

Problematic Land Buying and Selling Transactions

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Abstract

Introduction: Land ownership has become a primary need, but in the process of land ownership there are still problems. Basically, the acquisition of land rights according to the Decree of the Minister of Agrarian Affairs Number 21 of Article 1 Point 1, the acquisition of land is carried out by transferring land rights or through the delivery of release of land rights followed by granting rights. But this activity is not carried out in its entirety so that it will cause problems in granting rights to the community.

Purposes of the Research: This research was conducted in Sanahu Village, Elpaputih District, West Seram Regency. This village prioritizes and gives importance to matters relating to customary land. However, based on the dynamics of the community, transactions carried out by the community should be carried out in accordance with the provisions of the legislation governing land registration in order to obtain legal certainty in the transactions carried out and aim for orderly administration in land sector.

Methods of the Research: This research method is empirical juridical research that uses primary and secondary data. The legal materials used are primary legal materials, secondary legal materials with questionnaire and interview methods, data collection techniques with literature studies and field studies. Data processing and analysis techniques use descriptive analytical data analysis by identifying, classifying, then analyzing and describing according to the hierarchy.

Results of the Research: Based on have not carried out the first land the results of the interviews, it is known that some people in Sanahu village do not know about the sale and purchase practices that should be taken in order to obtain legal certainty from the sale and purchase transactions carried out. This should be done based on the provisions of Article 19 paragraph 2 of the UUPA, Article 37 of PP 24 of 1997 concerning land registration. As a result, in the event of problems related to previous land transactions, the community had to resolve themselves in a family manner, either without or with assistance from local officials. As a result, the people of Sanahu village have not carried out the initial registration and maintenance of land registration data properly. Because land administration is not orderly, if there are land issues in transactions carried out either by transferring rights or encumbering rights, there will be problems in the future and limit land owners in carrying out legal actions.

Keywords: : Legal Protection; Problematic; Sale and Purchase Transaction; Custom; Land Registration.

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INTRODUCTION

Land ownership has become a primary need because of the need for shelter for daily life. However, in the process of land ownership in reality, there are many problems in the process. This happens because the way it is obtained is not in accordance with applicable legal provisions. Land disputes usually occur due to seizure and grabbing without rights, to the detriment of the rightful owner.¹ In Indonesia, the ways to acquire land ownership

¹ Tiar Ramon, "Tinjauan Yuridis Terhadap Keabsahan Dan Kekuatan Alat Bukti Jual Beli Tanah Menurut Hukum Adat". *Jurnal Hukum Das Sollen* 2 No. 1 (2018): 2, <https://doi.org/10.32520/das-sollen.v1i4.334>

rights are through wills, inheritance, grants and sale and purchase. Regarding obtaining property rights to land through sale and purchase in the life of the Indonesian people can occur due to the sale and purchase of land according to the provisions of Agrarian Law as stipulated in Article 19 paragraph (2) in conjunction with Article 16 paragraph (1) of the Basic Agrarian Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles. In addition, it is also regulated in the implementing regulations in Article 37 Paragraph 1 concerning Transfer of Rights in Government Regulation Number 24 of 1997 concerning Land Registration. The sale and purchase of land according to customary law is carried out based on the provisions of local customary law implemented and obeyed by the local community.

Basically, the acquisition of land rights according to the provisions of Decree of the Minister of Agrarian Affairs Number 21 of 1994 Article 1 point 1, the acquisition of land is carried out by transferring land rights or through the delivery or release of land rights followed by the granting of rights with the following provisions. Acquisition of land through transfer of rights is carried out if the land concerned is already owned with land rights 'of the same type' as the land rights exercised by the company in carrying out its business, provided that if the companies concerned wish, the land rights can also be released and then applied for rights in accordance with the applicable provisions. Meanwhile, the acquisition of land through the surrender or release of rights is carried out if the required land is owned with Hak Milik or other rights 'that are not in accordance' with the type of rights needed by the company in carrying out its business, provided that if what is needed is land with Building Rights Title, then if the company concerned wishes, the acquisition of the land can be carried out through the transfer of rights by changing the land rights to Building Rights Title.

Land rights based on Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Principles based on the provisions of Article 16 paragraph (1), namely: The land rights referred to in Article 4 paragraph (1) are: property rights, Right to cultivate, building use rights, right of use, lease rights, land clearing rights, the right to collect forest products, rights that are not included in the aforementioned rights that will be determined by law and rights that are temporary in nature as mentioned in Article 53. In addition, the Implementing Regulation, namely Government Regulation Number 24 of 1997 concerning Land Registration, states that land registration is divided into two, namely land registration for the first time or commonly referred to as initial registration and maintenance of land registration data that has been registered or called maintenance.

Meanwhile, the type of land owned by customary law communities cannot be simply certified. The acquisition of customary land is obtained by means of land owned by customary law communities can be released by way of exchange (ruislag) or through the release of rights to the land first by the customary head. For former customary land rights in the form of girik, the party who wants to carry out the certification process is the original owner listed in the customary land, so there is no need for a sale and purchase first. If there has been inheritance, for example, it must be preceded by the preparation of an inheritance certificate and inheritance procedures. If the right is acquired through sale and purchase, the sale and purchase process must be followed as stipulated in the laws and regulations on land registration. This is what makes the problem if land registration is not immediately carried out as procedural sale and purchase even for customary land, while if the sale and

purchase of customary land is carried out with no conformity with national land law regulations, this will become an imbalance and a source of new problems in land and will cause disputes, so it is necessary to conduct research because the sale and purchase of customary land is currently widely implemented by the community. The sale and purchase of customary land is often carried out by buying and selling under the hand, so this is very risky if in the future there is a dispute because the evidence is not strong.

The acquisition of customary land is obtained by means of land owned by customary law communities can be released by way of exchange (*ruislag*) or through the release of land rights in advance by the customary head. For former customary land rights in the form of *girik*, the party that wants to carry out the certification process is the original owner listed in the customary land, so there is no need for a sale and purchase first. If there has been an inheritance, for example, it must be preceded by the preparation of an inheritance certificate and inheritance procedures. If the right is obtained through sale and purchase, then the sale and purchase process must be followed as stipulated in the Legislation on land registration. This is what makes a problem if land registration and sale and purchase procedures are not immediately carried out even for customary land, while if the sale and purchase of customary land is carried out in the absence of conformity with national land law regulations, this will become an imbalance and a source of new problems in land and will cause disputes, so it is necessary to conduct research because the sale and purchase of customary land is currently widely implemented by the community. Buying and selling customary land is often done by selling under the hand, so this is very risky if in the future there is a dispute because the evidence is not strong.

METHODS OF THE RESEARCH

In accordance with the problems and objectives of this research, the type of research used is sociolegal research², which is a combination research method between doctrinal legal research methods and empirical legal research methods. Doctrinal research is intended to conduct library research by identifying laws and regulations and collecting other data related to the problem under study. Meanwhile, empirical research aims not only to provide support for the development of legal science which is limited to the study of the norm system, but also to examine the actual law created by individuals interacting in society.³ Empirical research is used to gain an in-depth understanding of the context and social dynamics of the society in which the law is applied.⁴ To identify the Problematics of Sale and Purchase Transactions in Sanahu Village. This research was conducted in Sanahu Village, Elpaputih Sub-district, West Seram Regency. This research uses primary data through interview techniques and secondary data. The sources of legal materials used are primary legal sources and secondary legal sources. Data collection techniques used literature study and field study. The data collected is studied and analysed in depth so that a complete and in-depth conclusion is obtained. The technique of analysing descriptively analytical by being identified and then grouping then examined and described according to the hierarchy.

² Sulistyowati Irianto, *Memperkenalkan Studi Sosiolegal dan Implementasi Metodologisnya*, dalam Sulistyowaty dan Sidharta (eds), *Metode Penelitian Hukum Konstelasi dan Refleksi*, p. 177. Lihat juga dalam Sulistyowati Irianto dalam buku yang sama, *Praktik Hukum: Perspektif Sosiolegal*, (Jakarta: Yayasan Obor, 2009), 308

³ Mukti Fajar dan Yulianto Achmad, *Dualisme Penelitian Hukum Normatif dan Empiris*, (Yogyakarta Pustaka Pelajar, 2010), p. 44.

⁴ *Ibid.* p. 44-45.

RESULTS AND DISCUSSION

West Seram Regency is part of a province with an area of 84,181 km² or around 11.82 per cent of the total area of Maluku Province. Geographically, West Seram Regency is located at 2.550 South latitude to 03.30 South latitude and 127.0 East longitude to 55.0 East longitude. Number and Size of Villages and Hamlets in West Seram Regency.

Table 1. Number and Area of Villages and Hamlets in Seram Bagian Barat Regency

Number	District	Sub-distinct capital	Total		Area	Condition
			Village	Hamlet		
1	Kairatu	Kairatu	7	8	1.811.60	Coastal
2	Kairatu Barat	Kamal	5	-		Coastal
3	Amalatu	Latu	7	2		Coastal
4	Inamosol	Hunitetu	6	6		Mountains
5	Elpaputih	Elpaputih	7	3		Coastal & Mountains
6	Seram Barat	Piru	7	20	879.92	Coastal & Mountains
7	Huamual	Luhu	5	31		Coastal
8	Taniwel	Taniwel	19	3	1.915.12	Coastal & Mountains
9	Taniwel Timur	Uweng Pantai	15	-		Coastal
10	Waesala	Waesala	7	26	569.36	Coastal
11	Kepulauan Manipa	Tomalehu Timur	7	13		Coastal
Total			92	112	5.176.00	

The economic growth rate of West Seram Regency in 2014 was higher than in 2013. The growth rate of West Seram GRDP in 2014 reached 6.16 per cent, while in 2013 it was 4.55 per cent. The value of GRDP at current prices in 2013 was IDR 1.783 trillion and in 2014 it increased to IDR 2.024 trillion. The village that has the largest area in Elpaputih Sub-district is Ahiolo Village at 67.15 Km² and the smallest is Huku Kecil Village at 32.56Km². Kecamatan Elpaputih was established in 2010. Elpaputih sub-district is divided into 7 villages. According to available data there have been 3 sub-district heads who served in Elpaputih Sub-district, the first sub-district head was L. Ruspanah B.A, and the second served O. Tuhenay, S.E. and the current one is Drs. Paulus Charles Pical, M.Si.

The sample in this study was taken from the Sanahu Village community to serve as resource persons, namely: Head of Village, Village Government Staff, and Sanahu Village Community, Elpaputih Sub-district, West Seram Regency. The criteria for this research sample are those who meet the criteria that they currently reside in the customary jurisdiction of Sanahu Village and they have lived for at least 20 years in the area, so the samples in the study are Traditional Leaders, State Government, State Saniri, Community Leaders. Furthermore, in collecting data, this research was carried out with an interview session addressed to representative respondents from traditional leaders, the local government, and the local saniri.

The existence of customary law communities in Indonesia has factually existed since the time of the ancestors until now. Customary law communities are territorial or genealogical community units that have their own wealth, have citizens who can be distinguished from citizens of other legal communities and can act inwardly or outwardly as an independent legal entity (legal subject) and govern themselves.⁵ Many experts argue that the notion of indigenous peoples must be distinguished from customary law communities. The concept of indigenous peoples is an understanding to refer to certain communities with certain characteristics. Meanwhile, customary law society is a juridical technical definition that refers to a group of people who live in a certain area (ulayat) of residence and living environment, have wealth and leaders who are in charge of protecting the interests of the group (outward and inward), and have a legal system and government.⁶ According to Boedi Harsono, a customary law community is a group of people who are bound by their customary legal order as joint citizens of a legal community because of their common residence or on the basis of descent.⁷

Ter Haar⁸ further explained that customary law communities consist of territorial (regional) and genealogical (hereditary) factors. The definition of customary law communities based on territorial factors is customary law communities based on their regional environment. Meanwhile, genealogical customary law communities are customary societies based on descent (family). Customary Law Communities have one of the most important rights related to their living space, namely 'Ulayat rights' as stated in Article 3 of the UUPA; By remembering the provisions in Article 1 and Article 3, it is stated that; the implementation of ulayat rights and similar rights of customary law communities, as long as according to reality they still exist, must be in such a way that it is in accordance with national and state interests, which are based on national unity and must not conflict with other laws and regulations that are higher. The author's opinion in strengthening and sharpening the analysis of the article submitted for publication.

Table 2. Concept of Individual Land Rights Source, collated from legal materials

Number	Individual Land Rights
1	Property Rights Which is the right of ownership over the land of a person of the community who opens and works on the land, means that the people who live on the land have the full right to the land but with the condition that they must respect (1) Customary rights of the village. (2) Interests of others who own the land, (3) Customary rules (such as the obligation to allow other people's livestock on one's farm as long as the land is not used and fenced).
2	Right of Use The right to use, or <i>gebruikrecht</i> , must be distinguished from the right to enjoy, or <i>genotrecht</i> . The right to use focuses on the land, namely the right to use or cultivate the land, while the right to enjoy

⁵ Husein Alting, *Dinamika Hukum dalam Pengakuan dan Perlindungan Hak Masyarakat Hukum Adat atas Tanah*, (Maluku Utara : LaksBang Pressindo bekerjasama dengan Lembaga Penerbitan Universitas Khairun Ternate, 2011), p. 31

⁶ Taqwaddin, "Penguasaan Atas Pengelolaan Hutan Adat Oleh Masyarakat Hukum Adat (Mukim) di Provinsi Aceh. (Disertasi Doktor Ilmu Hukum Universitas Sumatera Utara, 2010) p. 34

⁷ Boedi Harsono, *Hukum Agraria Indonesia, Himpunan Peraturan-Peraturan Hukum Tanah*, (Jakarta: Djambatan, 2006), p. 63.

⁸ Ter Haar, *Asas-Asas dan Susunan Hukum Adat*, (Jakarta: Pradnya Paramita, 1979), p. 8.

		focuses on the right to take or enjoy the crops that have grown on the land.
3	Right of Priority / Right of Authority to Buy (<i>Naastingsrecht</i>)	The right given to a person to purchase a piece of land to the exclusion of others by way of the seller's kith and kin, the owner of land adjacent to his/her property, and neighbours/citizens or members of the juristic community/village.
4	Right to Collect Proceeds Due to Office (<i>Ambtelijk Profijtsrecht</i>).	The right given to a person to cultivate land where that person has precedence over others. This right of precedence is given to those to whom a prohibition sign is attached or those who have cleared the land, the person who last cultivated the land, and the person whose land borders the scrub land. for the Ambon area, it is known as Aong (atuhua) land, which was originally a scrub forest that was cleared or cultivated by a child of the country with the permission of the country to clear the forest and then plant it with short-lived plants.
5	Prior rights/voting authority (<i>voorkkeursrecht</i>)	The right given to a person to cultivate land where that person has precedence over others. This right of precedence is given to those to whom a prohibition sign is attached or those who have cleared the land, the person who last cultivated the land, and the person whose land borders the scrub land. for the Ambon area, it is known as Aong (atuhua) land, which was originally a scrub forest that was cleared or cultivated by a child of the country with the permission of the country to clear the forest and then plant it with short-lived plants.

Source: data analysed by the author

The customary law community in Sanahu Village prioritises and attaches importance to matters relating to customary land, both land that is recognised as public land or known as communally controlled communal land or private land or better known as clan land because the Sanahu customary law community can and will continue to maintain and preserve their culture, customs, traditions and ancestral habits that live and still exist as one of the identities of the customary law community, especially matters related to the management and control of land commonly referred to as customary land.

Land has become a part of human life, even today it is an indisputable necessity because it helps increase national development. In the context of sustainable national development, of course, the role of land will become increasingly important along with the increasing population, all of which will certainly require land, especially one of which is for housing. In this regard, the increasing development activities need for land will also increase the need for support in the form of legal certainty in the land sector. In addition, with the increasing needs of the community for land, it will also encourage the increase in land buying and selling activities as a form of land rights transfer process.⁹ Land sale and purchase is an agreement in which the party who owns the land called 'seller', promises and binds himself to give up his rights to the land in question to another party called 'buyer', the 'buyer' here

⁹ Mukti Fajar dan Yulianto Achmad, *ibid.*, p. 44.

promises and binds himself to pay the agreed price. The sale and purchase of land results in the transfer of land rights from the seller to the buyer.¹⁰

From the results of interviews with several respondents in Sanahu village, it was found that most of the residents of Sanahu village had conducted buying and selling transactions, although not all residents did so. In every sale and purchase transaction, residents also know that later land registration will be carried out in these transactions. However, the land registration they are referring to is not related to land registration that is regulated in accordance with PP 24/1997 on Land Registration. The community knew that the transaction was legal and the village officials knew that it was official and registered. This is not in accordance with the land registration procedures stipulated in PP 24/1997 on Land Registration. Land registration can be carried out by means of initial registration and maintenance of land registration data or commonly referred to as maintenance. The types of land registration are first-time land registration and data maintenance. First-time land registration can be divided into 2 (two), namely systematic land registration and sporadic land registration. Systematic land registration based on the provisions of Article 12 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration includes activities: a) Collection and processing of physical data; b) Proof of rights and bookkeeping; c) Issuance of certificates; d) Presentation of physical and juridical data; e) Storage of public registers and documents.

Systematic registration is also further regulated in the implementation guidelines of the government regulation. Systematic land registration procedures are regulated in the provisions of Chapter III Part One, paragraphs 1 (one) to 13 (thirteen), Articles 46 to 72, which in detail include: 1) Location Determination; 2) Preparation; 3) Formation of Adjudication Committee and Task Force; 4) Settlement of existing applications at the time of commencement of systematic land registration; 5) Counselling; 6) Physical data collection; 7) Juridical data collection and research; 8) Announcement of physical and juridical data and its ratification; 9) Affirmation of conversion, recognition of rights and granting of rights; 10) Bookkeeping of rights; 11) Issuance of a certificate; 12) Delivery of the results of the activity.

Meanwhile, sporadic land registration activities based on the provisions of Article 12 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration include: a) Registration of changes to other land registration data; b) Registration of maintenance and encumbrance of rights. Sporadic registration is also further regulated in the implementation guidelines of the government regulation. The procedures for sporadic land registration are regulated in the provisions of Chapter III Part Two, paragraphs 1 (one) to 7 (seven), Articles 73 to 93, which in detail include: 1) Application for sporadic land registration; 2) Measurement; 3) Collection and research of juridical data on land parcels; 4) Announcement of Physical and Juridical Data and its Ratification; 5) Affirmation of Conversion and Recognition of Rights; 6) Bookkeeping of Rights; 7) Issuance of certificates.

Although the community in Sanahu village has participated in land registration activities organised by the government, the local community does not really know about the systematic or sporadic land registration activities. They only know that there is a government programme for land titling but do not know more about what to do and later

¹⁰ *Ibid.* p. 44-45.

when a certificate has been issued for further activities many of them do not understand. So the maintenance of land registration data in the context of orderly land administration is still often ignored by local people. Based on interviews, they think that having a certificate means that they own the land in full, but if a transfer of rights is made later, they do not understand what should be done.

The local village government also lacks active participation in providing counselling when their residents carry out land-related transactions. Based on the land registration provisions outlined above, the Sanahu community does not know for sure whether the origin of the right is customary land or land that is already titled. If a new application is made, they also do not understand that land registration should be carried out, the end result of which will be a certificate. Even if they already had a certificate but because of a transfer of land rights, interviewees also stated that they were unaware of the process by which transfers of rights need to be registered in accordance with the maintenance provisions of the land registry. They only knew that if the land had a certificate, a sale or purchase transaction, witnesses and the village official would be valid, whereas according to the provisions of Government Regulation No. 24/1997 on Land Registration, in order to obtain proof of legal ownership, the land must be registered. In the process of buying and selling land, many people in Sanahu village do so without being accompanied and in front of a PPAT, so that these transactions can cause problems later. Regarding land registration procedures and requirements, the community does not fully understand, and the requirements in the village have not all been fulfilled in the required land registration system. If there is a problem, the community resolves the problem themselves and is usually resolved in a family manner. Either with or without assistance from local officials depending on the request of the community or resolved by custom.

CONCLUSION

Problems with buying and selling transactions in Sanahu village are based on the acquisition of land rights either by custom or by sale and purchase, which is carried out in accordance with the provisions of the UUPA and Government Regulation No. 24/1997 on Land Registration. This is not done through land registration at the local Land Office. Many people in Sanahu Village carry out the process of buying and selling land without being accompanied by and in front of a PPAT, so that these transactions can cause problems later. Regarding land registration procedures and requirements, the community does not fully understand, and the requirements in the village have not all been fulfilled in the required land registration system.

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