

## **ACQUISITION OF LAND RIGHTS CERTIFICATE DUE TO TRANSITION (BUYING AND SELLING) IN *REALIZING* LEGAL CERTAINTY IN PALU CITY**

**Rahmia Rachman<sup>1</sup>, Erlan Ardiansyah<sup>2</sup>, Abdul Karimuddin<sup>3</sup>, Mangapatila<sup>4</sup>,  
Armin K<sup>5</sup>, Hartanto<sup>6</sup>, Jubair<sup>7</sup>, Suarlan Datupalinge<sup>8</sup>**

<sup>1</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

<sup>2</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

<sup>3</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

<sup>4</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

<sup>5</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

<sup>6</sup>Universitas Muhammadiyah Surakarta

Jl. A. Yani, Mendungan, Pabelan, Kec. Kartasura, Kabupaten Sukoharjo, Jawa Tengah  
57169 Email : har218@ums.ac.id

<sup>7</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

<sup>7</sup>Faculty of Law, Tadulako University

Jl. Soekarno Hatta Km. 9, Tondo, Palu, Central Sulawesi, 94148, Indonesia  
Telp./Fax: +62-451-45446 Email: rahmiarachman@gmail.com

*Submitted: June 13, 2021; Reviewed: Jul 07, 2021; Accepted: Oct 05, 2021*

### **Abstract**

*Palu city is currently one of the Special Economic Areas in Eastern Indonesia. Various preparations for palu city as a special economic area have been carried out. One of them is the preparation of an area of 1,520 ha in north Palu sub-district. The development certainly requires land to be used as a support for development so that many people make the transfer of property rights to land because of buying and selling. Most of the land that is traded is land that has not been unionized. The issues that will be studied in this study are how to implement the transfer of land rights (buying and selling) in the city of Palu and whether the transition has realized an orderly land administration.*

*The approach method used in this research is an empirical juridical method that analyzes problems by combining legal materials that are secondary data with primary data obtained directly from informants through field research.. The result of the research is the implementation of the transfer of property rights to land because buying and selling in realizing the orderly land administration in Palu City in 2022 is in accordance with Article 37 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration, namely all respondents to transfer property rights to land due to buying and selling in the presence of PPAT, on the grounds of ensuring legal certainty to be registered at the Land Office and to be safe.*

**Keywords:** Administrative Orderly; Land Rights; Land Registration; Legal certainty

## INTRODUCTION

Land is one of the components of the ecosystem that is very strategic for the survival of mankind, and also as a major factor in every development activity.<sup>1</sup> The land has a very important position and function in human life. For man the land is a place of settlement, where humans carry out activities and even after death. Today the need for land is increasing in line with the increasing population and increasing other needs related to natural resources, especially land. Because the land of part of the earth has a very important function, in Article 33 paragraph (3) of the Constitution of the Republic of Indonesia of 1945 it is determined that the Earth and the water and natural wealth contained there in are controlled by the State and used for the greatest prosperity of the people. As a realization of Article

33 paragraph (3) of the 1945 Constitution, on September 24, 1960, Law No. 5 of 1960 on Basic Rules of Agrarian Principles or abbreviated as UUPA was established..

In Article 20 paragraph (2) UUPA specified that property rights can be switched and transferred. Property Rights switch means property rights move from one person to another because the legal event that the holder of property rights died. Property Rights are transferred means property rights move from one person to others because of legal actions, namely through buying and selling, exchanging and grants.

With regard to the transfer of property rights due to legal acts, in Article 37 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration it is determined that:

“Transfer of land rights and property rights to flat units through buying and selling, exchanging, grants, income in the company and other legal acts of transfer of rights, unless the transfer of rights through auction can only be registered if evidenced by deeds made by the PPAT authorized under the provi-

<sup>1</sup> Yosia Hetharie. (2019). “Perjanjian Nominee sebagai Sarana Penguasaan Hak Milik Atas Tanah Oleh Warga Negara Asing (WNA) Menurut Kitab Undang-undang Hukum Perdata”. *Jurnal SASI Universitas Pattimura*, 25 (1):27

sions of applicable laws and regulations.”

The provision contains the understanding of registration of property rights to land because legal acts (buying and selling) can only be done if proven by the PPAT Act. The PPAT Deed is an absolute requirement that must be fulfilled to register the transfer of property rights to land due to legal acts (buying and selling).

Registration of Property Rights is part of the Land Registration. Article 19 paragraph (1) of UUPA specified that:

“To ensure legal certainty by the government, land registration is held throughout the Territory of the Republic of Indonesia in the provisions regulated by Government Regulations.”

Land registration, as the implementation of Article 19 UUPA is one of the government's efforts to provide guarantees of legal certainty.<sup>2</sup> The rule explains that every citizen, in order to get a guarantee of the right to the land he owns must first register the land which then by the government will be issued a land certificate as proof of ownership of the land rights.<sup>3</sup> Certificate is a sheet of documents containing juridical data and physical

data needed from a plot of land registered in accordance with PP Number 24 of 1997.<sup>4</sup>

Based on the provisions of Article 19 paragraph (1) of UUPA there are 4 (four) things. First, land registration is done by the government. Second, land registration is carried out throughout Indonesia. Third, the purpose of land registration is to ensure legal certainty. Legal certainty in land registration includes certainty regarding the subject of land rights, certainty about the object (location, area, boundary, and area of land) and certainty about the status of land rights. Fourth, Land Registration is further regulated in Government Regulation No. 24 of 1997 on Land Registration in lieu of Government Regulation No. 10 of 1961 on Land Registration. Legal certainty of land is an absolute thing that must exist in order to maintain the stability of land use in development and realize legal certainty of land ownership for fellow people who want to be related to the land.<sup>5</sup> Land Registration aims to provide legal certainty and legal protection to the holder of rights to a plot of land, flat units, and other rights registered in order to easily prove himself as the holder of the rights concerned.<sup>6</sup>

<sup>2</sup> Harris Yonatan Parmahan Sibuea. (2011). “Arti Penting Pendaftaran Tanah Untuk Pertama Kali”. *Jurnal Negara Hukum*. 2(2): 289

<sup>3</sup> Dewi Arnita Sari. (2020). “Sengketa Pendaftaran Hak Milik Atas Tanah”. *Jurnal Al-Adalah: Jurnal Hukum dan Politik Islam*. 5(2):151

<sup>4</sup> Rezeki Aldila Rajab. (2020). “Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah”. *Jurnal Notarius*. 13(2): 644

<sup>5</sup> Rahmat Ramdhani. (2021). “Pendaftaran Tanah Sebagai Langkah Untuk Mendapatkan Kepastian Hukum Terhadap Hak Atas Tanah”. *Sosok: Jurnal Sosial dan Ekonomi*. 2(1):33

<sup>6</sup> Isdiyana Kusuma Ayu. (2019). “Problematisa Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap di Kota Batu”. *Legality Journal*. 27(1):28

Palu city is the capital of Central Sulawesi Province. Geographically, Palu city is located in the plains of Palu valley and Palu bay so that the region consists of five different landscapes such as mountains, valleys, rivers, bays, and oceans. Palu city is currently one of the Special Economic Areas in Eastern Indonesia. Various preparations for Palu city as a special economic area have been carried out. One of them is the preparation of an area of 1,520 ha in north Palu sub-district. The land area of a thousand hectares more will be divided into an industrial area of 700 ha., Residential Area 500 Ha, education and research area 100Ha, commercial area 100 Ha, sports area 50 Ha, warehousing area 50 Ha and plantation and park area of 20 Ha. The development certainly requires land to be used as a support for development so that many people make the transfer of property rights to land because of buying and selling. Most of the land that is traded is land that has not been unionized.

Based on the description in the background above, then the author will discuss a formulation of the problem of how to implement the transfer of land rights (buying and selling) in the city of Palu? and has the transition created a land administration order?

## METHOD

The problems that have been formulated above will be answered or solved using empirical juridical research meth-

ods. Juridical research (law is seen as the norm or watershed sollen), because in discussing this research problem uses legal materials (both written and unwritten law or either primary legal materials and secondary legal materials). Empirical research (law as a social, cultural or watershed reality), because in this study used primary data obtained from the field.

In this study the type of data collected consists of data that is primary and data that is secondary. Primary data is data that is directly obtained from data sources in the field (field research). This primary data is obtained using interviews with informants from relevant agencies and through the collection of document data from relevant agencies as well..

Data collection techniques in empirical or field legal research are carried out by collecting data sources of both primary data and secondary data, which are tailored to the type of research used. The primary data collection technique used is by in-person interview. Interviews are conducted to obtain information orally to achieve the goal of getting accurate information from competent sources.<sup>7</sup>

Furthermore, secondary data is obtained by studying and reviewing literature research materials in the form of legal materials both

<sup>7</sup> Burhan Ashshofa. (2002). *“Metode Penelitian Filsafat”*. Jakarta: Raja Grafindo Persada, p. 71

primary legal materials, secondary legal materials and tertiary legal materials.

After the data and legal materials are collected, the next stage is to process the data, which is to process the data in such a way that the data and legal materials are arranged in a direct, systematic manner, to make it easier for researchers to perform analysis. The process is to examine, examine the data that has been obtained to ensure whether the data can be accounted for in accordance with reality. After the data is processed and felt enough then it is then presented in the form of a narrative. After the data is collected complete and has been processed using narrative, then analyzed descriptively. The nature of descriptive analysis is that the researcher in analyzing wants to provide an overview or exposure to the subject and object of the study as the results of the study conducted.

## ANALYSIS AND DISCUSSION

### Implementation of Land Rights Transfer (Buying and Selling) in Palu City

In Article 20 paragraph (1) of the UUPA it is determined that property rights are hereditary, strongest and most common rights that can be owned by people on land, keeping in mind the provisions of Article 6.<sup>8</sup> Property rights have 3 (three) characteristics that distinguish from other land rights that are hereditary, strongest, and full. Hereditary means that property rights not only last for the life of the

person who has but can be passed on to the heirs if the owner dies. Strongest means that Property Rights are the parent of other land rights because they can be burdened with the right to build, right to business, rental rights, right of use so that the rights to land that can be owned by the person's property rights are the strongest. Terpenuhi means that Property Rights give full authority in terms of the use of their land to rights holders for example on land Property Rights can be planted plants or erected buildings on it.<sup>9</sup>

Land rights holders must remember the provisions of Article 6 of the UUPA which determines that all land rights have a social function. This means that the right to any land that has been owned by someone or who has not been owned can be used for the welfare and social interests of the general public and it is not justified that the land that has been owned by someone can only be used solely for the benefit of individuals, especially then the use of the land causes harm to the community then it needs to be maintained a balance between the interests of the general community and the interests of individuals. Land rights can be transferred and transferred to other parties.

The subject of property rights is contained in Article 21 of UUPA, among others:

- a. Indonesian citizen

<sup>8</sup> Urip Santoso. (2008). *"Hukum Agraria dan Hak-hak Atas Tanah"*. Jakarta: Kencana Prenada Media Group, p. 89

<sup>9</sup> Muhammad Irvan. (2019). "Proses Peralihan Hak Milik Atas Tanah Karena Pewarisan Dalam Perkawinan Campuran". *Lambung Mangkurat Law Journal*. 4(2):150

- b. By the government determined by legal entities that can have property rights and conditions
  - c. Foreigners who after the enactment of this law acquire property rights due to inheritance without will or the mixing of property due to marriage, as well as Indonesian citizens who have property rights and after the enactment of this law lose their citizenship must renounce that right within one year of the acquisition of that right or the loss of that citizenship. If after that period of time the property is not waived, then the right is removed because the law and land fall to the state, provided that the rights of other parties to the money burden it continue.
  - d. As long as a person in addition to his Indonesian citizenship has foreign citizenship then he cannot own land with property rights and for him applies the provisions in paragraph (3) of this Article.
- tinuously, and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land fields and flat units, including the provision of letters of proof of their rights for land fields that already have rights and property rights to the unit of flats and certain rights that burden it.
- The definition of land registration in Government Regulation No. 24 of 1997 is a refinement of the scope of land registration activities based on Article 19 paragraph (2) of Government Regulation No. 10 of 1961 which only includes: "Measurement, Regulation and Bookkeeping of Land, Registration and Transfer of land rights and the provision of proof of rights as a strong means of proof."<sup>10</sup>
- According to Boedi Harsono, land registration is a series of activities carried out regularly and continuously to collect, process, store and present certain data about certain fields or lands in a particular region with a specific purpose.<sup>11</sup>
- In Article 19 paragraph (1) of the UUPA which determines the purpose of Land Registration, namely:
- “To ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia in the provisions stipulated by Government Regulations.”

Land registration according to Article 1 of Government Regulation No. 24 of 1997 on Land Registration is a series of activities carried out by the government continuously, con-

<sup>10</sup> Mhd. Yamin Lubis dan Abd. Rahim Lubis. (2008). *Hukum Pendaftaran Tanah*. Bandung: Mandar Maju, p.15.

<sup>11</sup> Hasan Wargakusumah. (1992). *Hukum Agraria: Buku Panduan Mahasiswa*. Jakarta: Gramedia Pustaka, p. 80

Guarantees of legal certainty to be realized in the registration of this land include certainty of the status of registered rights, certainty of the subject of rights, and certainty of the object of rights. This land registration produces a certificate as a sign of proof of its rights.<sup>12</sup> The main function of the certificate is as a means of proof of land rights.<sup>13</sup> The proof of ownership tool can be used to prove himself as the holder of the rights concerned.<sup>14</sup>

The purpose of Land Registration is also further specified in Article 3 of Government Regulation No. 24 of 1997 concerning Land Registration, namely :

1. To provide legal certainty and legal protection to the holder of rights to a plot of land, flat units and other rights listed in order to easily prove themselves as the rights holder concerned
2. To provide information to interested parties including the government in order to easily obtain the data necessary in conducting legal actions regarding land fields and units of flats that have been registered, and
3. For the implementation of land administration order.

One of the purposes of Land Registration specified in Article 3 letter c of Government Regulation No. 24 of 1997 concerning Land Registration is the implementation of land administration order. Orderly Land Administration is intended so that all files on physical data and juridical data are complete, neat, good, and organized in the Land Office so as to facilitate every business related to the land to support the smooth development.

1. Implementation of the transfer of property rights to land due to buying and selling

All Respondents made the transfer of property rights to land in the presence of PPAT. The terms and process of the sale of property rights for land because of buying and selling are as follows:

- 1) Conditions :
  - a. The original certificate;
  - b. The seller's identity card;
  - c. The buyer's identity card;
  - d. The family card of the seller and buyer;
  - e. Proof of repayment of the original BPHBT payment;
  - f. Tax/UN tax return letter of the current year;
  - g. Cost of making PPAT deed

All respondents did not experience any problems with regards to the terms of the transfer of

<sup>12</sup> Dian Aries Mujiburohman. (2018). "Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)". *Bhumi Journal*. 4(1): 89

<sup>13</sup> Effendi Perangin. (1996). *Praktek Pengurusan Sertifikat Hak Atas Tanah*. Jakarta: Rajawali, p. 1

<sup>14</sup> Mira Novana Ardani. (2019). "Tantangan Pelaksanaan Kegiatan Pendaftaran Tanah Sistematis Lengkap dalam Rangka Mewujudkan Pemberian Kepastian Hukum". *Jurnal Gema Keadilan*. 6(3): 270



property rights over land due to buying and selling.

2) Process :

- a. Respondents face the PPAT by bringing and submitting the original certificate, ID card, photocopy of family card, SSPT / UN original current year, proof of deposit PPh and BPHTB;
- b. PPAT checks the truth of the certificate as to whether it is genuine and not existing dispute;
- c. PPAT creates, signs, and provides a deed of sale and purchase number;
- d. PPAT makes 3 (three) copies made by the Land Office, namely for buyers, Land Office and PPAT;
- e. There must be 2 (two) witnesses from PPAT and 2 (two) witnesses from the applicant then PPAT read the deed of sale and purchase;
- f. Respondents pay PPAT fees.  
All respondents had no problems with regards to the rights transition process.  
Owned on land because of buying and selling.

2. Implementation of registration of property rights to land due to buying and selling

1) Conditions :

- a. The self-application form and signed by the applicant or his or her power of attorney above stamp duty is sufficient. Application form contains :
  - a) Self-identity;
  - b) The area, location, and use of the land requested;
  - c) Statement of land not disputed;
  - d) Land statement is physically controlled
- b. Power of attorney when authorized;
  - a) Photocopy of the applicant's identity (ID card, Family Card);
  - b) The original sertpkat;
  - c) Deed of sale and purchase of PPAT;
  - d) Photocopy of ID cards from sellers and/or their power of attorney;
  - e) SSB (BPHTB) and proof of payment of income (at the time of registration of rights).



## 2) Process :

- a. Palu City Land Office service counter officer provides and receive the applicant's documents;
- b. Counter officers create and submit receipts of documents and letters deposit order (SPS) to the applicant;
- c. The officer records the registration of the transfer and the change of the name of the rights holder in the book of soil and sertipikat;
- d. Counter attendants grant certificates to the applicant.

Some respondents (5 people) have difficulty in registering property rights due to buying and selling in terms of cost difficulties because respondents do not have costs to take care of and time difficulties because partial respondents have jobs that require frequent exits from the city.

## CONCLUSION

The implementation of the transfer of property rights to land due to buying and selling in realizing the Land Administration Order in Palu City in 2022 is in accordance with Article 37 paragraph (1) of Government Regulation No. 24 of 1997 on Land Registration, namely all respondents to transfer property rights to land due to buying and selling in

the presence of PPAT, on the grounds of guaranteeing legal certainty, to be registered with the Land Office and to be safe.

The implementation of registration of property transfer rights due to buying and selling in Palu City in 2022 is in accordance with Government Regulation No. 24 of 1997 on Land Registration and Regulation of the National Minister of Agrarian Affairs / Head of National Land Agency Number 3 of 1997 on The Implementation Provisions of Government Regulation No. 24 of 1997 on Land Registration. In addition, the processes and conditions carried out are in accordance with the Regulation of the Head of the National Land Agency of the Republic of Indonesia Number 1 of 2010 concerning standards of Land Services and Arrangements. This is seen from all respondents who register for the transfer of property rights to land because of buying and selling in the Land Office. In other words, one of the goals of Land Registration is to realize the Land Administration Order has been achieved.

## BIBLIOGRAPHY

- Ardani, Mira Novana. (2019). "Tantangan Pelaksanaan Kegiatan Pendaftaran Tanah Sistematis Lengkap dalam Rangka Mewujudkan Pemberian Kepastian Hukum". *Jurnal Gema Keadilan*. 6(3)
- Ashshofa, Burhan. (2002). "Metode Penelitian Filsafat". Jakarta: Raja Grafindo Persada
- Ayu, Isdiyana Kusuma. (2019). "Problematika Pelaksanaan Pendaftaran Tanah Melalui Pendaftaran Tanah Sistematis Lengkap di Kota Batu". *Legality Journal*. 27(1)

- Hasan Wargakusumah. (1992). *Hukum Agraria: Buku Panduan Mahasiswa*. Jakarta: Gramedia Pustaka
- Hetharie, Yosia. (2019). “Perjanian Nominee sebagai Sarana Penguasaan Hak Milik Atas Tanah Oleh Warga Negara Asing (WNA) Menurut Kitab Undang-undang Hukum Perdata”. *Jurnal SASI Universitas Pattimura*, 25 (1)
- Irvan, Muhammad. (2019). “Proses Peralihan Hak Milik Atas Tanah Karena Pewarisan Dalam Perkawinan Campuran”. *Lambung Mangkurat Law Journal*. 4(2)
- Lubis, Mhd. Yamin dan Abd. Rahim Lubis. (2008). *Hukum Pendaftaran Tanah*. Bandung: Mandar Maju
- Mujiburohman, Dian Aries. (2018). “Potensi Permasalahan Pendaftaran Tanah Sistematis Lengkap (PTSL)”. *Bhumi Journal*. 4(1)
- Perangin, Effendi. (1996). *Praktek Pengurusan Sertifikat Hak Atas Tanah*. Jakarta: Rajawali
- Rajab, Rezeki Aldila. (2020). “Sertifikat Hak Atas Tanah Dalam Kepastian Hukum Pendaftaran Tanah”. *Jurnal Notarius*. 13(2)
- Ramdhani, Rahmat. (2021). “Pendaftaran Tanah Sebagai Langkah Untuk Mendapatkan Kepastian Hukum Terhadap Hak Atas Tanah”. *Sosek: Jurnal Sosial dan Ekonomi*. 2(1)
- Sari, Dewi Arnita. (2020). “Sengketa Pendaftaran Hak Milik Atas Tanah”. *Jurnal Al-Adalah: Jurnal Hukum dan Politik Islam*. 5(2)
- Santoso, Urip. (2008). *“Hukum Agraria dan Hak-hak Atas Tanah”*. Jakarta: Kencana Prenada Media Group
- Sibuea, Harris Yonatan Parmahan. (2011). “Arti Penting Pendaftaran Tanah Untuk Pertama Kali”. *Jurnal Negara Hukum*. 2(2)

\*\*\*