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Legality of Ownership Rights through Land Certificates issued by the Village Head

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Abstract: This article is entitled, Legality of Property Rights through Land Information issued by the Village Head, using a normative research type and using secondary data as analysis material. The results of the analysis are land ownership rights in the UUPA as proof of ownership, namely a certificate. However, the village head's SKT can be used as a historical guide in registering land to obtain a certificate at the land office, on the basis of physical and written evidence with coherent research on land ownership and supporting written evidence. This decision is based on Indonesia using a negative publication system that has a positive tendency. So the Village Head's Land Certificate can only be used as written evidence to register for labor, but the village head's SKT is not proof of recognized land ownership rights.

Keyword: Legality, Land Sale and Purchase Letter, Village Head.

INTRODUCTION

Indonesia is an agricultural country whose people depend largely on land. Indonesian people make land a source of life that has very important value. The importance of land in human life is because our human lives are in no way separated from land. Humans live on the surface of the land and obtain food by utilizing the land. Land is a place to live, a place for us to carry out daily activities and is also a source of livelihood for farmers in rural areas in almost all of Indonesia. (Farras Al-Husein Siregar, 2022) . Due to how important land is to Indonesian society, many groups of people are trying to have rights to this land so that it can be used as a place to build a house, a place to live, a place to do business, a place to grow crops by building a building for a place of business or even carrying out a transfer of rights. on land related to a sale and purchase transaction.

Land has become a necessity that everyone needs, this gives encouragement to everyone to be able to control and own land. In an effort to control land over the community, the State provides legal guarantees through legal means for the community to obtain rights to land ownership. The provisions governing the existence of land which can be owned by a community have been regulated in Law No. 5 of 1960 concerning Basic Agrarian Principles Regulations which are often referred to as UUPA (Basic Agrarian Law). (Activity Implementation & Land, 2019) . Among the objectives regulated in the Basic Agrarian Law

is to provide legal certainty relating to land rights owned by a community. In an effort to achieve this goal, the government implements Land Registration. Regarding land registration, it is strictly regulated in Article 19 paragraph (1) of the Basic Agrarian Law which states that "to provide legal certainty the Government shall carry out land registration in all regions of the State of Indonesia based on the provisions regulated by Government Regulations".

Land registration is a stage of activity carried out by the government continuously and regularly, by collecting information or certain data related to land located in certain areas, presenting it, storing it and processing it for the benefit of the people to provide a guarantee of legal certainty in the land sector, including it includes the issuance of evidence and its maintenance (Atikah, 2022) . As part of the guarantee of legal certainty, those who register land will be given documents as proof of rights which function as strong evidence. Based on regulations regarding Land Registration, only a certificate of land rights that has received legal recognition is proof of ownership of land rights that provides a guarantee of legal certainty and is protected by law. Communities carrying out land registration arrangements mean that they already have a guarantee of legal certainty over the land they own by carrying out land registration, then they will then obtain proof of registration in the form of a Land Certificate to provide legal certainty.

UUPA (Basic Agrarian Law) emphasizes that proof of land ownership must be proven by placing a certificate which is the highest legal basis for ownership of a plot of land. However, in practice in the daily life of a community regarding land issues that occur in Indonesia, it is still common to find land that has not been registered or does not have a certificate, but has become the property of community members. Land that has not been registered is usually found in rural areas where land ownership rights are only proven by an SKT (Land Certificate) issued by the village head. (Risandy et al., 2021) . And in terms of carrying out land sale and purchase transactions, these are only carried out on the basis of trust between the buyer and the seller by forming a private deed signed by the seller and the buyer and witnessed by two witnesses and with the knowledge of the village head.

The transfer of land rights by means of land sale and purchase transactions is something that often occurs in people's lives, and many people entrust related land sale and purchase procedures to their village heads. This is because the village head is someone who is the main figure in government governance in the village and is a formal leader who has influence on the life of a community. As a formal leader in government at the village level, the village head assumes his position based on the choice of the community (Government, 1997) . In the context of implementing government in the village, the village head carries out obligations, rights and authority as the leader of the government of a village, namely carrying out his own household and as the main person responsible and organizer in the fields of Community, Development and Government as well as matters relating to general government which includes fostering order. and peace in accordance with the provisions of applicable laws and regulations.

The village head has a very important role and position in village government. A village head is the organizer and at the same time the person responsible for the implementation of development and governance in his area. Apart from carrying out development and government affairs, the village head also has other obligations, namely carrying out affairs in the community sector. Based on the facts as presented in the description above, it can be said that the obligations and duties of a village head have a very broad scope. So in the end, many people entrust various kinds of management to their village heads, including carrying out land buying and selling transactions. Acquiring land rights is often carried out by transferring rights, namely by buying and selling. The definition of buying and selling in everyday terms can be interpreted as someone giving money to obtain goods voluntarily. Meanwhile, based on Article 1457 of the Civil Code

(KUHPer), it is stated that "sale and purchase is an agreement in which one party binds himself to provide an item, and the other party to pay the price that has been promised." Buying and selling which is defined here is buying and selling land rights. In practice it is called buying and selling land, juridically it is land rights, not the land itself. It is true that the purpose of buying land rights is so that the buyer can legally use and control the land.

Since the enactment of Law Number. 5 of 1960 concerning the Basic Agrarian Principles Regulations (UUPA), so that the definition of land sale and purchase is no longer an agreement the same as stated in Article 1457 of the Civil Code (KUHPer) but rather a legal act of perpetual transfer of rights which has cash in nature, and then regulated in the Government Regulation on Land Registration, which stipulates that the sale and purchase of land must be proven by an authentic deed drawn up by a public official who we call a PPAT (Land Deed Maker Official) appointed by the government as stated in in Article 37 paragraph (1) PP regarding Land Registration. So in the end, the sale and purchase of land cannot be carried out just like that, in this case it must be carried out in front of the Land Deed Making Officer in order to provide legal protection and legal certainty for the holder of rights to a plot of land and other rights that have been registered so that they can easily prove it. he is the holder of the rights concerned, as well as for the orderly implementation of land administration (Fachriza & Dajaan, 2020) .

In the matter of carrying out the sale and purchase of land that does not yet have a certificate, the community still uses a land certificate issued by the village head which is the basis for land rights, even though the land certificate is the basis for land rights which is used for land registration to obtain a certificate and is not proof of ownership of rights. above ground. The letter contains the identity of ownership and the boundaries of the land which is used as proof of ownership of the land. A land certificate is a written piece of evidence which has the power of proof which is not as strong as an authentic deed issued or made by a PPAT (Land Deed Making Official) (Sakinah, 2023) . The position of a village head in land law can be seen from the PP regarding Land Registration which is regulated in the provisions in Article 7, and in Government Regulation Number. 37 of 1998 concerning Position Regulations for Officials Making Land Deeds in Article 5 paragraph (3) letter a states that; The Village Head is the lowest government official who has very strategic tasks in assisting the Head of the Land Office in carrying out land registration which includes the formation of land sale and purchase deeds that are in accordance with the provisions of the applicable laws. Therefore, with the very strategic duties of a village head, it is hoped that he can be a motivator for community members who hold land rights so that they have the awareness to carry out land sales and purchases in front of the Land Deed Making Official, not in front of the Village Head.

Many people nowadays still lack knowledge regarding the importance of legally registering their land with the state. There are still many people who are ignorant about managing land properly, even though the provisions in the regulations already emphasize that the purpose of making land ownership certificates is to provide legal certainty and legal protection for holders of rights to land. Therefore, proof of land ownership must be proven by placing a certificate as the highest legal basis for ownership of a plot of land. However, in practice in the field, there are still many people who own land but do not yet have a land certificate, especially people in rural areas. Proof of ownership of their land is only in the form of an SKT (Land Certificate) issued by a village head (Legal, 2019) . By having a land certificate, people sometimes feel that their rights are protected and safe, even though the SKT (land certificate) is the basis for the right to obtain a land certificate, not as proof of ownership of the land rights.

It cannot be denied that in people's lives there are still many land buying and selling processes carried out between buyers and sellers without going through a Land Deed Official, especially among people in rural areas who are still unfamiliar with the law. The

process of buying and selling land using a deed from a Land Deed Making Officer is still rarely carried out by the community, so that when carrying out land buying and selling in rural areas, it is usually still carried out using a land sale and purchase letter which is drawn up under the hand of the village head. In everyday life, many problems arise regarding land matters. Disputes related to land are problems that have a classic nature, they are always found everywhere, one of the land disputes is buying and selling which is carried out under the hands without a sale and purchase deed which is an authentic deed. Buying and selling land without proof of ownership in the form of a land certificate is a complicated problem that is often the reason for conflict in our society. This kind of thing is very fearful if in the future a problem arises, the land bought or sold is sued over its legality or overlapping SKT (land certificate) and causes a dispute over ownership of land rights. Based on the background described above, the author is interested in studying and researching further regarding land certificates issued by village heads by raising the title "The legal power of land certificates issued by village heads as the basis for land rights in buying and selling transactions. land".

Based on the background of the problem above, the author draws legal issues What is the legality of ownership rights through the Land Certificate issued by the village head?

METHOD

The technique for writing this article uses legal research methods with normative research types, using *statute approaches* and *conceptual research approaches*. As for secondary data sources, namely using primary legal materials in the form of regulations that are relevant to legal issues, and secondary legal materials which are legal opinions and theories that are relevant to the legal issues in this writing. The data collection technique used is using a documentation guide from secondary data sources. This writing uses descriptive analysis techniques with deductive thinking methods *approaches*.

RESULTS AND DISCUSSION

Land is a community need, whether used to fulfill primary needs or for housing. Every person is obliged to have basic property rights regarding land ownership, considering that Indonesia is a legal country. In Indonesia, land ownership can be seen to be of two types, there are people who have land ownership rights by having a land certificate in accordance with what is regulated in the Basic Agrarian Law, there are people who do not have land rights in the form of a certificate. In the Basic Agrarian Law, if the land owned by the community has a certificate issued by the land agency, then the community has legal ownership rights to the land, however, if the community controls the land by managing it to obtain benefits or to suggest a place to live, then the status of the land is still State land. Land that is managed by the community to fulfill primary needs or for residence, usually has ownership rights recognized through a land certificate from the Village Head (Tuhuleruw et al., 2023).

the Village Head's Land Certificate is more commonly found in Indonesia, especially in rural areas, and is usually called " Village Head's SKT ", which is a letter issued by the Village Head which is useful for can be used as written evidence. Regarding the mechanism that can be followed to obtain ownership rights to land based on the Basic Agrarian Law, it can be seen that a land certificate is the initial process to be obtained before registering land ownership rights at the Land Office. However, in rural areas in Indonesia, paradigm a The community thinks that having the Village Head's SKT means that they are legally safe in managing and owning it the land, and has been recognized by the State and is entitled to legal protection for land ownership by public.

Land Certificate, there is no regulation in the ATR/BPN Ministerial Regulation No. 1 of 2021 concerning Electronic Certificates, which then in this Ministerial Regulation the

Village Head's SKT is not a letter that is a requirement for land registration with the National Land Agency to obtain ownership rights land, in accordance with article 76A. The ATR/BPN Ministerial Regulation is relevant to PP No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration which explains that the Village Head's SKT or other ex-customary land documents cannot be used as proof of land ownership rights (Setiawan et al., 2023) . However, it can be used as a source of guidance for making land ownership letters in the form of certificates, only within 5 years after the ATR/BPN and PP Ministerial Regulations on Management Rights, Land Rights, Flats and Land Registration are issued. Prior to the issuance of Ministerial Regulation ATR/BPN and PP No. 18 of 2021 , SE No.1756/15.I/1V/2016 was issued long ago regarding instructions for implementing community land registration, in the circular it was explained that the Village Head's SKT was not is an initial requirement in registering land ownership rights, even though the SKT in its legality is written evidence, it is not in accordance with the conditions for obtaining land ownership rights that have been determined . (Fachriza & Dajaan, 2020) . It is known that the SKT is still a private document , so its binding legal force and proof are not the same as an authentic deed, in this case a certificate , even though the Village Head 's STK can be used as a historical guide in obtaining, controlling and managing the land.

The Village Head's SKT is made on the basis of a request from the community to the village head, providing an explanation that the land is within the community 's control , which is usually hereditary and has rights such as Girik, Letter C, Petuk, Grant Sultan and similar rights. others , which were originally owned by customary rights, and have been controlled for generations (Dianti, 2017) . The issuance of the Village Head's SKT is mostly issued through applications from the community , many of which are the result of land being cleared by the community on State land which is not managed, which is then managed by the community and the land is requested to be made a Village Head's SKT. as land that has been managed for generations or land with customary rights. The problem of acquiring this land, which is not customary land but is already owned by the community because it is managed independently , and requires an SKT from the Village Head, often has problems with land provisions in protected forest areas . (THALIB, 2019) . . PP No. 18 of 2021 concerning Management Rights, Land Rights, Flat Units, and Land Registration is explained in To fulfill the requirements for registration of rights, land rights originating from the conversion of old rights can be accompanied by written documents as evidence control and manage, the testimony of witnesses and/or statements concerned, the truth of which is considered by the Adjudication Committee in systematic land registration or by the Head of the Land and Registration Office sporadically to be sufficient to register the rights, rights holders and the rights of other parties burdening them. The existence of the Village Head's SKT was valid as proof of land ownership before the Basic Agrarian Law came into existence. However, after the birth of the UUPA and Government Regulation Number 10 of 1961 concerning land registration as the first regulation implementing the UUPA, it was stated that, ownership rights to land that are recognized by the government and the State are certificates as the only valid form of land ownership rights.

CONCLUSION

Ownership rights to land in the UUPA as proof of ownership are certificates. However, the village head's SKT can be used as a historical guide in registering land to obtain a certificate at the land office, on the basis of physical and written evidence with coherent research on land ownership and supporting written evidence. This decision is based on Indonesia using a negative publication system that has a positive tendency. So the Village Head's Land Certificate can only be used as written evidence to register for labor, but the village head's SKT is not recognized proof of land ownership rights.

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