

LEGAL STRENGTH OF LAND PURCHASE AND SALE IN THE VILLAGE OF BANYUNING, BULELENG

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Abstrak:

The ambiguity of the legal status of village residential land after the enactment of the Basic Agrarian Law, particularly concerning the transfer of land rights carried out through private sales transactions. This research uses an empirical legal research method with a juridical sociological, legislative, and conceptual approach. The data used consists of primary data obtained through interviews and secondary data collected from various related literature. The research results show that although the buying and selling transactions of village yard land in Banyuning are conducted without official registration at the land office, they are still recognized as valid by customary law as long as there is an agreement from the local customary community. However, under national law, these transactions are not valid as they do not meet the procedures established by land regulations. In conclusion, to provide clearer legal certainty, there needs to be regulations governing the authentic transfer of rights over village yard land through a Land Deed Official (PPAT) and registration at the land office.

INTRODUCTION

Article 5 of Law Number 5 of 1960 on Basic Agrarian Regulations (hereinafter referred to as the Basic Agrarian Law) states that the agrarian law applicable to land, water, and space is customary law (Prisca Gulo, 2023). In addition, through the considerations of the recognition of customary law in the Basic Agrarian Law, it states that there is a need for national agrarian law based on customary law relating to land. Based on this, the meaning of the statement 'based on and is customary law' indicates a functional relationship between customary law and the Basic Agrarian Law (Harsono, 2015). The main source of national law formation is customary law, in terms of taking the necessary policies. The formation of the UUPA aims to realize what is outlined in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (Wesna et al., 2023).

Bali is one of the provinces in Indonesia that has customary land, referred to as Tanah Druwe Desa (A. A. A. I. Puspawati, 2022). The existence of Druwe land in the village serves as a benchmark for the existence of a traditional village. This land also embodies the philosophy of the element of Palemahan, which is one of the elements of life balance directly related to the environment (Januariawan, 2021). Moreover, the land of Druwe Village is part of the embodiment of the elements of Pawongan and Parahyangan, which unite to achieve a balance of life in a custom village (Sastrawan et al., 2018).

Before the enactment of the Basic Agrarian Law, there was a dualism in land law (Damanik, 2025). The presence of the Basic Agrarian Law simplifies land law in Indonesia. The dualism of law has been abolished and the Basic Agrarian Law recognizes the existence of customary land, which is referred to as ulayat land (Jabarudin & Karmila, 2022). The provisions of Article 3 of the Basic Agrarian Law recognize the existence of customary rights, but these customary rights are still



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general in nature and the Basic Agrarian Law does not provide an explanation of these rights, only mentioning that customary rights refer to *beschikkingsrecht* in the literature of customary law. Indeed, the Basic Agrarian Law acknowledges customary rights, but legal reinforcement is needed to prevent misinterpretation that may lead to ambiguity in legal norms regarding the status of rights and the subjects of those rights.

The legal status and ownership of village residential land (hereinafter referred to as PKD) after the enactment of the Basic Agrarian Law is unclear based on national law, as a result of the absence of the designation of customary villages as legal entities that can own land, and also because the customary community does not meet the requirements/there are prohibitions from the customary village regulations for certifying the PKD land.

Decision of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 276/KEP19.2/X/2017 regarding the *pakraman* village (currently the Customary Village) as the subject of communal land ownership rights (Arta & Sena, 2022), that the customary village has been explicitly recognized as a subject of communal land ownership rights, so the customary village has an obligation to register the land with the land office and then be granted a land ownership certificate through the processes and procedures stipulated in Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, and Apartment Units (Rai et al., 2022). Customary villages as subjects of communal land ownership rights after carrying out the registration of customary village lands, subsequently have the right to make agreements with third parties in accordance with the agreement. The communal land concept used in the Decree of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 276/Kep-19.2/X/2017 emphasizes that the communal rights referred to are the communal ownership rights of indigenous law communities in Bali Province and are rights to land that can be registered based on recognition by the government and local communities (A. Puspadewi et al., 2018).

Recognition of village residential land is essential to provide legal protection guarantees, as is the control over that village residential land. It starts from the control obtained based on agreements or the transfer of village residential land through private sales or through authentic transfers, as this will affect the legal strength of the transfer of the village residential land.

The transfer of land is the basis for the status of land held by the recipient of the land transfer, considering the legal data in the land registration data that will indicate the status and holder of rights to the land. Based on field findings, there are many transfers of village yard land in the Traditional Village in Banyuning, which is within the scope of Banyuning Subdistrict, Buleleng District, Buleleng-Bali, which are directed solely through the traditional village, not through the authorized public officials. The importance of the existence of customary land, especially village yard land, is to support the sustainability of the traditional village, to provide legal protection guarantees in every procedure, certainly prioritizing legal certainty regarding the land sale and purchase transactions.

METHODS

The type of research used is empirical legal research that examines the actual legal force of land purchase and sale in the village of Banyuning, Buleleng. The problem approach used in this research is a sociological juridical approach, statutory approach, and conceptual approach. The types of data used in this study are primary data obtained through interviews with respondents at the research location and secondary data, which are data obtained from several literatures related to the object of this research, such as legislation, customary village regulations of Banyuning, sub-



district and district of Buleleng, and the customary village guidelines of Banyuning. The data collection techniques used are collection through interviews conducted in the field and literature study techniques, which are then analyzed using qualitative descriptive methods. This research was conducted in the Banyuning Traditional Village, Buleleng District and Regency, and the Buleleng Regency Land Office in Bali Province.

RESULT AND DISCUSSION

During its development, the buying and selling of land not only involves the trade of land rights but also ownership rights of apartment units. The sale and purchase of land according to customary law differ from the Civil Code (Amiludin et al., 2023). The sale and purchase of land according to customary law differs from the agreement under article 1457 of the Civil Code, which involves legal actions to transfer rights over land with cash payment in the presence of the village head or customary head, thereby meeting the criteria for the clarity of the sales transaction. Meanwhile, according to article 1457 of the Civil Code, it must be followed by the creation of an authentic deed, in the presence of the authorized official, in this case, the Land Deed Official.

Transactions of village residential land can be conducted as long as the status of the land is clear. Residential land in the village that is privately owned by the members of the customary village can be bought and sold. Residential land that is privately owned means that the land is legally fully owned by an individual or legal entity, and the owner has rights over the land in the form of ownership rights. Ownership rights are one of the strongest and most complete forms of land rights in the Indonesian land system (Murni & Sulaiman, 2022). Buying and selling land is an act of transferring land rights that is clear and cash-based (Safitri & Suparsetyani, 2024). Clearly, the act of transferring the rights must be carried out in front of the Head of Customs (Nulhakim et al., 2024). Cash means the act of transferring rights and payment of its price is done simultaneously (Andias & Fatmawati, 2024).

The process of buying and selling village residential land by the customary village in Banyuning, Bali is carried out based on an agreement through a customary community meeting in Banyuning. The transaction for the sale and purchase of village residential land only involves buildings; however, if the land is also sold, it must still go through an agreement of the customary legal community, because the village residential land is owned collectively by the customary community. Additionally, it is important to note that the status of village residential land is governed by two legal systems, namely:

- a. Customary Law (Awig-Awig) is regulated by traditional village rules (pakraman village).
- b. National Law is regulated by national land regulations through the National Land Agency (BPN).

Land that is transferred based on considerations of the indigenous community and the traditional village administrators, while also taking into account the obligations of the community residing in the buildings on the grounds of the traditional village. The obligations of the community are as follows:

- a. The Obligation to Comply with Local Customary Law means that customary law communities must adhere to the norms, rules, and regulations that apply within their customary community.
- b. The Obligation to Maintain the Social Function of Land means that village courtyard land typically has a social function, so its use is not solely for personal interests.

- c. The Obligation to Pay Fees or Customary Contributions refers to several customary communities, residents of village courtyard land.
- d. The Obligation to Maintain Order and Social Harmony is part of the customary community, the inhabitants of the village's enclosed land, which includes maintaining good relations with neighbors and the indigenous community, and not taking actions that disturb or violate customary norms.
- e. The Obligation to Return Land if Not Used According to Provisions states that if the village's enclosed land is used in a manner that does not comply with customary regulations or laws, the customary or village institution has the right to revoke that usage right, and the inhabitants are obliged to return the land to the village or customary community.
- f. The Obligation to Manage Permits or Recognition of Rights means that in the context of national law, especially if there are plans for legalization or land certification, the inhabitants also have the obligation to manage the recognition of usage rights or ownership rights based on applicable regulations and to respect the administrative provisions of the village and local government.

In reality, the process of buying and selling village yard land, the obligations such as letters a, b, c, d, e mentioned above are carried out in accordance with the customary regulations and laws applicable in the traditional village of Banyuning. However, the obligation referred to in letter f above has not been implemented or registered by residents who occupy the recognition of rights to the village yard land in Banyuning; it has only been carried out based on a private agreement made by the customary representatives with the buyer of the building on the village yard land.

The status of the land lot being sold is still under customary ownership, but what is being transferred is the building. In the land ownership certificate, the holder of ownership still has the name of the customary village ownership, but the instructions contain information regarding the sale and purchase agreement, stating that the building becomes the property of the buyer.

Considering that the certificate is strong evidence as a certificate that proves a person's rights to a piece of land, in other words, this situation states that there is someone who owns certain pieces of land, and that ownership has strong evidence in the form of a document made by the authorized agency called a land certificate (Lubis, 2010). The certificate of land rights for the village yard remains the property of the customary village, and only the indication regarding the ownership of the building on the village yard is noted. The original certificate is held by the customary village, while a photocopy corresponding to the original is kept by the local customary community to ensure legal certainty for the holders of rights to the buildings on the village yard.

According to Gustav Radbruch, legal certainty is one of the objectives to be achieved through the form and application of law in societal life, in this case, in national and state life (Astuti & Daud, 2023). The legal certainty can also be interpreted as a state in which the law is established for the community within the state in a calm, firm manner, and does not create doubt in its implementation. Legal certainty will also be achieved when the law is developed sustainably and adheres to principles; similarly, the making and development of laws must be interconnected with one another, moving towards a unity that does not contradict (Ali, 2002).

The interplay between customary law and national law can provide legal certainty in the ownership of buildings on village land, although those who can purchase buildings on village land must fulfill the obligations of customary village law and those of the indigenous community of Banjuning village. However, it must still be registered to obtain legal certainty for the rights holder, and it is not sufficient to merely create a private sales agreement; it should be made authentically

through a Notary/PPAT (Land Deed Official). Village land can sometimes be inherited or sold among the members of the indigenous village community. Therefore, registration is necessary to ascertain who the owner of the building on the village land is.

Land registration is generally carried out through Government Regulation No. 24 of 1997 on land registration, which includes the initial registration and maintenance of land registration data. If the customary village's yard land has already obtained a certificate of ownership, its registration is based on the Decree of the Minister of ATR/BPN No. 276/KEP-19.2/X/2017 concerning the designation of customary villages in Bali province as subjects of communal ownership rights over land. This means that it serves as a basis for customary villages as holders of customary land ownership rights, including village yard land, and registration to obtain such certificates is based on the Regulation of the Minister of ATR/Head of BPN No. 10 of 2016 concerning the procedures for determining communal rights to land for customary legal communities and communities located in certain areas.

Communal rights are defined as the joint ownership rights over the land of an indigenous legal community or the joint ownership rights over the land granted to communities located within a certain area (Tanti Herawati et al., 2023). The registration process begins with the recognition of indigenous legal communities by the local government, followed by inventory and verification by the IP4T Team (Inventory of Control, Ownership, Use, and Utilization of Land), leading to the issuance of a communal land certificate.

However, if the village yard land has been certified and the buildings have been sold, a sales agreement for the land is made through an authentic deed and then registered at the local land office, so that it is recorded according to the latest owner of the building. This is part of the maintenance of land registration data. The maintenance of land registration data aims to ensure legal certainty and legal protection of land rights, to maintain the accuracy and reliability of land data, and to provide valid data for development planning and public policy. When the data of the building owner on the village yard land is valid, the principles of land registration will be achieved, namely:

- a. The principle of security means that land registration must be conducted carefully and diligently so that the results can provide legal certainty in accordance with the purpose of land registration itself. Holders of buildings on village residential land can have security in controlling the buildings located on that village residential land.
- b. The principle of currency refers to the adequacy of completeness in its implementation and the continuity in maintaining its data, with the available data needing to reflect the current situation. This must be followed by the obligation to register and record changes that occur in the future. This principle demands the continuous and sustainable maintenance of land registration data, ensuring that the data stored at the Land Office always corresponds to the actual situation on the ground. Data maintenance is necessary to identify the holders of building rights on that customary village residential land.
- c. The principle of openness is intended so that the public can know or obtain information regarding accurate physical and legal data at all times at the District or City Land Office. With the existence of information transparency, buildings on village yard land cannot be easily transferred to irresponsible parties.

The sale and purchase of land under the table is a legal act of transfer of land rights that is not carried out in the presence of a Land Deed Official (PPAT) and is not documented in an authentic deed. This transaction is not registered at the Land Office, therefore it does not create legal consequences for third parties. Customary law views individual life primarily as a life devoted to serving the community. Based on this conception, ulayat land, as a shared ownership right of a

customary law community, is regarded as common land that is a "gift/grant" from a supernatural power, not seen as something obtained by chance or through the efforts of that customary community. Thus, the ulayat rights that provide life for the customary community are regarded as common land, making all individual rights derived from that common land.

Although the agreement letter made by the customary village of Banyuning is a practice that is not recorded and not done through the creation of an authentic deed by the authorized official, it can lead to legal consequences, meaning that the agreement made by the customary village of Banyuning has legal force under private hand. This implies that when a legal issue arises concerning the village yard land inhabited by the indigenous community, other evidence is needed to strengthen the evidence of that private agreement. Similarly, another risk is that it cannot be transferred in the land certificate or included in the guidance regarding the use of buildings on the village yard land; it certainly cannot be used as collateral for credit or mortgaged and is vulnerable to claims from third parties, including heirs of the original owner or other village members, and can be invalidated by the court if proven not to meet legal requirements (Laseduw, 2019).

Land disputes that arise in Indonesia can be classified into issues, namely those related to the recognition of land ownership, land rights transfer, rights encumbrance, and occupation of former private land. Viewed from the parties involved in the dispute, land disputes can be categorized into land disputes among fellow citizens, the Government (Central/Regional) with local residents, and disputes related to the management of natural resources. If a dispute over land rights occurs, legal certainty needs to be established to find a resolution.

Different from when the transfer of land control is done with a notarial deed which is an authentic deed as one of the types of evidence as regulated in Article 1866 of the Civil Code. The meaning of an authentic deed carries perfect evidentiary power, and it can also be determined that anyone is bound by that deed, as long as it cannot be proven otherwise based on a court decision that has permanent legal force.

This means that this authentic deed has perfect evidentiary power, as long as the interested party does not prove otherwise, because the interested party can prove the opposite in court proceedings. That the authentic deed, which is also a product of a notary, is a perfect and complete deed, so the perfection of this authentic deed must be seen as it is without the need to assess or interpret it otherwise. The written evidence referred to is divided into two, namely, authentic deeds and private deeds, which have different evidentiary powers.

An authentic deed as previously explained has perfect evidentiary power. Therefore, as stated in Article 1875 of the Civil Code, as long as the existence of the private deed is not denied, it has the same perfect evidentiary power as an authentic deed. However, if one party denies the existence of the deed, then that party must provide evidence, and the assessment of the evidence regarding the private deed will be entrusted to the judge.

When not recorded and not in the presence of the authorized officials, an act of transfer of control over the building on village yard land and similarly on village yard land will have legal impacts that lead to insecurity for the krama or community members residing on the village yard land and may lead to material as well as immaterial losses to the customary village and especially to the community living on that village yard land.

CONCLUSION

The implementation of buying and selling village land by customary villages in Banyuning, Bali, is conducted through the agreement of community meetings of the customary village in Banyuning and is based solely on informal agreements that are not registered with the land office for buildings being sold on the village land. However, if the land is sold along with the property, it must still go through the agreement of the customary laws of the community, considering that the status of village land is subject to two legal systems, namely Customary Law (Awig-Awig) governed by traditional rules of the customary village (desa pakraman) and National Law regulated by national land regulations through the National Land Agency.

The validity of the sale and purchase of village land in the customary village of Banyuning, Buleleng is deemed invalid under national law, because the sale and purchase must be conducted in the presence of a PPAT (official title deed maker) and subsequently registered with the local land office. However, under customary law, it remains valid as long as it is acknowledged by the parties involved, and if disputes arise, it will lead to legal consequences in the form of legal force under hand for the transaction of village land sales. It is different if an authentic deed is created, which has perfect evidentiary power regarding the sale and purchase of village land by the customary village in Banyuning, Buleleng.

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