

## Legality Of Land Certificate Issued By Village Head As The Basis For Land Sale And Purchase Transaction

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**Abstract :** *The village head is the highest stakeholder in the village community where the authority to decide a community problem is in the hands of the village head. One of these authorities is to resolve land allergy problems arising from disputes, overlapping ownership or other problems arising from misunderstandings The community in understanding the land problem. This research has 2 (two) problem formulations, namely (1) Can the deed under hand be used as the basis for issuing a certificate? (2) What is the basis for a land certificate to have legal force for the landowner? The type of research used in this study is normative research , this research uses a statutory approach (statute approach) and a comparative approach approach (comparative approach). The results of this study are the legal basis for the authority of the village head in issuing land certificates and fungsi land certificates as evidence of guidance legal ownership of land.*

**Keywords:** village head, land certificate, land issue.

### 1. Introduction

The Village Head is a person who becomes the main figure in village governance and is a formal leader who is influential in community life. As a formal leader in village-level government. The village head holds his position at the election of the community.<sup>1</sup>

The Village Head carries out the rights, authorities, and obligations of the village government leaders including organizing their own household affairs and is the main organizer and person in charge of the field governance, development and society. In order to minister village government affairs, general government includes the construction of peace and order in accordance with applicable laws and regulations and as the main joint implementation of village government.<sup>2</sup>

The Village Head has a very important role and position in the Village Government. He is the leader of the course of government affairs in the village. A Village Head is the organizer and at the same time as the person in charge of JavaB for the running of the wheels of government and development in his area.<sup>3</sup>

In addition to carrying out government affairs and development, the Village Head also has other obligations, namely carrying out affairs in the community sector to build peace and order in the community. With various facts as above, it can be said that the duties and obligations of a Village Head have a fairly broad scope. So

<sup>1</sup> Momon Soetisna Sendjaja and Basan Syachran, Principles of Village Government, Alumni, Bandung, 1983, p. 42

<sup>2</sup> Ibid, p. 42

<sup>3</sup> Ibid, p. 42

that many people entrust various management to their village heads, including to carry out land sale and purchase transactions.

The fact found on the ground is that there are many overlapping land certificates, and also a lot of village heads who do not know the legal basis on which they are based. Issue the land certificate, so there are often mistakes and misuse of the authority possessed by the village head. The land certificate is also widely requested by the community not in terms of being an introduction to making or issuing certificates but is used as evidence or their requirements to make land sale and purchase transactions.

In Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it can be noted that for the transfer of land rights, an authentic deed is required to be made by a general official called the Land Deed Making Officer (PPAT) appointed by the government. So that the transfer of land rights cannot be done just like that without fulfilling the requirements set by the applicable laws and regulations. From this side, the role of village heads is interesting to be studied further in the process of transferring land rights in rural areas in the context of ensuring legal certainty and protection. For the community at land transactions he made<sup>4</sup>.

Starting from the description above, the author wants to research more about the problem and compile it in a thesis entitled: "Legal study on the legality of land certificates issued by cadres as the basis for land sale and purchase transactions".

#### A. Problem Statement

Based on the background of the above problem, the following problem formulation can be drawn:

- 1) Can the deed under hand be used as the basis for issuing a certificate?
- 2) What is the basis for a land certificate to have legal force for the land owner?

#### B. Research Methods

Research for Method comes from the two words Method and Research. Method comes from the Greek "Methodos" which means the way or path taken.<sup>5</sup> While Research comes from English Research which means the process of collecting information with the aim of improving, modifying or developing an investigation or inquiry group. Research is an activity carried out with a systematic, scientific methodology with the aim of obtaining something new or original in an effort to solve a problems that at any time can arise in society.<sup>6</sup> So the Research Method is the main way that researchers use to achieve goals and determine answers to the problems posed.

##### 1. Types of Research

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<sup>4</sup> See Explanation of Article 37 paragraph (1) of Government Regulation No. 24 of 1997, concerning Land Registration

<sup>5</sup> Typhoon Setiawan, *Understanding and Definition of Research Methods, Research and Methods*, in <http://setiawantopan.wordpress.com>, October 28, 2022 at 12:030 WIB.

<sup>6</sup> Sukandarrumidi, *Research Methodology: A Practical Guide for PeBeginner neliti*, Yogyakarta, Gajah Mada University Press, 2006, p.111.

Based on the problems examined by the author, the author uses normative legal research methods. Normative legal research methods or literature law research methods are methods or methods used in legal research carried out by examining materials existing libraries.<sup>7</sup>

2. Research Approach

The type of research conducted is normative legal research using the *statutory approach (statute approach)* and *comparative approach (comparative approach)*. After using normative legal research methods, to subsequently obtain information and answers from the problems formulated by the author.

3. Types of Legal Research Materials

Normative legal research that focuses on literature research and is based on secondary data, the sources of legal materials that can be used can be divided into several groups, namely:

a. Primary Legal Materials

Covering all laws and regulations relevant to research problems and objectives, including:

- Law No. 5 of 1960 on the Basic Rules of Agrarian Trees;
- Law Number 5 of 1979 concerning Village Government;
- Law No. 22 of 1999 concerning Local Government;
- Law No.6 of 2014 on Villages;
- Government regulations relating to land.

4. Secondary Legal Material

Used to help understand various legal concepts in primary legal materials, analysis of primary legal materials is assisted by secondary legal materials obtained from various sources both journals, books, news, and media reviews, and other relevant sources.

5. Tertiary Law Materials

The necessary materials are used for various things in terms of explaining the meanings of words from secunder legal materials and primary legal materials, such as:

- a. Great Dictionary Indonesian;
- b. *Black's Law Dictionary*.<sup>8</sup>

6. Research Law Material Collection Techniques

The technique of collecting legal materials is to use library *research* techniques There are 2 (two) instruments used, namely: a). Library; and b). Data Collection through applicable laws and regulations.

7. Legal Material Analysis Techniques

In this study, the author will use qualitative analysis techniques, namely legal materials obtained, then compiled systematically, thoroughly and completely and integrated to achieve clarity of the issues to be discussed. This Qualitative

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<sup>7</sup> Sourjono Soekanto then Sri Mamudji, *Normative Legal Research: A Brief Review*, 11th printing. Jakarta, PT Raja Grafindo Persada, 2009, pp. 13 –14.

<sup>8</sup> Richard A. Garner (Editor), *Black's Law Dictionary*, Eighth Edition, Minnesota, West Group, 2004.

Analysis uses normative logic (law regulations), syllogisms, qualitative is the content that

## 2. Discussion

### A. Whether the deed under hand can be used as the basis for issuing a certificate

The objection of the letter under hand as the basic for the issues of the Certificate of Title is still recognized in Government Regulation No. 24 of 1997 concerning Land Registration, even though the letter under hand is not has the force of law. To be used as a basis for rights in the issuance of a Certificate of Property and can have evidentiary power, the letter under the hand must meet the procedure and the requirements specified in Article 24 Paragraph (2) of Government Regulation NO. 24 of 1997 which stipulates that in the event that there is no longer a complete means of proof available Based on evidence, bookkeeping of rights can be carried out in fact of physical control of the land parcel concerned for 20 years or more consecutively by the joint government The Village Head or Village Head as a party who is considered to know the land history in the Kelurahan or Village where they serve. However, this letter under hand cannot provide any guarantee of legal certainty to the certificate holders because in reality in the Court, the Judges have different interpretations regarding the validity of the letter under hand.

To anticipate the emergence of problems in the use of underhand letters as the basis for issuing certificates, in making underhand land certificates, all relevant parties should Prioritize accuracy and accuracy and prudence so as not to cause uncertainty for the certificate owners or the actual land owners (if the certificate is issued to unauthorized parties).

### B. What is the basis for a land certificate so that it can have legal force for the landowner

In practice, if a person or citizen wanted to control a land, in the past had to clear the forest first, because the forest is so large and not Cultivated by anyone, someone can open the forest as they wish. Meanwhile, the government at that time let it go because it was considered for the lives of the surrounding residents. With the issuance of the UUPA in terms of freedom to open forests is further regulated because progress and development increasingly require forest clearing. In addition to the incomplete registration of land and property rights, sometimes it happens close together both because it is deliberate by the community and unknown to the government officials on duty In that field so that this incident causes disputes that can hamper development activities. To overcome this, thebar is felt now the importance of land registration and having rights to land.

Based on its position, land occurs into 2, namely certified land and uncertified land. Certified land is land that has rights that have been registered with the land office while land that has not been certified is land that does not yet have certain rights and status his land is still State land. Usually, state-owned land that has been controlled and cultivated by the communityfor

generations has proof of a land certificate from the Village Head as preliminary evidence before certified.

As stated in the explanation of Article 24 of Government Regulation No. 24 of 1997 concerning Land Registration,<sup>9</sup> there is a written tool to be able to prove ownership of land that can be used for registration of old rights and is a complete document for the purpose of land registration, including the deed of transfer of rights made under the affixed hand testimony by the Traditional Head/Village Head/Village Head made before the enactment of Government Regulation No. 24 of 1997 concerning Land Registration. <sup>10</sup>

Land Certificate which is a right that is widely used in various regions, in rural areas there are different terms but this is the same as a basic letter or some people refer to it as "SKT Kepala Desa" and this is included in the form of written evidence.

A certificate that was previously controlled by someone was issued by the Village Head in the form of a slash cutting permit, to prove they could recognize the land, a SKT (Certificate of Certificate ) was issued Soil).

Then the cultivator wants to sell this land, by the parties to the village the proof is ganti loss from everything that has been incurred by the cultivator then stimulated by the device The village regarding compensation until now is called a certificate of compensation. This happened after 1970 and above so that land clarity letters issued before 1970 did not exist. This certificate of compensation is made by interested parties, namely the party whose land is compensated (cultivator) and the party who gives losses (buyer). The process is quite simple, starting with a Rukun Neighbor (RT), the head of Rukun Masyarakat (RW), then known to the Village Head, approved by the Village Head or Lurah and subsequently corroborated by the sub-district head and witnesses.<sup>11</sup>

The process of obtaining title to land like this if referring to the basic agrarian law, a land certificate is the initial process or basis for the right to obtain a certificate of land. However, by pocketing the land certificate, the community feels that their rights are safe and (2), states that: "For villages in remote areas the Minister may appoint a Temporary PPAT."

Based on the explanatory provisions of Article 7 paragraph (2), it is explained that to facilitate celebration in remote areas where there is no temporary PPAT is the Government Acting Officer who controls regional conditions the person concerned, namely the Village Head. The authority of the Village Head is also regulated in the provisions of Article 39 paragraph (1) letter b number 1) and number 2), it is stated that: <sup>12</sup>Regarding parcels of land that have not been registered, it is not submitted to him:

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<sup>9</sup> Mhd. Yamin Lubis, and Abd. Uterus, Op. Cit., p. 62

<sup>10</sup> Andi Sufiarna, Letter Under Hand as the Basis for Issuance of Land Title Certificate, <http://fiaji.blogspot.com/2016/05/surat-di-bawah-tangan-sebagai-dasar.html>, last accessed on October 28, 2022 at 12:030 WIB.

<sup>11</sup>Ibid

<sup>12</sup> See Explanation of Article 39 paragraph (1) letter b number 1 and number 2, Government Regulation No. 24 of 1997

- 1) Proof of rights as referred to in Article 24 paragraph (1) or a certificate from the Village Head / Village stating that the person concerned controls the land as referred to in Article 24 paragraph (2), and
- 2) Certificate stating that the land parcel concerned is from the land office, or for land located in an area far from the land office, from the holder yang rights are related to being strengthened by the Village / Village Head.

Based on the sound of article 39 paragraph (1) letter b number (1) and number (2), it can be understood that the Village Head is authorized to make a corroborating certificate as proof of rights with which BersangkUtan who controls the piece of land. For sub-district areas outside the city where the Land Office is located, a certificate from the head of the land registration office can be made with a statement from the Village Head.

Based on proof of land ownership owned by the community in the form of a land certificate issued by the Village Head authorized by the local sub-district based on Article 7 paragraph (2), and Article 39 Government Regulation No. 24 of 1997 on Land Registration, can be categorized as a basis of rights submitted as a completeness of the requirements for an application for land rights, <sup>13</sup>by therefore, if there is an error or there is a legal defect in the issuance of the right base, it will result in the cancellation or invalidity of the Certificate.

Based on the description above, it can be seen that even though the land certificate is a written evidence under the hand whose evidentiary power is not as strong as an authentic deed, but because Land certificates are letters categorized as rights or juridical data on land that are used as a requirement for completeness of land application requirements as follows: regulated in the provisions of land legislation, the land certificate is a very important document in the process of issuing land title certificates. The legal force of the Village Head's land certificate in land sale and purchase transactions is reviewed from Government Regulation No. 24 of 1997 concerning land registration, with legal strength which is valid if known by the sub-district as the land deed making official, with a legal basis based on the explanation of Article 7 paragraph (2) and Article 39 paragraph letter b number (1) and number (2) of Government Regulation No. 24 of 1997 can be categorized as a right submitted as a completeness of the requirements for applying for hah above ground.

Number (1) and number (2) of Government Regulation No. 24 of 1997 can be categorized as the basis of rights submitted as a completeness of the requirements for application ha katas tanah. A land certificate is a written evidence under the hand whose evidentiary power is not as strong as an authentic deed made or issued by a land deed making official (PPAT), However, because the land certificate is a surat-letter categorized as a basis of rights or juridical data on land that is used as a requirement for completeness of the requirements for applying for rights to land as stipulated in statutory provisions, the land certificate is an important document in the process of issuing a certificate of land rights.

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<sup>13</sup> Mhd. Yamin Lubis, and Abd. Rahim Lubis, Op. Cit., p. 241.

### 3. Conclusion

#### A. Conclusion

Based on the results of the above materialization, there are several conclusions as follows :

1. The deed under hand is recognized in the Civil Code. Article 1320 stipulates the terms of validity of the agreement. Judging from the 4 legal conditions in question, it can be interpreted that a deed that is not made by and faced by PPAT is still valid as long as the parties have agreed den fulfills the elements in Article 1320 of the Civil Code. There are 2 functions of the deed, namely the formal function that determines the completeness and the function of the deed as evidence in the future.
2. That the legal power of a Kepala Desa land certificate in a land sale and purchase transaction in terms of Government Regulation Number 24 of 1997 concerning Land Registration will obtain legal force that is valid if known by the sub-district as the land deed making official, with a legal basis based on Market Clarification & paragraph (2) and Article 39 paragraph letter B

#### B. Advice

Based on the results of the above changes , there are several suggestions as follows :

1. Need integrated and continuous guidance and socialization on land registration, especially the procedure for implementing land sale and purchase to the community, especially the Village Head and his equipment by the Office The Land Agency and the District Office to create legal certainty in the midst of the community and increase the understanding of the Head of the District and his apparatus on the National Defense Law.
2. There are still plots of land that have been repeatedly sold underhand, do not have clear evidence of land ownership, there is still low community understanding of the role PPAT in buying and selling land, so buying and selling is often done only in front of the village head. For this reason, the Head of the Sub-District, both the Head of Government in the Sub-district and as a temporary PPAT together with BPN, has tried to carry out counseling activities for the community, providing administrative services in the field of land , Prona procurement or systematic land registration (PTSL). But it has not been realized and succeeded optimally.

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