carried out in good faith.”

Implementation in good faith, there are two kinds, namely as a subjective element, and as an objective measure to assess implementation. In property law, the subjective element means the "honesty" or "cleanliness" of the maker. However, in Article 1338 Paragraph (3) of the Civil Code, it is not in the meaning of this subjective element, but rather the implementation of the agreement must proceed with due regard for norms of propriety and morality. So what is meant by good faith here is an objective measure to assess the implementation of the agreement.

4. Conclusion

The judge's legal considerations in adjudicating the land rights sale and purchase dispute in decision number 940 PK/Pdt/2020, the reason for the review cannot be justified, because after examining the Review Memorandum dated May 20, 2020 and May 28, 2020 and the Counter Review Memorandum dated June 10, 2020 in connection with the considerations and decisions of the *judex juris*, there was no error by the judge or a clear error and the new evidence (*novum*) submitted was not decisive in the *a quo* decision. The Sale and Purchase Deed between Rosehan and Melyanti, especially regarding the sale and purchase value, lacked honesty and respect for the pledges contained in the agreement. According to the Panel of Judges, this is one of the indicators to declare the Buyer of the land object of the case is a buyer who does not act in good faith.

¹³Iwan Permadi, *Op.Cit.*, p. 455

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