JURNAL MAGISTER HUKUM UDAYANA
(UDAYANA MASTER LAW JOURNAL)
Vol. 14 No. 1 May 2025
E-ISSN: 2502-3101 P-ISSN: 2302-528x
http: //ojs.unud.ac.id/index.php/jmhu

The Ambiguity of Adat Law and National Land Law Implementation in Land Sale and Purchase Agreement

M. Yazid Fathoni[1], Diangsa Wagian[2], Hadi Adha[3]

[1]Faculty of law Mataram University, Email : myazidfathoni@unram.ac.id
[2]Faculty of law Mataram University, Email : diangsawagian@unram.ac.id
[3]Faculty of law Mataram University, Email : hadiadha@unram.ac.id

Article Info

Received: 28th November 2024
Accepted: 24th April 2025
Published: 24th April 2025

Keywords:
Agreement; Sale and Purchase; Verbal

Corresponding Author:
M. Yazid Fathoni, Email : myazidfathoni@unram.ac.id

DOI:
10.24843/JMHU.2025.v14.i01.p10

Abstract

The purpose of this study is to determine the concept of the validity of land sale and purchase agreements in Indonesia, related to the judge's legal considerations in Court Decision Number 596/K/Pdt 2012. The research method in this study uses the normative research method by case study. The results of this study showed that the concept of the Indonesian Land Sale and Purchase Agreement under Law Number 5 of 1960 and Government Regulation Number 24 of 1997, the transfer of land rights is considered to occur when a PPAT sale and purchase deed is made. However, because the UUPA was formed based on Adat Law, there are principles in practice and court decisions, the transfer of land rights through sale and purchase can be carried out according to customary law/Adat Law by fulfilling the elements of real, clear, and cash. However, the uniqueness of this decision, even though the parties did it in the customary way, the judge's legal consideration in decision Number 596 / K / Pdt 2012 is based on the Civil Code/ Burgerlijk Wetboek.

1. Introduction

The Land Sale and Purchase Agreement in Indonesia is an issue that is still an interesting research object. Currently, Indonesia does have regulations regarding land registration in Government Regulation Number 24 of 1997 concerning Land Registration and changed by Government Regulation No. 18 of 2021 concerning Management Right, Right to the Land, Apartment Unit and Land Registration (especially the provisions regarding the period for systematic Land Registration announcements and the period for sporadic Land Registration announcements in Article 26 paragraph (1) and the provisions of Article 45 paragraph (1) letter e of Government Regulation Number 24 of 1997 concerning Land Registration) , but the essence of this regulation is very different and does not focus on the transfer of land rights. The main purpose of land registration in Government Regulation Number 24 of 1997

is more towards administrative legal certainty[1] from the state[2] by presenting evidence of recognition stated in the land rights certificate. The issue of land sale and purchase agreements did not only arise when Law Number 5 of 1960 concerning Basic Agrarian Principles was first enacted but began when the Dutch colonial government was in power in Indonesia. At that time, the pluralism of law implementation in the archipelago added to the complexity of positive law in the archipelago.

When a legal relationship occurs in the field of land law, not only the legal subject carrying out the legal relationship is looked at but also the legal object (type of land rights). This civil law relationship model in the land sector differentiates civil law legal relations in general at that time. This difference occurred because at that time there were Western land rights or European lands and Indonesian land rights. This is similar to other Dutch colonies, but there is not much influence in the former colonies of Africa and America. [3]

Indonesia has Law Number 5 of 1960 concerning Basic Agrarian Law. This law deprives pluralism in land law in Indonesia, but its regulations are too general, not concrete and complete[4]. It is not surprising then, that in several decisions, judges consider various things in assessing the validity of the transfer of land rights, sometimes considering general provisions or concepts in the Indonesia Civil Code/Burgerlijk Wetboek concerning the validity of the agreement such as the provisions in Article 1320 of the Civil Code and others [5], sometimes considering from the perspective of customary law because agrarian law is based on customary law, sometimes also considering PP Number 24 of 1997 concerning Land Registration which stipulates in Article 37 that every transfer of land rights uses a PPAT deed.

Interestingly, in the case study that will be analyzed in this research (the Supreme Court Decision Number 596/K/Pdt 2012), there is based on the fact that there is only an oral agreement. The main claim of the plaintiff in this case is to ask the panel of judges to declare legality an oral agreement a sale and purchase of land and a house building on it (the object of the dispute). The District Court Judge in his decision then stated that the oral agreement between the plaintiff and Defendant to conduct a sale and purchase of land and a house building on it (the object of the dispute) was legally valid by referring to several parts of jurisprudence and certain legal sources only.

---

[1] Anne Gunadi, "The Embodiment of Adat Law as an Element of Legal Certainty in Administration of Adat Rights," *Indon. L. Rev.* 9 (2019): 259.

[2] Raymond Talinbe Abdulai and Edward Ochieng, "Land Registration and Landownership Security: An Examination of the Underpinning Principles of Registration," *Property Management* 35, no. 1 (2017): 24–47.

[3] Roy J Geraci, "The Dutch Atlantic and American Life: Beginnings of America in Colonial New Netherland," 2021.

[4] M Yazid Fathoni, Adi Sulistiyono, and Lego Karjoko, "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia," *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 55–67.

[5] M Yazid Fathoni, "Kedudukan Hukum Peralihan Hak Atas Tanah Secara Adat Dalam Persfektif Hukum Positif Indonesia," *Jurnal Ius Kajian Hukum Dan Keadilan* 8, no. 1 (2020).

This research differs from the research in the article "Legal Protection for the Parties in a Letter C Land Sale and Purchase Agreement Underhand " [6] because this research does not focus on various types of underhand agreements carried out by Indonesian society. Likewise, the article "Legal Implications of Adat Land Sale and Purchase Through Underhand Agreements in the Perspective of the Basic Agrarian Law" [7] does not look at the practical side, especially how the court applies a norm with its tendencies.

The case that will be studied in this article is a case of land sale and purchase carried out without using a PPAT deed as regulated in Government Regulation Number 24 of 1997 and tends more towards Adat Law methods, but with verbal agreement. Based on these explanations, the researcher is interested in researching the following legal issues: What is the concept of the validity of the sale and purchase agreement of Land Rights in Indonesia? And how is the coherence of the judge's consideration in Decision Number 596/K/Pdt 2012 with positive law in Indonesia?

2. Research Method

This research uses a normative legal research method because the focus of the analysis is the implementation of norms in practice through court decisions. The legal approach uses the statute approach, conceptual approach, analytical approach, and case approach. The legal material search technique uses the document study, and the study analysis uses qualitative analysis.

3. Result and Discussion

3.1. Concept of Land Rights Sale and Purchase Agreement in Indonesia

Analyzing the concept of land rights sale and purchase agreement in Indonesia, we cannot be separated from the legal history that once applied in the archipelago. Before the Indonesian state was established, during the Dutch colonial era, the principle of concordance was enforced, which essentially meant that all legislation that was in force in the Netherlands also applied in the territory controlled by it unless otherwise specified. This principle has the consequence that all positive laws in the Netherlands are enforced in the territory of Indonesia, although in fact what is used by the indigenous people still uses customary law.

At that time, all types and fields of life were formally regulated by Dutch positive law. However, over time, the Dutch East Indies government realized that the indigenous people

[6] Socha Tcefortin Indera Sakti and Ambar Budhisulistyawati, "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C Di Bawah Tangan," *Jurnal Privat Law* 8, no. 1 (2020): 144–50.

[7] Widiadnyani, Windari, and Sudiatmaka, "Implikasi Yuridis Jual Beli Tanah Adat Melalui Perjanjian Dibawah Tangan Dalam Perspektif Undang-Undang Pokok Agraria."

had their laws,[8] which were deeply rooted in indigenous society. Dutch positive law was very difficult to apply to Indigenous communities that already had their laws. Finally, based on article 131 IS (Indische Staatregeling (IS) in 1926[9], the Dutch East Indies government at the same time also enforced customary law in addition to Dutch Civil Law.
Based on the provisions of Article 131 IS, the people living in the archipelago are divided into three groups of people, namely the European group, the native/indigenous group, and the foreign eastern group. Each group has different legal arrangements, either regulated by Western civil law or customary law. Dutch Civil Law applies to the European group with some exceptions for foreign easterners, while for indigenous people customary law applies.

The pluralism of legal enforcement, especially in the civil sector, makes the complexity (pluralism)[10] of legal regulation in the archipelago.[11] In the field of land law when a legal relationship occurs, not only the legal subject who carries out the legal relationship is seen but also the legal object (type of land rights). This difference occurs because at that time there were Dutch Land Rights European Land Rights and Indonesian Land Rights.[12]

> *The status of land did not depend on the personal status of the person who owned or occupied it. Therefore, land, as well as population could give rise to an interpersonal law problem. Even, when the parties to a transaction involving land were from the same group, an interpersonal agrarian law problem could arise.*[13]

After the establishment of the Indonesian state or after the Indonesian nation became independent, new National Land Laws were enacted that separated from the provisions in the Dutch Civil Code. On September 24, 1960, a formal legal unification took place, the pluralism of the implementation of previous legislation was eliminated and replaced with new provisions and all of them referred to the rules stipulated in Law Number 5 of 1960.[14]

Although Law Number 5 of 1960 is enforced, in practice in society and the settlement of cases in court, sometimes the judge's legal considerations also partially consider the general provisions of the agreement in the Civil Code. In addition to the Civil Code, there is also

---

[8] Zezen Zaenal Mutaqin, "Indonesian Customary Law and European Colonialism: A Comparative Analysis on Adat Law," *JE Asia & Int'l L.* 4 (2011): 351.
[9] Wiwit Pratiwi Rosmanila and Sherly Nelsa Fitri, "Towards the Unification of Inheritance Law in Indonesia: Challenges and Opportunities in the Context of Religious and Cultural Diversity," n.d.
[10] Pierre Merlet and Johan Bastiaensen, "Illustrated with Case Studies from Madagascar and Ghana," n.d., http://www.ua.ac.be/iob.
[11] Emmanuel Frimpong Boamah and Margath Walker, "Legal Pluralism, Land Tenure and the Production of 'Nomotropic Urban Spaces' in Post-Colonial Accra, Ghana," *Geography Research Forum* •, vol. 36, 2016.
[12] Hasyim Syamhudi, "Menegosiasikan Hukum IslamTentang Kepemilikan Tanah Ke Dalam Pluralisme Hukum Kepemilikan Di Indonesia," *KEADABAN* 1, no. 1 (2019): 49–68.
[13] Gautama, Indonesia Business Law. P.95
[14] Daniel Fitzpatrick, "Disputes and Pluralism in Modern Indonesian Land Law'(1997)," *Yale Journal of International Law* 22 (n.d.): 171.

customary law in the Judge's legal considerations with the argument that the UUPA is established based on customary law.

Although the UUPA and Government Regulation Number 24 of 1997 always emphasize the role of PPAT and PPAT deeds, there are various interpretations of the role and position of PPAT and PPAT deeds both in legal doctrine and by court decisions. Therefore, there are at least three types of laws that influence the concept of transferring land rights through sale and purchase in Indonesia, starting from the Dutch Civil Code, Customary Law, and Law Number 5 of 1960 concerning Basic Agrarian Principles and its implementing regulations in Government Regulation Number 24 of 1997 concerning Land Registration. The following will present these concepts as follows:

3.1.1. The Concept of Land Sale and Purchase According to Civil Code

The Burgerlijk Wetboek is a Dutch civil law code that has been in effect since 1983. In 1992, the Netherlands revoked the Burgerlijk Wetboek and replaced and updated its regulations with the enactment of the NBW (Niew Burgerlijk Wetboek). Unlike in the Netherlands where its position is currently an invalid provision, the BW in Indonesia remains in effect and is even the main source for civil law in Indonesia.

The implementation of this BW is legally based on the provisions of Article I of the Transitional Provisions of the 1945 Constitution[15] which implies that every written regulation that has ever been implemented in the territory of Indonesia remains in effect before there is a new regulation that replaces it. This provision provides a formal legal indication that the BW remains the main source of civil regulation in Indonesia.

Regarding the transfer of land rights, the regulation in the Civil Code is found separately in several different Books, namely, Book III concerning Contracts and Book II concerning things. Book III contains the regulation regarding the title which is the basis for the agreement of the parties before carrying out the transfer of land rights, while Book II contains the regulation regarding the terms and mechanism of the parties to carry out the transfer of land ownership. Thus, unlike customary law which considers the transfer of land rights not due to an agreement, the Civil Code strongly emphasizes that the transfer of land rights must be based on an agreement. A valid agreement basis can be used as the basis for carrying out the transfer of land rights according to the Burgerlijk Wetboek.

In the Burgerlijk Wetboek, based on Article 1313 BW, an agreement defined an act by which one or more persons bind themselves to one or more other persons[16] or where that person

[15] Elwyn Bastian Sinaga, Silvana Sinar, and Eddy Setia, "Transitivity Analysis in the Text of the 1945 Constitution before the Amendment," *International Journal of Educational Research & Social Sciences* 2, no. 2 (2021): 315–21.

[16] Aditya Fadli Turagan, "Pelaksanaan Perjanjian Dengan Itikad Baik Menurut Pasal 1338 KUHPerdata," *Lex Privatum* 7, no. 1 (2019).

promises each other to do something[17], while a sale and purchase is defined as an agreement by which one party binds himself to deliver an item, and the other party pays the promised price (1457 BW). Therefore, it can be said that a sale and purchase agreement is an agreement or consent of the parties [18] to transfer ownership of things between the seller and the buyer.[19] This transfer of ownership is the essence of a sale and purchase agreement.

From the concept of the agreement, BW considers that the sale and purchase agreement made by the parties has not resulted transfer of ownership rights. The agreement made is only obligatory,[20] It means only imposing rights and obligations on the parties. The transfer of ownership requires another legal act, separately from the obligatory agreement. This other legal act is called *levering* or is often translated into Indonesian as *penyerahan* (delivery).

The levering is the determining moment whether a thing changes ownership, not the sale and purchase agreement. This levering depends on its validity on two conditions, namely the validity of the title which is the basis for the levering, and the act of levering must be carried out by a person who acts freely (beschickingsbevoegd) against the land being levered. By "title" it means the sale and purchase agreement. While the person who acts freely is the land owner or a person authorized or has power of attorney.

Levering between movable and immovable objects has a difference concept[21]. The handover of movable objects is done by handing over the possession of the object, while immovable objects which include in this case immovable land objects are done by authentic deed, by changing the name (overschrijving) in front of the Cadastral officer (land registrar).

> The delivery of movable assets, except for intangibles, shall take place by a single handover which is carried out by the owner or on his behalf, or by the delivery of the keys of the building in which the assets are located. Delivery shall not be required if the individual entitled to the assets already has such in his possession under another title. (612 BW)

---

[17] Diah Gayatri Sudibya and Kade Richa Mulyawati, "Assistance and Legal Counseling in Agribusiness Cooperation Agreements Between Farmers and Bali Bali/PT. Suji Wood Leaves According to the Provisions of Article 1313 of KUHPERDATA," *Community Service Journal of Law* 2, no. 2 (2023): 60–65.

[18] Mohamad Kharis Umardani, "Jual Beli Berdasarkan Kitab Undang-Undang Hukum," *Journal of Islamic Law Studies Volume* 4, no. 1 (2021): 20.

[19] Gradia Okultra Alba and Alan Siti Nurrizky, "Keabsahan Transaksi Jual Beli Rumah Ditinjau Dari Kitab Undang-Undang Hukum Perdata," *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 2, no. 2 (2023): 123–37.

[20] Moch Isnaeni, Perjanjian Jual Beli (Bandung: Refika Aditama, 2016). P. 67

[21] Nur Fitri Melnia and Susilowati Suparto, "THE ROLE OF THE NOTARY IN SALE AND PURCHASE AGREEMENT FOR MOVABLE PROPERTY (BASED ON DECISION NUMBER 33/PDT. G/2018/PN. BLK)," *Jurnal Hukum DE'RECHTSSTAAT* 10, no. 1 (2024): 104–13.

> Article 616. The delivery or order of immovable assets shall be effected by publication of the deed, in the manner stipulated in article 620.
>
> Article 620. Having regard to the requirements contained in the three preceding articles, the public notification shall take place:- by submitting to the office of the registrar of the mortgages within whose area the immovable assets to be delivered or ordered are located, an authentic and complete copy of the authentic deed or the judgment, and by the recording of the copy in the register designated thereto. The interested party shall at the same time offer a second certified copy or a certified excerpt of the deed or judgment for notification by the registrar of the date of submission, together with the section and number of the register. (620 BW)

In this case, it is interesting reveals the similarity of the transfer system of Rights between BW and the implementing regulations for land registration in Government Regulation Number 10 of 1961, or currently with Government Regulation Number 24 of 1997. The land registration regulations, the transfer of land rights must be proven by a PPAT deed, and the transfer of land rights is deemed to have occurred when the deed is made.

3.1.2. The Concept of Land Sale and Purchase Agreement Besed on Customary Law

Customary law is the basic foundation of national agrarian law[22], to achieve the ideal of justice in the land sector. Customary land" and "land sales based on customary law" are two different concepts. "Customary land" (or "ulayat land") refers to land that is in the area of control of the customary law community. Meanwhile, "land sales based on customary law" can occur where the people sell land by following the procedures and provisions applicable in customary law.

In Customary law, agreement in customary law is defined as an act by the parties to agree or consent to a certain thing or act based on full trust and marked by the presence of a certain bond. Agreements in customary law emphasize the basis of trust. Based on this, the terms of an agreement in customary law/Adat Law include[23]

1. The starting point is based on spirituality. In this customary law, the starting point is based on spirituality, harmony, and mutual assistance;
2. In Adat Law, there is not only an agreement, but it is usually also accompanied by a sign of a bond, under the real (concrete Adat Law Principles;
3. Agreements in Adat Law, in addition to being in the scope of property, also concern non-material things.

Meanwhile, the principles of the Agreement According to Adat Law include: [24]

[22] M Yazid Fathoni, "Peran Hukum Adat Sebagai Pondasi Hukum Pertanahan Nasional Dalam Menghadapi Revolusi Industri 4.0," *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 2 (2021): 219–36.
[23] Erwin Owan Hermansyah Soetoto, *Buku Ajar Hukum Adat* (Malang: Mazda Media, 2005).
[24] Erwin Owan Hermansyah Soetoto.

1. Cash or clear is "a kind of achievement that is carried out simultaneously at that time" so that even though an agreement has been agreed between the two parties, a sale and purchase agreement has not yet occurred;
2. Strong trust, namely mutual trust in each other, between the buyer and seller in the sale and purchase process, because of this they do not make written evidence.

Land rights according to Adat Law can be distinguished between personal legal rights (community, extended family, relatives) to land and personal natural rights to land. In customary law/Adat Law, a sale and purchase is defined as an act of transferring land rights that is transparent and in cash.

Sale and Purchase in Adat Law have the characteristic of an agreement (consensus) or unification of will followed by a contract before the head of the local community, to fulfil the transparent *(terang)* and cash *(tunai)* requirements. Transparent *(terang)* and cash *(tunai* are the main requirements for the validity of sale and purchase. Below will be presented several opinions of legal experts regarding sale and purchase according to customary law/Adat Law who have uniform perceptions related to this matter.

According to Urip Santoso,[25] in the sale and purchase of land according to Adat Law, there is one legal act, namely the land right is transferred from the seller to the buyer when the price of the land is paid in cash by the buyer to the seller. The sale and purchase of land according to Adat Law is not an agreement as stated in Article 1457 of the Civil Code, but rather a legal act intended to transfer land rights from the rights holder (seller) to another party (buyer) by paying a sum of money in cash (cash) and carried out before the village head/local traditional head (transparent).

Similar to the explanation of the experts above, Maria S.W. Soemardjono[26] concluded that the valid requirements for land sales according to Adat Law depend on the fulfillment of three elements, namely, cash, real, and transparency. What is meant by cash is that the transfer of rights by the seller is carried out simultaneously with payment by the buyer and the rights have been transferred immediately. The price paid does not have to be paid in full, and the difference in price will be considered as the buyer's debt to the seller. Then, the real here means that the expressed will be followed by real actions, for example by receiving money from the seller and making an agreement before the village head, and the transparency means that the sale and purchase are carried out before the village head to ensure that the act does not contrary against law.

3.1.3. The Concept of Sale and Purchase in National Land Law

Land registration is regulated in Article 19 Paragraph 1 of Law Number 5 of 1960 concerning Basic Agrarian Law. This provision states that "To guarantee legal security the Government shall conduct land registration throughout the territory of the Republic of Indonesia

[25] Urip santoso, Pendaftaran Dan Peralihan Hak Atas Tanah (Jakarta: Kencana, 2019). P. 35
[26] Maria S.W. Soemardjono, Kebijakan Perntanahan; Antara Regululasi Dan Implementasi (Jakarta: Kompas, 2001). P.74

according to provisions laid (sown by Government Regulation". To implement this provision, Government Regulation Number 10 of 1961 concerning Land Registration was enacted, which was later replaced by Government Regulation Number 24 of 1997 concerning Land Registration. This government regulation is supplemented by implementing regulations regulated in the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

After the enactment of Law Number 11 of 2020 concerning Job Creation, this law also regulates land registration issues. The implementation of the provisions of Law 11 of 2020, especially in land registration, is regulated by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. This government regulation emphasizes more on the Implementation of Electronic Land Registration (Articles 84-86), Acceleration of Land Registration (Articles 87-89), Orderly Administration of Land Registration (Articles 90-93), Changes in Land Rights (Article 94), Evidence of Old Land Rights (Articles 95-99).

Land registration in Government Regulation Number 18 of 2021 is defined Land registration as "an activity carried out by the Government continuously, continuously and regularly including the collection, processing, bookkeeping, and publication and maintenance of physical data and juridical data, in the method of maps and lists, regarding land plots, above ground space, underground space and apartment units, including the provision of certificates of proof of rights for land plots, above ground space, underground space that already have rights and ownership rights to apartment units and certain mortgage rights that burden them. This activity of maintaining physical data and legal data can occur due to changes in land rights, one of which can occur due to the transfer of rights through sale and purchase.

PPAT is a public official who is given the authority to make deeds in the land sector[27], this is different with Notary[28]. In his authority, for the transfer of land rights through sale and purchase, to make sure the principle of good faith[29] in the sale and purchase agreement[30], at least PPAT must ensure several things:

1. Ensure that the legal subjects or parties conducting the land sale and purchase transaction do have the legal capacity, in the sense that they have met the criteria of the legal capacity, namely being of a certain age or having been married, not under guardianship, and not being hindered by other things that are contrary to the law;

---

[27] Rafi Hidayahtullah Pakaya et al., "Analysis of the Dispute of Unlawful Acts in the Land Sale and Purchase Agreement," *Interdisciplinary Social Studies* 1, no. 2 (2021): 138–47.

[28] Dewa Ayu Sinddhisar Smaratungga, R Ismala Dewi, and Enny Koeswarni, "Implementation of The Binding Agreement for The Sale and Purchase of Land Rights Based on a Notarial Deed in East Jakarta," *Legal Brief* 11, no. 3 (2022): 1387–98.

[29] Zaldi Pratama Bagus Putra, "The Basics of Good Faith and Good Intention in Land Purchase System in Indonesia," *Journal of Law and Legal Reform* 1, no. 4 (2020): 691–704.

[30] I Gusti Ngurah Muliarta, "The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary," *Community Service Journal of Law* 1, no. 1 (2022): 44–48.

2. Ensure that the seller is the legal owner of the land, the object of sale and purchase, as proven by the seller himself with various types of evidence that have been determined so that the PPAT can be convinced that the seller is the legal owner of the land;
3. Ensure that one of the parties using the power of attorney to sell is indeed given the power to make a sale and purchase agreement for the land object. In addition, the party given the power of attorney to sell does not use the basis of an absolute power of attorney. Absolute Power of Attorney is a power of attorney that contains an element that cannot be revoked by the principal.

Transfer of land rights can be done by the parties through a PPAT deed[31], whether the land is registered or not registered, or has a certificate or not has a certificate. After the PPAT deed is made and then registered[32], the National Land Office is required to provide a receipt for the submission of the registration application, along with the PPAT deed. The PPAT notifies the recipient of the rights regarding the submission of the application for registration of the transfer of rights along with the PPAT deed and its documents to the Land Office by giving a receipt.

However, UUPA states that the law to the earth's surface in Indonesia is Adat Law (Article 5 UUPA)[33]. Adat Law regulates the method and mechanism for transferring land rights. By using the logic in Article 5 UUPA, a valid transfer of land rights is a transfer of land rights that uses the legal mechanisms or validations in customary law.

However, the above provisions become confusing if we look at other norms stipulated in the UUPA, the provision stating "based on Adat Law" is not coherent with the provisions concerning the obligation to register land and the provisions concerning the registration of transfers of land rights which are the only strong evidence in the transfer of land rights.

> Article 23.
> (1) The right of ownership and likewise each transfer, annulment, and mortgage with another right shall be registered under the stipulations as mentioned in Article 19.
> (2) The registration meant in paragraph (1) constitutes strong evidence concerning the annulment of the right of ownership and the legal validity of transfer and the mortgage of the right

[31] Akbar Rahmat Irhamulloh Abba, Dimas Al Hakim, and I Putu Aris Udiana Putra, "The Function Of The Sale And Purchase Deed In The Transfer Of Land Ownership Rights," *Journal Equity of Law and Governance* 1, no. 1 (2021): 48–60.

[32] Dewi Rasda, Muhammad Sabir Rahman, and Bakhtiar Tijjang, "Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Dalam Pendaftaran Peralihan Hak Milik Atas Tanah," *Jurnal Litigasi Amsir* 9, no. 1 (2021): 34–40.

[33] Setyo Utomo, "Nilai-Nilai Kearifan Lokal Hukum Adat Dalam Hukum Tanah Nasional," *Jurnal Hukum Media Bhakti*, 2018.

If viewed from Adat Law, It does not recognize the concept of land registration and does not recognize the concept of transferring land rights by registration. Customary Law emphasizes the validity of the transfer of land rights not from a formal perspective but rather emphasizes the material aspect of a transfer of land rights.

As strong evidence of the transfer of land rights, UUPA, furthermore with Government Regulation Number 24 of 1997, stipulates that to register a transfer of land rights, it must be done with a PPAT deed.

Article 37

(1) A transfer of a land right or apartment ownership right resulting from a sale/purchase transaction, from an exchange, from a grant, from incorporation into a company, or from any other legal act affecting such a transfer except for an auction can be registered only if it is evidenced with a deed made by the authorized PPAT in line with the positive law.

(2) Under certain circumstances as determined by the Minister, the Head of the Land Office can register a transfer of a right on a land parcel with the status of hak milik (right of ownership) between individuals of Indonesian citizenship which is evidenced with a non-PPAT deed, provided that the Head of the Land Office evaluates the deed as having an adequate content of truth to warrant the registration of the said transfer.

Although it is possible to do it with a deed that is not made by a PPAT under paragraph 2 above, however in maintaining land registration data, it has rarely been heard of its implementation by the Land Agency. Until now, the Government and the National Land Agency have not determined the type and criteria of a deed that is not made by a PPAT, as explained in Article 37.

Therefore, the role of PPAT in UUPA is very significant in the transfer of land rights, especially for maintaining land registration data based on Government Regulation Number 24 of 1997.

Transfers not with a PPAT deed are in a weak position compared with PPAT Deed.

> Article 1868. An authentic deed is one which has been drawn up in a legal format, by or before public officials who are authorized to do so at the location where this takes place.

If the transfer of land rights is not carried out by a PPAT deed as stipulated by law or made by an authorized official, then the status of the deed made is not an authentic deed.

> Article 1869. A deed which, due to the incompetence or incapability of the official or due to the absence of format, cannot be regarded as authentic, may be enforced as a private document, if this document has been executed by the parties

Both judges or anyone else and the parties first must accept and appreciate its authenticity, namely, according to the law, every authentic deed must be considered genuine and valid. Therefore, anyone who doubts its authenticity must prove its falsity.

Meanwhile, regarding the evidentiary value of an Authentic Deed, it directly meets the minimum limit of proof without the help of other evidence, is immediately valid as evidence, and has the maximum value of evidentiary power attached to it: perfect (*volledig),* and binding (*bindende)*. The judge is obliged and bound to consider the Authentic Deed genuine and perfect; must consider what is argued or stated to be sufficiently proven; the judge is bound by the truth proven by the deed, so it must be used as a basis for legal consideration in making a decision. [34]

Therefore, the existence of a PPAT deed as an Authentic Deed has the truth of the contents and statements contained therein, is considered perfect and binding on the parties regarding what is stated in the deed; also perfect and binding on the judge so that the judge must make it a perfect and sufficient factual basis for deciding on the settlement of the disputed case.

Thus, a deed or agreement made without using a PPAT deed is not invalid but only has the status of a non-authentic deed and requires proof of authenticity or proof of validity. While a PPAT deed has the status of an authentic deed, the parties who deny the validity of the deed are the ones who have the burden of proving that the legal act in the deed probably is invalid. Legal efforts like this are called proof of invalidity or proof of falsity.

3.2 Analysis of the judge's legal considerations in Decision Number 596/K/Pdt 2012

This case began with Lalu Sapaan as the plaintiff filing a lawsuit against Baiq Wardah and Lalu Mashudi. Lalu Sapaan with Baiq Wardah on August 10, 2010, based on the plaintiff's confession was bound by an oral agreement to conduct a sale and purchase of a plot of land measuring 720 m2, a certificate of ownership No. 759 in the name of Baiq Wardah and a permanent house of 5 +4 m with an agreed price of Rp. 110,000,000, - located in Kopang Rembiga Village, Kopang District, Central Lombok Regency. When the sale and purchase of the land was carried out, there were no witnesses, no handwriting or other written signs indicating the existence of a sale and purchase agreement, or writings indicating the agreements made.

At the time the agreement was made, based on the Plaintiff's confession, Baiq Wardah requested that the payment for the object be transferred to the BNI 46 account according to the BNI 46 transfer receipt dated August 10, 2010. Then Sapaan went to Denpasar (Bali) to visit his family for 2 (two) weeks and upon the plaintiff's return the land and the land object had been taken over by Defendant 2 without the plaintiff's knowledge and permission as the owner of the land object.

[34] M Yahya Harahap, Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan (Sinar Grafika, 2021). P.113

After Plaintiff made the transfer, Defendant I then informed that the money had entered Defendant I's account, Defendant I (Baiq Wahidah) then only signed the receipt dated April 25, 2011. After the money for the sale and purchase price of the land object was received and the receipt had been signed by Defendant I, Plaintiff was given a land certificate and immediately took control of the land and house (the land object) and Plaintiff renovated the house.

After the plaintiff found out that the land object was possessed by the defendant, the plaintiff contacted defendant 2 and asked why the disputed object was controlled and the plaintiff received the answer that he was ordered to occupy the land object by the defendant because Defendant I would not sell the disputed object if the plaintiff did not want to increase the selling price of the land object.

The main claim of the plaintiff is to ask the panel of judges to declare that the oral agreement to sell and purchase the land and the house building on it (the object of the dispute) as stated in the lawsuit is legally valid. The answer of Defendant I in this case is that it is true that Defendant planned to sell the object for Rp.250,000,000,- (Two Hundred and Fifty Million Rupiah) but the Plaintiff never made any agreement to buy the object. In addition, the Defendant never made any sales and purchase agreement with the Plaintiff. The Defendant also admitted that it was true that the Plaintiff had transferred money in the amount of Rp.110,000,000,- (One Hundred and Ten Million Rupiah) to the Defendant's account as evidenced by the transfer receipt NO.041708764 dated August 10, 2010, but did not explain the intent and purpose of sending the money. The Defendant had tried to contact the Plaintiff to ask about the intent of the transfer but the Plaintiff could never be called.

In addition, Defendant I revealed that the receipt dated April 25, 2011, was written and made by Plaintiff himself without Defendant's knowledge, and forged Defendant's signature. Regarding the guarantee certificate for the object lent by the plaintiff who ordered him (Lalu Sani Akbar/24 years old) to take it to the defendant's house because it would be disclosed to his wife, and until now it is still in the possession of the plaintiff.

Interestingly, in this case, in addition to the oral agreement which was later denied by the opposing party, to strengthen this oral agreement there were no witnesses presented, only evidence of transfer and receipt. The evidence of transfer was acknowledged by the Defendant but claimed not to understand its purpose, and the receipt was also denied with the suspicion that the signature was forged.

Therefore, Defendant I considers that the evidence submitted by Plaintiff does not fulfill the requirements of legally valid written evidence, does not support the testimony of witnesses that strengthen the arguments of his lawsuit, and no oath was taken on the evidence held by Plaintiff. The conclusion of the Panel of Judges of the District Court, the main point of the dispute/problem between the Plaintiff and the Defendants consists of:

1. Whether between Plaintiff and Defendant I is there a valid sale and purchase made by Plaintiff and Defendant I?
2. Is the possession of the land object carried out by Defendant 2 an Unlawful Act?

In its decision, the judge's legal reasoning began with the question, of whether there had been a sale and purchase agreement between Lalu Sapaan and Baiq Wardah for the land object, and whether the agreement made was valid. The judge then considered evidence of a BNI 46 transfer of IDR 110,000,000. Based on written evidence and witnesses, the Panel of Judges' opinion based on the transfer of money, control of the land object, and hold of the Certificate of Ownership Number 579 in the name of Baiq Wardah by Lalu Sapaan, could be used as a strong suspicion for the Panel of Judges, that a sale and purchase agreement had been made, and after the payment was followed by delivery (levering) of the land object and the Certificate of Ownership for the land object and the Certificate of Ownership for the land object (Vide Jurisprudence MARI No. 516/Pdt/1995, dated June 27, 1997).

Regarding the unlawful act by Defendant II, because the judge's consideration proved that between Plaintiff and Defendant I there had been a sale and purchase agreement for the disputed object and there had been a payment made by Plaintiff to Defendant I which was then followed by the Handover of the land Object and the Certificate of Ownership of the Disputed Object by Defendant I to the Plaintiff (levering) so that the Ownership Rights of the land Object had been transferred from Defendant I to the Plaintiff (vide Jurisprudence of the Supreme Court of the Republic of Indonesia No. 516/Pdt/1995) then the action of Defendant II in controlling or possessing the land object without permission or approval from the Plaintiff as the owner of the rights to the disputed object is an unlawful act.

The consideration of the Praya District Court is then strengthened by the Mataram High Court in Decision Number. 120/PDT/2012/PT.MTR on October 19, 2012. At the cassation level, the Supreme Court through Supreme Court Decision Number 596/K/Pdt 2012 dated October 17, 2013, considered the Praya District Court's decision to be correct and not wrong in implementing the law. According to the Panel of Judges of the Supreme Court, Lalu Sapaan succeeded in proving the arguments of his lawsuit, there had been a sale and purchase of the land object between the Plaintiff, as the buyer, and the Defendant as the seller. Lalu Sapaan had paid off the dispute through transfer and receipt evidence. Thus, the legal consideration of the Mataram High Court which had strengthened the Praya District Court's decision. The Praya District Court is correct, and not wrong in implementing the law.

Case Analysis

The main claim of the plaintiff, in this case, is to ask the panel of judges to decide the oral agreement to sell and purchase the land and the house building on it (the object of the dispute) as stated in the lawsuit is legally valid. The District Court Judge in his decision then stated that the oral agreement between the plaintiff and Defendant I was to sell and purchase the land and the house building on it (land object). This oral agreement is legally valid, even though it was denied by the Defendant and never recognized agreement.

The consideration of the Praya District Court was then strengthened by the Mataram High Court in Decision Number. 120/PDT/2012/PT.MTR on October 19, 2012. At the cassation

level, the Supreme Court through Supreme Court Decision Number 596/K/Pdt 2012 considered the Praya District Court's decision is right and not wrong in implementing the law. According to the Panel of Judges of the Supreme Court, Lalu Sapaan succeeded in proving the arguments of his lawsuit, arguing there had been a sale and purchase of the land object between the Plaintiff, as the buyer, and the Defendant as the seller.

Interestingly, this decision, from the first level to the cassation, acknowledges that the oral agreement to sell and purchase land and the house building on it (the object of the dispute) is legally valid and has transferred ownership of the land on a levering basis. Indeed, the main claim of the plaintiff in this case is to state that the oral agreement to sell and purchase land and the house building on it (the object of the purchase) as stated in the lawsuit is legally valid.

Oral agreements for the sale and purchase of land objects are not under all the laws and regulations that have ever been in force in Indonesia. Oral agreements do not at all transfer land rights or ownership based on the Civil Code and Government Regulation Number 24 of 1997, even under Adat Law or Customary Law it is not permitted. Oral agreements are allowed in customary law for land objects but must be made before a traditional leader or before the village head.

Is an oral agreement on an immovable thing in the land binding on the parties and can ownership be transferred? The answers from the Panel of Judges of the District Court, the Panel of Judges of the High Court, and the Panel of Judges of the Supreme Court believe that an oral agreement is binding and can transfer land ownership rights.

Levering is a way for legal subjects to obtain ownership based on Article 584 of the Civil Code.

> Ownership of assets cannot be acquired in any manner other than by appropriation, attachment, prescription, legal or testamentary succession, and by assignment or delivery pursuant to a transfer of legal title, originating from the individual who was entitled to dispose of the property.

The concept of "leveraging" is taken from the words of Article 584 of the Civil Code, the method of acquiring ownership thing by "appointment or transfer" with the condition "a title/agreement for the transfer of ownership rights and carried out by a person who has the right to act on the things".

Based on these provisions, the way to obtain property rights is not by buying and selling, exchanging or granting but rather by levering/delivery based on these provisions. Sale and Purchase, Exchange, and Grant are said to constitute "title" in the sense of a civil event for the transfer of property rights. In the Indonesian Civil Code, An agreement is an act capable of whereby one or more individuals commit themselves to one another. (1313 BW), while a sale and purchase is defined as an agreement, by which one party is bound to deliver a certain matter, for which the other party shall pay a specified price (1457 BW). Therefore, it

can be said that a sale and purchase agreement is an agreement or consent of the parties to transfer ownership of goods between the seller and the buyer. This transfer of ownership is the essence of a sale and purchase agreement.

From the definition of this agreement, BW considers that the sale and purchase agreement made by the parties has not yet resulted in a transfer of ownership rights. The agreement made is only obligatory, meaning that it only imposes rights and obligations on the parties. The transfer of ownership rights requires another juridical act that is separate from the obligatory agreement. This other legal act is called levering/delivery or is often translated into Indonesian as *penyerahan*.

The delivery or *levering* is the determining moment whether an object changes ownership, not the sale and purchase agreement. This *levering*/delivery depends on its validity on two conditions, namely the validity of the title (agreement) which is the basis for the levering and the act of levering must be carried out by a person who acts freely (*beschickingsbevoegd*) against the land being levered/delivered.

Levering between movable and immovable things has a difference. The *levering* of movable objects is done by handing over the power of the object, while immovable objects which include in this case immovable land are done by changing the name (*overschrijving*) in front of the Cadastral officer (*land registrar*).

> Article 612. The delivery of movable assets, with the exception of intangibles, shall take place by a single handover which is carried out by the owner or on his behalf, or by the delivery of the keys of the building in which the assets are located. Delivery shall not be required in the event that the individual entitled to the assets already has such in his possession by virtue of another title
>
> Article 616. The delivery or order of immovable assets shall be effected by publication of the deed, in the manner stipulated in Article 620
>
> Article 620. Having regard to the requirements contained in the three preceding articles, the public notification shall take place:- by submitting to the office of the registrar of the mortgages within whose area the immovable assets to be delivered or ordered are located, an authentic and complete copy of the authentic deed or of the judgment, and by the recording of the copy in the register designated thereto. The interested party shall at the same time offer a second *196 certified copy or a certified excerpt of the deed or judgment for the purpose of notification by the registrar of the date of submission, together with the section and number of the register.

By following the guidelines in this provision, it can be concluded that the case in Supreme Court Decision Number 596 K/Pdt./2012 has not yet occurred levering/delivery. Therefore, if the oral agreement is considered valid, it should be continuous by levering/delivery.

In this case, it is interesting reveals the similarity of the property rights system between Burgerlijk Wetboek and the implementing regulations for land registration Number 10 of 1961, or currently with Government Regulation Number 24 of 1997. According to it, in the land registration regulations, the property land rights must be proven by a PPAT deed, and the transfer of land rights is deemed to have occurred when the deed is made.

By following the guidelines in the provisions of the Civil Code (616 and 620 BW), it can be concluded that the case in the Supreme Court Decision Number 596 K/Pdt./2012 has not yet occurred levering/delivery. If the oral agreement is considered to have occurred and has validity, then the oral agreement should be considered an obligatory agreement, namely only imposing rights and obligations on the parties. The transfer of land ownership has not yet occurred because levering has not been carried out. Levering for immovable objects must be carried out under the provisions of 616 and 620 Burgerlijk Wetboek, or by citing the opinion of Soebekti and Boedi Harsono as quoted earlier, the levering in question at this time is no longer based on 612 or 620 BW but rather based on the Land Registration Government Regulation (PP Number 10 of 1961 and PP Number 24 of 1997 concerning Land Registration). This Government Regulation emphasizes that all transfers of rights through Sale and Purchase must be proven using a PPAT Deed which is then registered with the National Land Agency.
Therefore, an obligatory agreement is an agreement that stands alone apart from its levering and is considered as two different legal acts. BW does not use a pure causal system, as practiced by the French state, land rights are considered transferred simply by inferring from the obligatory agreement. [35] Delivery or levering is not a separate act and is not a separate category of legal action apart from the obligatory agreement.

Unlike the pure causal system, the abstract system has different characteristics. The abstract system clearly distinguishes between obligatory agreements and delivery/levering as two different legal acts. In the abstract system, the agreement only creates rights and obligations for the parties. To transfer ownership of an object, another legal act is required, namely the transferee (buyer or recipient of rights) must control the object through delivery/levering. This legal act is called tradition, or for immovable objects, a register is required.

The decision on the Sale and Purchase Agreement of Land Rights in the Supreme Court Decision Number 596 K/Pdt./2012 does not distinguish between obligatory and levering agreements. The decision considers that because there is an oral agreement and there is a transfer of certificate, levering is considered to have occurred, even though the levering concept in Burgerlijk Wetboek is a separate legal act apart from its obligatory.

In addition to citing the concept of levering based on the judge's legal consideration, the transfer of land rights is considered to have occurred in the case of the sale and purchase agreement referring to the Supreme Court Jurisprudence (Vide MARI Jurisprudence No.

[35] Caslav Pejovic, "Civil Law and Common Law: Two Different Paths Leading to The Same Goal," *Victoria University of Wellington Law Review* 6 (2001): 747–54.

516/Pdt/1995, dated June 27, 1997). The jurisprudence has a similar case, namely regarding an underhand or simple agreement, but does not follow the entire pattern of its decision in its entirety. This jurisprudence (the previous decision) does indeed also talk about the concept of levering in the transfer of land ownership but then concludes that there is no transfer of ownership because there is no levering in the underhand/simple agreement made by the parties. The main points of the jurisprudence (the previous decision) reveal first, that the sale and purchase carried out underhand before the existence of the Basic Agrarian Law still applies the BW system; Second, The sale and purchase that is not followed by levering, then based on article 1459 BW the ownership rights to the land have not been transferred to the buyer, so it remains [36]. Thus, a brief overview of MARI Jurisprudence No. 516/Pdt/1995, dated 27 June 1997.

Supreme Court Decision Number 596 K/Pdt./2012 if following the jurisprudence pattern above then the oral agreement made by the parties was not followed by levering at all. A sale and purchase that is not followed by levering, then based on article 1459 BW the ownership rights to the land have not been transferred to the buyer, so it remains on the seller according to MARI Jurisprudence No. 516/Pdt/1995, dated June 27, 1997.

In other jurisprudence, there is no finding regarding the position of an oral agreement that is denied by the other party, but we can find other jurisprudence regarding the position of an underhand or simple agreement. Supreme Court Decision No. 775 K/Sip/1971, dated October 6, 1971, related to evidence of a deed of sale underhand agreement, assessed that the Deed of Sale and Purchase of Land "underhand" which was submitted in court, was then denied by the opposing parties, and was not supported by other evidence, then the deed of sale and purchase of land was considered as weak and imperfect evidence.

The issue of the Sale and Purchase Agreement is indeed a classic problem that until now is still ambiguous in practice and dispute resolution, especially in court decisions.

This can be seen in court practices in deciding cases regarding Land Sale and Purchase Agreements. In this resolution, there are at least variations in legal sources used in resolving disputes, sometimes the court's decision in its judge's legal considerations relies on the Civil Code (Buergerlijk Wetboek), sometimes with the PPAT Deed under Government Regulation Number 24 of 1997, and sometimes it is only used Customary Law. These patterns emerge, among other things, because there are no detailed norms in writing regarding the regulation of land sale and purchase in Indonesia.

In its development, the Supreme Court has issued several basic circulars to determine buyers who have good intentions and as a basis for the transfer of land ownership rights. SEMA is not a statutory regulation and is not included in the hierarchy of legislation as regulated in Law Number 12 of 2011 concerning the Formation of Legislation. However, its existence is considered binding and has the same power as legislation.

[36] Hulman Panjaitan, Kumpulan Kaidah Hukum: Putusan Mahkamah Agung Republik Indonesia Tahun 1953-2008 Berdasarkan Penggolongan (Prenada Media, 2016).

The Supreme Court through the agreement of the Civil Chamber Plenary as stated in the Circular of the Supreme Court (SEMA) No. 7/2012. In point IX it is formulated that:

- "Protection must be given to buyers who have good intentions even if it is later discovered that a seller is a person who is not entitled (to the object of the sale and purchase of land)"
- "The original owner can only file a lawsuit for damages by tort law against the seller who is not entitled"

Civil Chamber Plenary Meeting in the Circular of the Supreme Court (SEMA Number 4 of 2016 amendments SEMA No. 5 of 2014)

a. Conducting the sale and purchase of the land object with the procedures and valid documents as determined by the legislation, namely;
- Purchase of land through a public auction, or;
- Purchase of land before the Land Deed Making Officer (PPAT) (under the provisions of Government Regulation Number 24 of 1997), or;
- Purchase of customary land or unregistered land carried out based on customary law, namely:

i. Conducted in cash and clearly (before/with the knowledge of the local Village Head/Lurah)
ii. Preceded by research on the status of the land object of the sale and purchase and based on the research it shows that the land object of the sale and purchase belongs to the seller

- Purchase is made at a reasonable price

b. Beware by examining matters relating to the object of the land, including:
- The seller is the person who has the right/has the rights to the land that is the object of the sale and purchase, based on the proof of ownership, or;
- The land/object being sold is not confiscated, or;
- For land with a certificate, information has been obtained from the BPN and the history of the legal relationship between the land and the certificate holder.

Therefore, if we look at the decision on the Land Rights Sale and Purchase Agreement in the Supreme Court Decision Number 596 K/Pdt./2012, it can be seen that the basis for the judge's legal considerations used as the basis for making the decision does not yet have coherence with Law Number 5 of 1960 and its implementing regulations through Government Regulation Number 24 of 1997. In addition to not being coherent with the legislation, it is also not coherent with several circulars of the Supreme Court.

4. Conclusion

The concept of the sale and purchase agreement for Indonesian Land Rights if referring to Law Number 5 of 1960 and Government Regulation Number 24 of 1997, the transfer of land rights is considered to occur when a PPAT sale and purchase agreement deed is made. This is similar to that regulated in the Civil Code which also considers the transfer of land rights

to occur when levering occurs. Levering for immovable land in the Civil Code is similar to that regulated in Government Regulation Number 24 of 1997 with and through an authentic deed. However, because the UUPA is established based on customary law, there are principles in practice and court decisions, the transfer of land rights through sale and purchase can be carried out according to customary law through the fulfillment of real, clear, and cash elements. The variety of methods of transferring land rights makes the concept of transferring land rights in Indonesia a mixed concept, namely the causal-abstract system concept.

The main claim in the case of Decision 596/K/Pdt 2012 is to ask the panel of judges to declare the oral agreement in the sale and purchase of land and the house building on it is legally valid. The District Court Judge in his decision then stated that the oral agreement between the plaintiff and Defendant I to conduct the sale and purchase of land and the house building on it (the land object) was legally valid, even though it had been denied by the Defendant. The basis of this oral sale and purchase agreement is the basis recognized for the transfer of rights. The consideration of the Praya District Court was then strengthened by the Mataram High Court in Decision Number. 120/PDT/2012/PT.MTR on October 19, 2012. At the cassation level, the Supreme Court through Supreme Court Decision Number 596/K/Pdt 2012 considered that the Praya District Court's decision is correct and not wrong in implementing law. The legal source used as a legal basis is the Civil Code concerning the concept of levering and Article 1338 of the Civil Code. To prevent similar cases, norms are needed regarding the affirmation of the clear legal position of PPAT deeds, customary law, and the Indonesia Civil Code in validating each transfer of land rights so that the judge's legal source in deciding cases is clear, especially for the people as a definite legal source in making land sale and purchase agreements.

Reference

Abba, Akbar Rahmat Irhamulloh, Dimas Al Hakim, and I Putu Aris Udiana Putra. "The Function Of The Sale And Purchase Deed In The Transfer Of Land Ownership Rights." *Journal Equity of Law and Governance* 1, no. 1 (2021): 48–60.

Abdulai, Raymond Talinbe, and Edward Ochieng. "Land Registration and Landownership Security: An Examination of the Underpinning Principles of Registration." *Property Management* 35, no. 1 (2017): 24–47.

Alba, Gradia Okultra, and Alan Siti Nurrizky. "Keabsahan Transaksi Jual Beli Rumah Ditinjau Dari Kitab Undang-Undang Hukum Perdata." *Jurnal Riset Rumpun Ilmu Sosial, Politik Dan Humaniora* 2, no. 2 (2023): 123–37.

Boamah, Emmanuel Frimpong, and Margath Walker. "Legal Pluralism, Land Tenure and the Production of 'Nomotropic Urban Spaces' in Post-Colonial Accra, Ghana." *Geography Research Forum* •. Vol. 36, 2016.

Erwin Owan Hermansyah Soetoto. *Buku Ajar Hukum Adat*. Malang: Mazda Media, 2005.

Fathoni, M Yazid. "Kedudukan Hukum Peralihan Hak Atas Tanah Secara Adat Dalam Persfektif Hukum Positif Indonesia." *Jurnal Ius Kajian Hukum Dan Keadilan* 8, no. 1 (2020).

———. "Peran Hukum Adat Sebagai Pondasi Hukum Pertanahan Nasional Dalam Menghadapi Revolusi Industri 4.0." *Refleksi Hukum: Jurnal Ilmu Hukum* 5, no. 2 (2021): 219–36.

Fathoni, M Yazid, Adi Sulistiyono, and Lego Karjoko. "Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia." *Jurnal IUS Kajian Hukum Dan Keadilan* 12, no. 1 (2024): 55–67.

Fitzpatrick, Daniel. "Disputes and Pluralism in Modern Indonesian Land Law'(1997)." *Yale Journal of International Law* 22 (n.d.): 171.

Gautama, Sudargo. *Indonesia Business Law*. Bandung: Citra Aditya Bakti, 1995.

Geraci, Roy J. "The Dutch Atlantic and American Life: Beginnings of America in Colonial New Netherland," 2021.

Gunadi, Anne. "The Embodiment of Adat Law as an Element of Legal Certainty in Administration of Adat Rights." *Indon. L. Rev.* 9 (2019): 259.

Harahap, M Yahya. *Hukum Acara Perdata: Tentang Gugatan, Persidangan, Penyitaan, Pembuktian, Dan Putusan Pengadilan*. Sinar Grafika, 2021.

Hulman Panjaitan, S H. *Kumpulan Kaidah Hukum: Putusan Mahkamah Agung Republik Indonesia Tahun 1953-2008 Berdasarkan Penggolongan*. Prenada Media, 2016.

Isnaeni, Moch. *Perjanjian Jual Beli*. Bandung: Refika Aditama, 2016.

Melnia, Nur Fitri, and Susilowati Suparto. "THE ROLE OF THE NOTARY IN SALE AND PURCHASE AGREEMENT FOR MOVABLE PROPERTY (BASED ON DECISION NUMBER 33/PDT. G/2018/PN. BLK)." *Jurnal Hukum DE'RECHTSSTAAT* 10, no. 1 (2024): 104–13.

Merlet, Pierre, and Johan Bastiaensen. "Illustrated with Case Studies from Madagascar and Ghana," n.d. http://www.ua.ac.be/iob.

Muliarta, I Gusti Ngurah. "The Principle of Good Faith in the Sale and Purchase Agreement of Rights Made Before a Notary." *Community Service Journal of Law* 1, no. 1 (2022): 44–48.

Mutaqin, Zezen Zaenal. "Indonesian Customary Law and European Colonialism: A Comparative Analysis on Adat Law." *JE Asia & Int'l L.* 4 (2011): 351.

Pakaya, Rafi Hidayahtullah, Ananda Chaya Narendra, M Nauval Ivanda, Ary Andryanto, and M Rizky Ardiansyah. "Analysis of the Dispute of Unlawful Acts in the Land Sale and Purchase Agreement." *Interdisciplinary Social Studies* 1, no. 2 (2021): 138–47.

Pejovic, Caslav. "Civil Law and Common Law: Two Different Paths Leading to The Same Goal." *Victoria University of Wellington Law Review* 6 (2001): 747–54.

Putra, Zaldi Pratama Bagus. "The Basics of Good Faith and Good Intention in Land Purchase System in Indonesia." *Journal of Law and Legal Reform* 1, no. 4 (2020): 691–704.

Rasda, Dewi, Muhammad Sabir Rahman, and Bakhtiar Tijjang. "Tanggung Jawab Pejabat Pembuat Akta Tanah (PPAT) Dalam Pendaftaran Peralihan Hak Milik Atas Tanah." *Jurnal Litigasi Amsir* 9, no. 1 (2021): 34–40.

Rosmanila, Wiwit Pratiwi, and Sherly Nelsa Fitri. "Towards the Unification of Inheritance Law in Indonesia: Challenges and Opportunities in the Context of Religious and Cultural Diversity," n.d.

Sakti, Socha Tcefortin Indera, and Ambar Budhisulistyawati. "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C Di Bawah Tangan." *Jurnal Privat Law* 8, no. 1 (2020): 144–50.

Sinaga, Elwyn Bastian, Silvana Sinar, and Eddy Setia. "Transitivity Analysis in the Text of the 1945 Constitution before the Amendment." *International Journal of Educational Research & Social Sciences* 2, no. 2 (2021): 315–21.

Smaratungga, Dewa Ayu Sinddhisar, R Ismala Dewi, and Enny Koeswarni. "Implementation of The Binding Agreement for The Sale and Purchase of Land Rights Based on a Notarial Deed in East Jakarta." *Legal Brief* 11, no. 3 (2022): 1387–98.

Soemardjono, Maria S.W. *Kebijakan Perntanahan; Antara Regululasi Dan Implementasi*. Jakarta: Kompas, 2001.

Sudibya, Diah Gayatri, and Kade Richa Mulyawati. "Assistance and Legal Counseling in Agribusiness Cooperation Agreements Between Farmers and Bali Bali/PT. Suji Wood Leaves According to the Provisions of Article 1313 of KUHPERDATA." *Community Service Journal of Law* 2, no. 2 (2023): 60–65.

Syamhudi, Hasyim. "Menegosiasikan Hukum IslamTentang Kepemilikan Tanah Ke Dalam Pluralisme Hukum Kepemilikan Di Indonesia." *KEADABAN* 1, no. 1 (2019): 49–68.

Turagan, Aditya Fadli. "Pelaksanaan Perjanjian Dengan Itikad Baik Menurut Pasal 1338 KUHPerdata." *Lex Privatum* 7, no. 1 (2019).

Umardani, Mohamad Kharis. "Jual Beli Berdasarkan Kitab Undang-Undang Hukum." *Journal of Islamic Law Studies Volume* 4, no. 1 (2021): 20.

Urip santoso. *Pendaftaran Dan Peralihan Hak Atas Tanah*. Jakarta: Kencana, 2019.

Utomo, Setyo. "Nilai-Nilai Kearifan Lokal Hukum Adat Dalam Hukum Tanah Nasional." *Jurnal Hukum Media Bhakti*, 2018.

Widiadnyani, I Gusti Ayu, Ratna Artha Windari, and Ketut Sudiatmaka. "Implikasi Yuridis Jual Beli Tanah Adat Melalui Perjanjian Dibawah Tangan Dalam Perspektif Undang-Undang Pokok Agraria." *Jurnal Komunitas Yustisia* 1, no. 1 (2018): 45–54.

Laws and Regulations

Civil Code

Law Number 5 of 1960 concerning Basic Agrarian Law

Government Regulation Number 24 of 1997 concerning Land Registration

Government Regulation No. 18 of 2021 concerning Management Right, Right to the Land, Apartment Unit and Land Registration