

Juridical Analysis of the Implementation of Buying and Selling Former Customary Land in Wajo Regency

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ABSTRACT

Regarding the buying and selling used customary land without signing in front of the Camat as the temporary PPAT that occurred in the Wajo area, this has certainly become a legal problem. This problem is related to the authentication of the land transaction deed as the principle of land registration at the National Land Agency of Wajo Regency. The research method in this study uses empirical legal research (*law in action*), which is to examine and analyze the workings of law in society, using a sociology of law approach. The legal sociology approach is an approach that analyzes how the reaction or interaction occurs when the norm system works in society. With the results of the study, although the signing of the deed of sale by the parties concerned, the seller, buyer and witnesses were not carried out before the authorized PPAT, in this case the PPAT of the Camat, if there was no legal problem (dispute) then the deed of sale and purchase was still considered as an authentic deed because physically in the form of the deed of sale there are signatures of the parties concerned, namely the seller, the buyer, the witnesses and the PPAT itself. The implementation of the sale and purchase of former property rights (custom) in Wajo Regency which is carried out before the Village Head is basically not in accordance with land law in Indonesia. This is because since the UUPA was enacted, only deeds made by authorized officials (PPAT) can be used as the basis for the transfer of land rights as stated in Article 37 paragraph (1) Government Regulation no. 24 Years 1997.

ABSTRAK

Fenomena jual beli tanah bekas adat tanpa melakukan tanda tangan di depan Camat selaku PPAT sementara yang terjadi di wilayah Wajo ini telah menjadi suatu permasalahan hukum. Permasalahan ini terkait dengan otentifikasi akta transaksi tanah tersebut selaku dasar pendaftaran tanah di Badan Pertanahan Nasional Kabupaten Wajo. Metode penelitian dalam penelitian ini menggunakan penelitian hukum empiris (*law in action*) yakni mengkaji dan menganalisis bekerjanya hukum di dalam masyarakat, dengan menggunakan pendekatan sosiologi hukum. Pendekatan sosiologi hukum merupakan pendekatan yang menganalisis tentang bagaimana reaksi atau interaksi yang terjadi ketika sistem norma itu bekerja di dalam masyarakat. Hasil penelitian penanda-tanganan akta jual-beli oleh para pihak yang bersangkutan penjual, pembeli dan para saksi tidak dilaksanakan dihadapan PPAT yang berwenang dalam hal ini PPAT Camat, apabila tidak terjadi masalah hukum (sengketa) maka akta jual-beli tersebut tetap dianggap sebagai akta otentik sebab secara fisik dalam blangko akta jual-beli tersebut terdapat tanda-tangan para pihak yang berkepentingan yaitu penjual, pembeli, saksi-saksi dan PPAT-nya sendiri. Pelaksanaan jual beli tanah bekas hak milik (adat) di Kabupaten Wajo yang dilakukan dihadapan Kepala Desa pada dasarnya tidaklah sesuai dengan hukum tanah di Indonesia. Hal ini karena sejak UUPA diberlakukan hanya akta-akta yang dibuat oleh Pejabat yang berwenang (PPAT) yang dapat dipergunakan sebagai dasar peralihan hak atas tanah sebagaimana bunyi Pasal 37 ayat (1) Peraturan Pemerintah No. 24 Tahun 1997.

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I. INTRODUCTION

The Basic Agrarian Law bases its philosophy on the customary law of the Indonesian state (Nugroho, 2019). Of course, in some cases, that will result in differences in how legal concepts based on Western Law are applied. For example, Customary Law follows the notion of "light and cash" when buying and selling land. Cash means the transfer of rights directly from the seller to the buyer at the time of the transaction from the buyer to the seller, while the light refers to a legal transaction that takes place in the presence of a traditional leader who oversees land issues.

Land ownership rights according to the theory of customary land law (Beschikkingsrecht) are the same as the theory of Roman land law (jus terra). The birth of land ownership rights began because of the relationship and position of people in a partnership or customary law community (rechtsgemeenschappen) meaning that people who are not members of the partnership do not have the right to become landowners or enter into legal relations to relinquish land rights or hand over land to foreigners. Foreigners or those who are not members of a legal community, in accordance with the provisions of local customary law (Emanuel, 2017).

While buying and selling land using western legal principles is different from the concept of customary law. There are two legal acts in the concept of western law, namely the law of sale and purchase agreements, in which the seller and buyer promise to carry out transactions that are subject to the rules of Book III of the Civil Code. As well as there are activities in the form of transfer of property rights from the seller to the buyer which are regulated in the rules of Book II of the Civil Code concerning Objects. Leveraging is carried out on land items by giving names to the authorized agencies (Hayati, 2016).

Meanwhile, the community's habit of buying and selling land in Wajo Regency, especially in Pammana Subdistrict and Maniangpajo Subdistrict, has been mostly carried out based on transaction deeds made by temporary PPATs, in this case the Camat. The making of the transaction deed carried out by the sub-district head in Pammana sub-district and Maniangpajo sub-district, Wajo district, which occurred in practice was that the parties did not sign the deed of the land transaction when they were presented with the Temporary PPAT (District Head) but at their respective residences. Including the people who have carried out the land sale and purchase transaction at the Temporary PPAT (Camat) is Andi Arsyad who stated that, the parties (seller and buyer) were visited at their respective residences by village/kelurahan officials to provide the format of the deed of land transaction to be signed by the parties, not before the Camat as the Temporary PPAT.

So that if the transaction activities of land ex-customary rights which in practice occur in Pammana District and Maniangpajo District, Wajo Regency, related to the activity of signing the transaction deed by the related parties are not confronted by temporary PPAT officials which is contrary to the existing rules.

Regarding the phenomenon of buying and selling used customary land without signing in front of the Camat as the temporary PPAT that occurred in the Wajo area, this has certainly become a legal problem. This problem is related to the authentication of the land transaction deed as the principle of land registration at the National Land Agency of Wajo Regency.

The formulation of the problem in this study, first, how is the validity of the deed of sale and purchase of land that was not signed by the parties before the temporary PPAT?. Second, how is the legal protection for buyers in the implementation of the sale and purchase of customary land in Wajo Regency. The purpose of this research is first, to analyze the validity of the deed of sale and purchase of land that is not signed before the temporary PPAT. Second, to analyze legal protection in the practice of ex-customary land transactions in Wajo Regency.

II. METHOD

The type of research used is the type of empirical legal research (law in action), which examines and analyzes the workings of law in society, using a legal sociology approach. The sociology of law approach is an approach that analyzes how reactions or interactions occur when the norm system works in society (Salim & Nurbani, 2017).

The approaches used in this type of research consist of a statutory approach (statue approach) which is an approach that is carried out by examining all laws and regulations related to the legal issues being handled.

The conceptual approach (conceptual approach) is an approach that departs from the views and doctrines that develop in legal science (Arrasyid, 2021). The case approach is an approach that is carried out by examining cases related to the legal issues at hand (Marzuki, 2021). The analytical approach is an approach aimed at examining the meaning of a legal term and seen in legal practice and court decisions (Arrasyid, 2021).

This research was conducted in Pammana Subdistrict and Maniangpajo Subdistrict, Wajo Regency, South Sulawesi Province on the grounds that in that area there has been a sale and purchase of land belonging to the community before the Village Head. The types and sources of legal materials used as the basis for supporting the results of this study are Primary Legal materials, namely in the form of original data whose sources are directly from respondents and information from research results directly in the field (field research), which was conducted through interviews with several sources who have competence over the object of research discussed. Secondary Legal Materials, namely a number of information or facts that are already available at the research site, which consist of literature related to the research object being studied.

The population in this study includes parties related to the buying and selling of former customary land in Pammana District and Maniangpajo District, Wajo Regency, South Sulawesi Province, including: the State Land Agency for Wajo Regency, Pammana District, Maniangpajo District, Traditional Stakeholders. The sample of informants to be interviewed in this study was carried out by means of purposive sampling, namely sampling as a source of data with certain considerations, that these people are those who are directly involved and responsible for buying and selling formerly owned land. customs, so that it will make it easier for researchers to explore the object or situation under study (Sugiyono, 2013). The samples in this study were BPN staff in Wajo Regency for the Determination of Land Rights, Staff for BPN for Wajo Regency in the Asset Measurement Division, Pammana sub-district head, Maniangpajo sub-district head, Secretary to Pammana sub-district head, Maniangpajo sub-district secretary, Head of Lampulung Village, Head of Lagosi Village, Head of Lampiri Village, Head Kalola Village, Head of Minanga Tellue Village, Head of Sogi Village and customary stakeholders of Wajo Regency.

Based on the type and source of data, the techniques used by researchers are interviews, document studies, and questionnaires. The entire data obtained, both primary and secondary data were processed and analyzed qualitatively. The data obtained, arranged systematically to achieve clarity of the issues discussed. Qualitative data analysis is a way of research that produces descriptive analysis data, namely by explaining and interpreting logically and systematically the data obtained from the research results.

III. RESULT AND DISCUSSION

1. The validity of the Deed of Sale and Purchase of Land that is not signed before the Temporary PPAT Legal actions related to land rights are included in the scope of PPAT. Actions taken by PPAT including PPAT Deed are deed made by PPAT in accordance with Article 1 No. 4 PP Number 37 of 1998 concerning Regulation of the Position of Land Deed Officials to show that certain legal actions have been carried out in connection with land rights or property rights with an average unit (Wibawa, 2019). In order to develop the National Land Law, Customary Law is the main source for obtaining the materials, in the form of conceptions, principles and legal institutions to be formulated into written norms compiled according to the Customary Law system. The new Land Law which was formed using materials from Customary Law, in the form of legal norms as outlined in legislation as written law, is a written positive National Land Law (Pide, 2017).

Maniangpajo District conducted a study before buying and selling used (customary) land in Maniangpajo District (data checking). The PPAT sub-district officer examines (examines) the deed of sale and purchase and its supporting documents. Buyer's KTP, Identity Card (KTP), Family Card (KK), Marriage Certificate, Land and Building Tax of the previous year, Girik or C. Induk Desa, and Deed or deed of transfer of land rights, along with attachments to minutes of transfer of rights, letter the seller's statement that the buyer actually purchased the land, a certificate of land history, and a non-dispute certificate from the village office are all required.

Meanwhile in Pammana sub-district it is not much different from what happened in Maniangpajo sub-district in terms of the procedures for carrying out the sale and purchase of second-hand (customary) land. The research (data checking) is intended to ensure that the seller is confirmed to actually own the object of land being traded by matching the identity of the seller with a letter of acknowledgment and proof of Girik or Letter C of the village as well as matching the buyer's data with the minutes of the transfer of rights transactions.

Pammana and Maniangpajo Subdistricts acknowledge that in carrying out their authority, they have carried out their duties and authorities in accordance with the guidelines contained in PP Number 24 of 2016 as amended by Government Regulation Number 24 of 2016 concerning Regulations for Land Deed Makers.

Fulfill community requests for transfer of property rights by making grant deeds, buying and selling, to meet the requirements of the National Land Agency for registration and transfer of land rights. No doubt, the problem that continues to plague Wajo Regency is the perception of the Temporary PPAT or Camat, which merely follows individual requests without considering the correctness of an action.

In general, a deed is good and has evidentiary power, especially the deed of transfer of land rights based on Article 96 paragraph (1) and paragraph (2) of the Regulation of the State Minister of Agrarian Affairs/Head of BPN Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, which requires using the form provided by the National Land Agency through the post office. The title of the deed must match the contents of the deed, and the title of the deed determines which legal provisions govern the agreement in a deed. For example, if the title of the deed is "sale and purchase deed" then the agreement contained therein is subject to and regulated by the legal provisions of the sale and purchase agreement, and of course the sale and purchase agreement must be in accordance with the deed. Of course, the understanding of the Temporary PPAT or Camat which only accommodates people's requests without paying attention to the authenticity of a deed is a problem that occurs continuously in Wajo Regency.

In principle, a deed is good and has evidentiary power, especially the deed of transfer of land rights based on Article 96 paragraphs (1) and (2) of the Regulation of the State Minister of Agrarian Affairs/Head of BPN Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Registration Land, must use the form in accordance with the form provided by the National Land Agency through the post offices. The parts of the deed in the authentic deed form are that the title of the deed must be in line with the contents of the deed and the title of the deed will determine which legal regulations govern the agreement in a deed, for example "sale and purchase deed" then the agreement contained in the sale and purchase deed is subject to and regulated in the legal regulations of the sale and purchase agreement and of course the sale and purchase agreement must be in accordance with what was agreed upon by the parties as well as the achievements contained in the sale and purchase agreement.

The procedure for arranging a sale and purchase deed is always done through the Village Office, not directly to the PPAT sub-district office, in the sale and purchase of ex-owned (customary) land. In connection with the implementation of buying and selling land before the village head.

Table 1. Respondents' responses to officials who act to sign the deed of sale and purchase have the validity of acting or not

No	Category	Frecuency	Prosentase
1	Have	18	25%
2	No Have	10	42%
3	Dont Know	12	33%
Total		40	100%

From table 1 it can be seen that out of 40 respondents there were 18 respondents or 25% who stated that the official who signed the deed of sale and purchase had the validity of acting, 10 respondents or 42% who stated that the official who signed the deed of sale and purchase did not have the validity of acting and 12 respondents or 33% said they did not know. If you look at the results of the processed questionnaire, it can be seen that there are still many people who think that the officials (Village Heads) who act to sign the deed of sale and purchase have the validity of acting, conditions like this show that the level of public knowledge about land law is still very minimal.

Table 2. Respondents' responses to the legal impact of signing the deed of sale and purchase before the village head

No	Category	Frequency	Presentase
1	Very impactful	6	12%
2	No impact	4	8%
3	Tidak Tahu	30	80%
Total		40	100%

From table 2, it can be seen that from 40 respondents there were 6 respondents or 12% who stated that the village head signing the sale and purchase deed did not apply a significant penalty, 4 respondents or 8% stated that the signing of the sale and purchase deed before the village head had no impact. very significant law and 30 respondents or 80% said they did not know. If you look at the results of the processed questionnaire, it can be seen that almost all people think that the official (Village Head) who acts to sign the sale and purchase deed is a legal action that has no legal impact in the future, this condition shows that the activity of signing the sale

and purchase deed is carried out against The village head is a culture of environmental law that has been running for too long.

One of the documents that prove the transfer of land rights is the PPAT deed, in this case the deed of sale and purchase. Land rights are transferred when ownership passes from the seller to the buyer. The new land owner is the buyer. Only the seller and the buyer are bound by this sale and purchase. The sale and purchase must be recorded on behalf of the buyer at the Land Office to bind third parties. Because the PPAT deed is made by a trustworthy public official who fulfills his duties in accordance with the oath of office, it can be used as evidence of a strong transfer of property rights in the event of a dispute over land rights. The deed made by the PPAT cannot be revoked by either the buyer or the seller because the deed is legally binding on the parties who made it. Only with the approval of the two persons concerned can the PPAT deed be cancelled. Article 1338 of the Civil Code which reads as follows:

“All legal agreements are binding on the parties that enter into them. Other than with the consent of both parties or for reasons determined by law, the agreement cannot be withdrawn. These agreements must be upheld in good faith.”

Both parties are required to carry out the PPAT deed made as a result of a mutual agreement. The party who feels aggrieved can file a lawsuit against the party causing the loss if one party cancels the collective agreement which results in a loss for the other party. If the PPAT deed made together needs to be cancelled, the Notary official must make a deed of cancellation. The PPAT who made the canceled land deed reports/submits the cancellation of the deed to the relevant Office/Institution, namely the Land Office, Land and Building Tax Service Office, and the Tax Service Office, based on the Cancellation Deed.

The deed made by the PPAT turns out to be legally flawed, which is not caused by the mistakes of the parties but by the mistakes of the PPAT; PPAT can be sued for compensation as a result of field research findings and public information. There are sales and purchase agreements made beforehand to the PPAT, but some are not, especially those made in the presence of the village head. Because the Village Head carries out the sale and purchase agreement after the BAL is in effect, his legal status is only the same as a private deed. After the UUPA comes into force, PPAT is a person who is allowed to make a land sale and purchase deed. According to Article 37 Paragraph 1 PP 24 of 1997 Concerning Land Registration that:

“Except for the transfer of rights through an auction which can only be proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations, the transfer of rights to land and ownership rights to apartment units through buying and selling, exchanging, granting, entering into company, and other legal actions to transfer rights can all be registered.”

Even if the buyer has received the land rights, it will be difficult for him to register them because the Land Office only accepts deed of sale and purchase signed by the authorized PPAT as a legal basis for registering land rights. If the seller or other party disputes the sale and purchase settlement, the buyer may also experience difficulties in establishing his rights.

If other parties can prove otherwise, namely those who have the deed of sale and purchase made by the authorized PPAT, then the land owner with proof of ownership of the deed of sale and purchase drawn up by the village head will lose. This is because the deed of sale and purchase made by the village head is a deed under the hand whose juridical power is still weaker than the deed of sale and purchase of land drawn up by the authorized PPAT. This is meant to make it clear that the sale and purchase of the goods in question actually takes place, in contrast to the Village Head whose role is limited to providing witnesses and may not make a sale and purchase deed.

According to laws or government regulations, a legal sale and purchase of land is only carried out in the presence of an official who makes the land deed or includes the sale and purchase of real estate accompanied by a deed legalized by the official. This is in accordance with PP No. 24 of 1997 concerning Land Registration in Article 37 Number 1 which stipulates that the transfer of ownership rights to land and apartment units is carried out through sale and purchase, exchange, provision of income within the company, and other legal means. transfer of rights. Except for the transfer of rights through an auction, which can only be documented if it is supported by a deed drawn up by the authorized PPAT in accordance with the applicable laws and regulations. In order for the sale and purchase to be carried out legally, the public must carry out the sale and purchase with an authentic deed or a deed legalized by an authorized official.

The implementation of land buying and selling activities, including in Pammana District and Maniangpajo District, until now still upholds mutual trust between sellers and buyers as well as the District government to the RT with the parties. The blank deed of sale and purchase made by the village secretary is used for the signature between the buyer and the seller. The identity of the parties and the land object has not been filled

in the blank deed of sale and purchase. Neither the buyer nor the seller has a problem with signing an empty (still blank) sale and purchase deed.

Based on the author's research that in addition to the lack of public knowledge about Land Law, economic factors also greatly affect the occurrence of buying and selling land before the Village Head. In addition, the village head will inform the community before selling or buying land because it is believed that the village head is the one who knows best about all aspects of the land. This is one of the reasons why second-hand (adat) property rights are traded in front of the village head. In addition, the following is justification for the sale and purchase of used (customary) land conducted before the Village Head:

a) The Village Office is responsible for arranging land sale and purchase deeds

As a guarantee that everything, including the signing of the sale and purchase deed, is carried out in accordance with the provisions decided by the Village Head and before the relevant Village Head, the community who will sell or buy a plot of land will entrust the arrangement of the sale and purchase deed through the Village Office.

b) Habits that last a long time

The practice of signing the deed of sale and purchase in front of the village head has been carried out by the village head for a long time, from ancient times to the present, and the current village head only adheres to (continues) this practice.

c) Approval obtained from PPAT Camat

The sub-district head of the PPAT who oversees each village head has given permission for the deed of sale and purchase to be signed in front of the village head so that the village head is willing to carry out the deed of sale and purchase of land in front of the village head personally.

When buying or selling land, the deed of sale and purchase is signed by the seller and the buyer in front of the village head. This is known as the sale and purchase of land which is carried out in front of the village head. Article 1868 of the Civil Code states that an authentic deed is a deed made according to the method determined by law, by an authorized official, and at the place where the authority is given. In addition, Article 1869 of the Civil Code states that a deed cannot be treated as an authentic deed due to the incapacity or incapacity of the employee mentioned above, or because of a deformity, but has the same authority as handwriting. note if it is signed by that person. Because it was not made by or in the presence of an authorized official, in this case the PPAT Camat, the deed of sale and purchase of land drawn up by/in front of the Village Head is only authorized as a private deed.

The sale and purchase of land according to the National Land Law system is based on customary law, namely Real, Clear and Cash, thus the sale and purchase remains valid even though the deed is not made by and before the authorized PPAT and only has the power of evidence. Light indicates that the object of sale is genuine (clear), real indicates that the stated goals must be followed by concrete actions, and Cash indicates that the seller transfers ownership of the object of sale together with the delivery of the buyer's money. Remaining valid means that, in the absence of evidence to the contrary, the sale and purchase remains valid and results in the immediate transfer of rights from the seller to the buyer.

In the case of buying and selling used (customary) land in Wajo Regency, the seller and buyer sign the deed of sale and purchase in front of the village head, not at the designated PPATCamat. If there are no legal issues (conflicts), the deed of sale and purchase is still considered an authentic deed even if the person concerned—the seller, the buyer, and the witness—does not sign it in front of the authorized PPAT. , in this case the District Head's PPAT. because the parties involved, including sellers, buyers, witnesses, and the PPAT itself, have physically signed the deed of sale and purchase. However, even though the parties involved, including the PPAT, have physically signed the sale and purchase deed, in the event of a legal dispute (conflict) it is possible to show that only the seller, buyer and witnesses actually signed the sale and purchase deed. document. The deed will be recognized as a private deed if it is not executed before the PPAT is approved.

2. Legal Protection for Buyers in the Sale and Purchase of Community-Owned Land in Wajo District

PPAT property sale and purchase documents are made not for direct profit but as evidence of an agreement that has been made, with each party having the appropriate rights and obligations. The deed was made before or by PPAT and is in accordance with the applicable laws and regulations, so that if a problem occurs, the PPAT land sale and purchase deed will remain valid. All actions of the parties based on the applicable legal rules will undoubtedly provide legal certainty for the parties themselves. The parties can use this as a general guideline (Adjie, 2009).

In Article 1457 it is explained that buying and selling is an agreement, whereby one party binds himself to deliver an object, and the other party pays the promised price. This definition of buying and selling means that the parties enter into an agreement, in which one party promises to deliver an item, while the other party

also promises to pay the price. Although in the article above it is not stated in the form of what price must be paid by the other party, but the payment must be in the form of money, because if the payment is not in the form of money but in the form of goods, then the agreement is no longer a sale and purchase agreement, but in the form of exchange (Suarti, 2019).

The realization of legal protection for the community in the land sector, especially buying and selling, based on the provisions of Article 33 paragraph (3) of the 1945 Constitution which is the basis for policies in the Indonesian land sector, which is then further elaborated in Law no. 5 of 1960 concerning Agrarian Principles. Therefore, Law Number 5 of 1960 concerning Agrarian Principles must be the basis and regulation for everything related to land. In order to create clarity, order, and legal protection rooted in truth and justice, the UUPA was established on this philosophical foundation.

According to customary law, obtaining land for the community usually involves a shady sale and purchase that must be carried out in front of the customary or village head, seen by interested parties, and documented with receipts and/or a statement of sale and purchase. and land purchases. Alternatively, the sale and purchase fulfills clear and cash requirements without being carried out in accordance with Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, which relates to land registration.

In dispute resolution efforts, such as dispute resolution in court, it is related to the transfer of land rights due to the sale and purchase of unregistered land. When the philosophy of legal goals initiated by Gustav Radbruch, which elevates the purpose of justice above other legal goals, is accompanied by repressive legal protection.

Justice is the result of decisions that are based on truth, impartiality, traceability, and treat everyone equally before the law. The practice of justice can be applied at the local, national and global community levels. This can be demonstrated through impartial attitudes and actions, as well as by giving people what is rightfully theirs.

Thus, it is legal and valuable based on community legal actions taken before the village head. Therefore, in this case the buyer of land rights as a result of buying and selling land that has not been registered whose legal actions are carried out in good faith by fulfilling clear requirements and cash received recognition from the community concerned as the new owner. and will receive legal protection in the event that a party later sues it on the grounds that the sale and purchase is invalid.

The name is listed as the right holder in the land book and the certificate is always facing the possibility of a lawsuit from a third party who believes he owns the land, which is another weakness of the negative publicity system which is usually overcome by using harmful means. own or free a *verjaring* institution. We cannot use this institution because it is not recognized by customary law, which is the basis of our land law. However, the *rechtsverwerking* institution contained in customary law can be used to get around the shortcomings of the negative publicity system for land registration. According to customary law, a person loses the right to claim a piece of land if they allow it to be used for a sufficiently long time by someone else who legally acquired it. Articles 27, 34, and 40 of the LoGA, which stipulate that land rights can be abolished due to neglect, are in line with this institution.

Therefore, the institution is also covered by legal protection for buyers of land rights that are not registered according to customary law, which recognizes the institution of *rechtsverwerking*. Due to the rule in the LoGA which states that land rights are abandoned due to neglect, according to customary law, if a person neglects his land for a long time and is cultivated by someone else who legally obtained it, his right to claim the lost land.

Repressive legal protection is provided when the law is violated. Law enforcement which includes the imposition of sanctions such as fines, compensation, imprisonment, and further sanctions, as well as procedures for resolving disputes in court is one way to provide protection (Zaidan, 2022). The main purpose of this protection is to avoid disputes in the first place and to deal with the impact of disputes in court. The lawsuit filed in court by the *reschstverwerking* institution against land rights certificate holders who have good intentions in fighting for dispute resolution is given repressive protection to certificate rights holders.

The binding strength of the sale and purchase agreement made, especially made with a private deed (carried out in front of the village head) or not, determines legal protection for the fulfillment of the rights of the parties in the event that one of the parties defaults or breaks a promise in the agreement. The deed automatically becomes a notarial deed if made by or before a notary/PPAT so that the power of protection is in line with the strength of an authentic deed.

The buyer's efforts to ensure that the sale and purchase of land carried out in front of the village head (without an official deed of land deed) can be legally binding. An agreement regarding the transfer of land rights, including the sale and purchase of land, must be made in front of the official making the land deed, in

accordance with the provisions of Government Regulation Number 24 of 1997. Sellers and buyers must meet at the PPAT office to make a Land Sale and Purchase Deed before carrying out a sale and purchase transaction soil. The head of the National Land Agency (BPN) considers PPAT as a public official with the authority to transfer land rights, including buying and selling land.

The Land Office will provide proof of receipt of the name change application to the applicant after the application and complete documents have been submitted to the Land Office, either by the buyer himself or by the PPAT on behalf of the buyer. The Land Office will also delete the name of the old right holder and replace it with the name of the new right holder. The Head of the Land Office or the appointed official crosses out and initials the name of the previous right holder (Seller) in the land book and certificate in black ink. On the pages and columns provided in the land book and certificate, the name of the new right holder (buyer) is stated along with the date of registration and signed by the Head of the Land Office or an appointed official. The buyer can pick up the certificate, which is already in his name, at the relevant Land Office within fourteen days.

The settlement procedure can be carried out in two ways, namely by legal (litigation) and non-legal (non-litigation) methods, for land sale and purchase issues that are not carried out before the PPAT and are not proven by the land sale and purchase deed made by the PPAT are as follows following (Wiratama Suwignyo, 2017):

- a) Settlement of Land Sales and Purchase Problems through Non-Litigation Channels that were not carried out before PPAT moved

Purchases and sales of land prior to PPAT are used to resolve disputes without going through court. The buyer asks the seller to appear before the PPAT and make a deed of sale and purchase. This strategy is possible if the seller or the seller's heirs are willing to buy back before the PPAT, but it will be difficult to implement if the seller or the seller's heirs do not want to sell and buy before the PPAT. Through discussion and mediation, there are other non-litigation options.

In addition, the National Land Agency or BPN can mediate disputes on behalf of parties who feel aggrieved. According to Article 29 of Presidential Regulation Number 63 of 2013 concerning the National Land Agency of the Republic of Indonesia, the Deputy of BPN for the Handling of Land Disputes and Cases is responsible for organizing and implementing alternative settlements of land problems, disputes, and cases through mediation, facilitation, and other means.

Control, ownership, use, and exploitation of land is the subject of dispute resolution by BPN based on Perkaban to provide legal certainty and justice. Perkaban Number 11 of 2016 regulates land dispute mediation, which is a form of conflict resolution based on the idea of deliberation to reach consensus for the benefit of all parties, in order to achieve this goal. In the event that the Mediation results in a settlement, a binding Peace Agreement is made based on the Minutes of Mediation.

- b) Litigation path to resolve land sale and purchase problems that were not handled before PPAT

In the event that the seller or his heirs are not willing to make a deed of sale and purchase before the PPAT or the seller's whereabouts are not known, a settlement with a lawsuit can be made. The unlawful act committed by the seller is one of the basic types of lawsuits that can be filed against the seller for settlement. This illegal activity is related to the sale and purchase agreement between the buyer and the seller.

In addition, efforts may be made to reach a decision with the nearest District Court. The buyer submits a settlement request and states in the request that the land object legally belongs to him and that a sale and purchase has taken place. So that based on the decision of the District Court, the application for a change of name on behalf of the buyer at the State Property Agency can be supported with additional evidence, such as a statement not in dispute, ownership rights to land parcels, land certificates, witnesses, and media announcements.

Based on the results of interviews with people involved in the sale and purchase of land rights in Pammana and Maniangpajo Districts, Wajo Regency that:

"Because the PPAT deed must be made as proof of the transfer of rights to the goods in question, the land buyer who is solely based on the receipt of payment of the purchase price cannot be registered for reverse registration. As proof of the transfer of ownership of the goods in question, the buyer must ask the seller to appear before the PPAT with the buyer to sign the deed of sale and purchase. In order for the transfer of certificates to be completed and provide legal protection and legal certainty over the ownership of the land being judged, the buyer must be willing to bear the buyer's tax burden if the seller does not want to bear the tax costs on the land.

A formal contract between the seller and the buyer occurs when land rights are sold and purchased in front of the village head. It is also a means of proof as regulated in the Civil Code, especially in Article 1866, where one of the evidences is written evidence, although it is only limited under the hands. This is further

supported by Article 1874 of the Civil Code, which stipulates that an informal letter that has been signed or affixed with a thumbprint by the parties to the agreement is also considered as written evidence.

Sale and purchase made with cash can be accepted as evidence, but is weak evidence for the transfer of ownership rights to the goods in question because according to Article 37 of Government Regulation Number 24 of 1997, the transfer of ownership rights to goods can only be proven by deed made by the PPAT. As a result, the Land Office cannot record transfers of land rights that occur privately. Even if the evidence is lacking, the sale and purchase agreement in hand can be used as evidence if there has ever been a dispute over the sale and purchase.

However, the private sale and purchase agreement cannot be used as a reference for submission to the Land Office if the buyer wants to change the name related to the land rights. The practice in the field is that if a buyer wants to change the name on the certificate, then a private sale and purchase agreement cannot be used as a guideline for doing so at the land office. This is also supported by the Head of the Wajo District Land Office, Subsidies for Transfer of Rights, Mortgage Rights, and PPAT, which states that the sale and purchase agreement on land ownership rights made privately.

IV. CONCLUSSION

Based on the results and discussion it was concluded that even though the signing of the deed of sale and purchase by the parties concerned the seller, buyer and witnesses was not carried out before the authorized PPAT, in this case the PPAT Camat, if there is no legal problem (dispute), then the deed of sale it is still considered as an authentic deed because physically on the blank of the sale and purchase deed are the signatures of the interested parties, namely the seller, buyer, witnesses and the PPAT itself. The sale and purchase of formerly owned (customary) land in Wajo District which was carried out before the Village Head was basically not in accordance with land law in Indonesia. This is because since the UUPA was enacted, only deeds drawn up by an authorized official (PPAT) can be used as a basis for transferring land rights as stated in Article 37 paragraph (1) of Government Regulation No. 24 Year 1997.

Referensi

- Adjie, H. (2009). *Meneropong khazanah notaris dan PPAT Indonesia: kumpulan tulisan tentang notaris dan PPAT*. Citra Aditya Bakti.
- Emanuel, V. (2017). Perlindungan Hukum Atas Tanah Adat dalam Kaitan dengan Pemberian Izin Usaha Perkebunan Kelapa Sawit di Kecamatan Serawai Kabupaten Sintang. *PERAHU (PENERANGAN HUKUM): JURNAL ILMU HUKUM*, 5(2).
- Hayati, N. (2016). Peralihan Hak dalam Jual Beli Hak Atas Tanah (suatu Tinjauan terhadap Perjanjian Jual Beli dalam Konsep Hukum Barat dan Hukum Adat dalam Kerangka Hukum Tanah Nasional). *Lex Jurmalica*, 13(3), 147934.
- Marzuki, P. M., & SH, M. (2021). *Pengantar ilmu hukum*. Prenada Media.
- Nugroho, W. (2019). Konsep Integrasi Kebijakan Pengelolaan Pertambangan Perspektif Pluralisme Hukum di Indonesia. *Masalah-Masalah Hukum*, 48(4), 402-410.
- Pide, A. S. M., & SH, M. (2017). *Hukum Adat Dahulu, kini, dan akan datang*. Prenada Media.
- Salim, H. S., & Nurbani, E. S. (2017). Penerapan teori hukum pada penelitian tesis dan disertasi/Salim HS.
- Suarti, E. (2019). Asas Keseimbangan Para Pihak dalam Kontrak Jual Beli Tanah. *Doctrinal*, 4(1), 976-987.
- Sugiyono, D. (2013). Metode penelitian pendidikan pendekatan kuantitatif, kualitatif dan R&D.
- Wawancara Andi Arsyad, Warga Desa Kalola Kecamatan Maniangpajo Kabupaten Wajo.
- Wawancara Camat Maniangpajo (Muh. Yusuf S.Sos) tanggal 24 Februari 2022
- Wawancara Camat Pammana (Junisatri Rasyd S.STP) tanggal 26 Februari 2022
- Wawancara Kepala Seksi Penetapan Hak dan Pendaftaran Kantor Pertanahan Kabupaten Wajo (Iswandi) tanggal, 16 Februari 2022
- Wawancara Kepala Tata Usaha ATR/BPN Kabupaten Wajo, (Abdul Salam) 16 Februari 2022.
- Wibawa, K. C. S. (2019). Menakar Kewenangan dan Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) dalam Perspektif Bestuurs Bevoegdheid. *Jurnal Crepido*, 1(1), 44-58.
- Wiratama Suwignyo, D. R., Shalman Al Farizi, S. H., & Kn, M. (2017). *Perlindungan Hukum dalam Praktek Jual Beli Tanah di Bawah Tangan yang dilakukan di Hadapan Kepala Desa (Studi Kasus di Desa Sedadi Kecamatan Penawangan Kabupaten Grobogan)* (Doctoral dissertation, Universitas Muhammadiyah Surakarta).
- Zaidan, M. A. (2022). *Menuju pembaruan hukum pidana*. Sinar Grafika.