

The Position of The Binding Agreement for The Sale and Purchase of Land in the Perspective of Land Law as Stipulated in Law No. 5 Of 1960

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Abstract. The position of the land rights purchase agreement under Law No. 5 of 1960 has significant implications for land transactions and legal stability in Indonesia. Firstly, it protects the rights of owners and involved parties by officially recording agreements in the land office, preventing disputes and invalid claims. This registration ensures legal certainty, which is crucial for promoting investment in the property sector and facilitating sustainable development. Additionally, recording the agreement enhances transparency and accountability in land transactions, reducing the risk of illegal practices or fraud. This normative research used statutory and conceptual approaches, with secondary data sources and qualitative descriptive analysis. Conclusions were drawn deductively, focusing on the position of the land rights purchase agreement under Law No. 5 of 1960. The study found that the agreement's legal validity provides certainty in property transactions, ensuring the integrity and legitimacy of land deals. By adhering to applicable laws and the Civil Code, it creates a stable and orderly land sector. The resolution of land disputes through Pancasila justice, rooted in Indonesia's legal principles, provides direction and stability in national life.

Keywords: Binding Purchase Agreement, Land Rights, Land Law, Law No. 5 of 1960

1 Introduction

The position of the binding agreement for the sale and purchase of land rights in the perspective of land law as regulated in Law No. 5 of 1960 is a reflection of the complexity and significance of the legal role in regulating land ownership in Indonesia. The law better known as the Basic Agrarian Law, has the primary goal of regulating land rights and their utilization fairly and justly. Firstly, the binding agreement for the sale and purchase of land rights serves as one of the main instruments used in property transactions in Indonesia. In this context, the agreement reflects the agreement between the parties involved in the transaction, including the seller and the buyer, regarding the purchase of land rights. However, in the context of land law in Indonesia, a binding agreement for the sale and purchase of land rights must meet the requirements set forth by the Basic Agrarian Law to have valid legal force.[1]. The position of the binding agreement for the sale and purchase of land rights in the perspective of land law highlights the importance of compliance with the provisions regulated in Law No. 5 of 1960. This includes certain requirements such as setting a reasonable price, paying appropriate taxes,

and fulfilling all provisions governing land transactions in Indonesia. More than just a transaction tool, the agreement also serves as an important instrument in maintaining stability and legal certainty in the land sector.[2]

The reality up to this point indicates that the government has its orientation, which is overly advanced (having a global vision), while the majority of society is not ready for such a vision. As a result, many legislative regulations issued by the government are perceived as not favoring the interests of the people but rather favoring the global trade/free trade world and investors. However, the government should ideally pay close attention to the actual conditions of Indonesia's highly varied societal development levels. Furthermore, in Law Number 23 of 2014 concerning Regional Government as a replacement for Law Number 32 of 2004 concerning Regional Government, Article 12 paragraph (2) mentions the fields that are the authority of regional governments, including land services. The implementation delegated to regions within the framework of regional autonomy is the implementation of national land law. It is confirmed in Article 2 section (4) of Regulation Number 5 of 1960 concerning Essential Agrarian Standards (State Paper of the Republic of Indonesia of 1960 Number 104, Supplement to State Periodical of the Republic of Indonesia Number 2034); further alluded to as UUPA, expressing that the state's right of control might be designated to independent areas and standard regulation networks, depending on the situation and not problematic.[3].

Law No. 5 of 1960 also regulates the procedures for registration and protection of land rights. In this context, the binding agreement for the sale and purchase of land rights plays a key role as evidence of a valid transaction and can be legally recognized after registration at the competent land office. The registration process is a crucial step in ensuring the validity and enforceability of land rights obtained through a sale and purchase agreement. Through this registration process, the rights of the parties involved in the transaction will be given stronger legal protection, and it helps prevent disputes or ambiguous claims to the land in the future. In practice, the binding agreement for the sale and purchase of land rights also requires special attention to the provisions regarding the rights of third parties. It includes consideration of pre-existing rights to the relevant land, such as rights held by mortgagees or leaseholders. Good knowledge and understanding of the land's status and its inherent rights are essential in maintaining the validity of the agreement and avoiding potential conflicts in the future.[4].

Land ownership before the enactment of the Basic Agrarian Law (UUPA) resulted in a legal dualism governing land in Indonesia. On one side, there was the application of Dutch colonial land law or adherence to the Western Civil Law system, while on the other side, customary law applied to indigenous communities who lacked written proof, often referred to as customary or ancestral land. Then, after the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles, the dualism of land law in Indonesia came to an end, and land law in Indonesia underwent standardization. Certainly, this UUPA brought about significant changes in the regulation of land in Indonesia, which was highly complex before its enactment. Alongside its development, there have arisen issues regarding land registration in Indonesia, considering that there was once a dual legal system in place before the enactment of the UUPA, which still leaves new issues, especially in terms of land ownership registration.[2]

Every land ownership carries legal power within it, both the legal power over land ownership rights and the legal protection regarding the legitimate owner in disputes over the

land owned. In the arrangements of Unofficial law Number 24 of 1997 Article (3), it is made sense of that land enrollment means to give certifications to assurance and legitimate security in the field of land. Concerning what is implied via land enrollment, it very well may be found in Article 1 Passage (1) of Unofficial law Number 24 of 1997 which explains that "Land registration is a series of activities carried out continuously, consistently, and systematically by the Government, including data collection, processing, recording, presentation, and maintenance of physical and juridical data, in the form of maps and lists, regarding land parcels and apartment units, including the issuance of evidence of rights for land parcels with existing rights and ownership rights for apartment units and certain encumbrances." Moreover, Article 19 Section (1) of the Fundamental Agrarian Regulation, it has extensively made sense of that the reason for land enrollment is to get lawful assurance with respect to the subject and object of privileges.[5].

The Articles contained in Law No. 5 of 1960 provide a strong legal foundation regarding the binding agreement for the sale and purchase of land rights. One relevant article is Article 21, which asserts that any transfer of land rights must be executed with a valid authentic deed. This implies that land sale and purchase agreements must be made officially and legally, usually through a notary or authorized official. Additionally, Article 22 states that the sale and purchase agreement of land rights must be registered with the local land office. This registration process is an important step in securing the rights to the land acquired through the agreement. With proper registration, the rights of the involved parties will be officially recorded and protected by law. Article 26 specifies that the binding agreement for the sale and purchase of land rights must include detailed information about the land object being sold, the agreed price, and the identities of the seller and buyer. It is crucial for maintaining clarity and legal certainty regarding the transaction.

Disputes over land rights arise due to several reasons that serve as the basis for lawsuits filed in court. Lawsuits claiming rights to a piece of land aim to obtain legal protection provided by the court to prevent self-help or vigilantism. These land disputes can be brought to the Administrative Court or District Court, even up to the Supreme Court level, and sometimes involve third parties with third-party opposition. Resolving these disputes is a crucial key to preventing upheaval in societal life. Civil disputes involve issues between individuals regarding personal interests. A prosperous, peaceful, just, and prosperous society is undoubtedly desired by the government of any country in the world, including Indonesia. Such a condition cannot be achieved without continuity among several supporting factors, including economic, social, political, and cultural factors. Among these, the most fundamental supporting factor in creating prosperity is security.[2].

Article 22 of Law No. 5 of 1960 states, "The sale and purchase agreement of land rights must be registered at the local Land Office." The wording of this article emphasizes that the sale and purchase agreement of land rights must undergo a valid registration process at the authorized land office. This registration process is not merely a formality but is a crucial step to secure the rights associated with the land transaction. Recording the sale and purchase agreement of land rights in the official records of the land office provides strong legal protection for the parties involved in the transaction. Additionally, this registration also helps maintain legal certainty regarding land ownership and prevents ambiguous claims or disputes in the

future. The wording of this article also indicates that Law No. 5 of 1960 emphasizes strong emphasis on formal procedures in land transactions, to uphold fairness, legal certainty, and protection of the rights of the involved parties. Thus, this article serves as an important foundation for understanding the position of the binding agreement for the sale and purchase of land rights in the context of land law in Indonesia.[6]

2 Methodology

This study falls within the realm of normative research. The employed methodologies include the statutory approach and the conceptual approach. Secondary data sources are utilized for this study. Data analysis is conducted qualitatively and descriptively.[7] The conclusion is drawn through a deductive method, which entails deriving conclusions from general to specific, particularly related to the research topic, namely the Position of the Binding Agreement for the Sale and Purchase of Land Rights in the Perspective of Land Law as Contained in Law No. 5 of 1960. Qualitative data analysis is conducted when the empirical data obtained consists of a collection of verbal expressions rather than numerical sequences and cannot be organized into data categories. The data is gathered through various methods such as observation, interviews, document analysis, and tape recordings. Typically, it undergoes preprocessing before being utilized in qualitative research, including interview transcription results, data reduction, analysis, data interpretation, and triangulation.[8]

3 Result and Discussion

3.1 Implications of the Position of the Binding Agreement for the Sale and Purchase of Land Rights in the Perspective of Land Law as Contained in Law No. 5 of 1960

The position of the binding agreement for the sale and purchase of land rights in the perspective of land law found in Law No. 5 of 1960 has significant implications in various aspects, both for parties involved in land transactions and for the overall legal stability in Indonesia. Firstly, one of the main implications is the protection of the rights of owners and parties involved in transactions. By registering the sale and purchase agreement of land rights in the official records of the land office, Law No. 5 of 1960 provides strong legal protection for legitimate land ownership rights. This enables parties to avoid disputes or illegitimate claims over the land they own or purchase. Furthermore, the position of the binding agreement for the sale and purchase of land rights also has implications for legal certainty. With the requirement for registration of such agreements, Law No. 5 of 1960 helps maintain clarity and legal certainty regarding land ownership. It is crucial for encouraging investment in the property sector and facilitating sustainable development.

Moreover, another implication is the enhancement of transparency and accountability in land transactions. By registering the sale and purchase agreement of land rights in official records, the transaction process becomes more open and legally accountable. This helps reduce

the risk of illegal practices or fraud in land trading, which can harm one or both parties involved. The implications of the position of the binding agreement for the sale and purchase of land rights in Law No. 5 of 1960 include increased trust and stability in the property market. With a clear and robust legal framework, business actors and the general public feel more confident in conducting land transactions. This contributes to sustainable economic development and improves the overall welfare of society. Overall, the position of the binding agreement for the sale and purchase of land rights in the perspective of land law regulated by Law No. 5 of 1960 has broad and significant implications in securing land ownership rights, maintaining legal certainty, enhancing transparency and accountability, and strengthening trust in the Indonesian property market.[9]

The Preamble to the 1945 Constitution contains Pancasila (State of Belief in God), the basic principles of human rights, justice (State of Law), the sovereignty of the people (Democratic State), as well as the duties and obligations of the Government (all state institutions) to realize the State. Welfare includes protecting Indonesia's bloodshed, improving the welfare of the people, making the country's life savvy, and partaking in executing world request. The upsides of Pancasila as expressed in MPRS Pronouncement no. XX/MPRS/1966, is basically a perspective on life, mindfulness, and legitimate goals as well as respectable moral beliefs which incorporate the mental climate and character of the Indonesian country. Based on its situation, Pancasila is the most elevated wellspring of regulation, and that implies that Pancasila is the norm for surveying our regulations. The legitimate standards applied in the public eye should reflect mindfulness and a feeling of equity by the character and reasoning of life of the Indonesian public [10].

Behind all of this, the need for land is increasing every moment, where the imbalance between humans and the available land is due to the increasing population but limited land availability. Consequently, this leads to individual interests that can lead to disputes. A piece of land with dual certificates can result in legal uncertainty for land rights holders, which is certainly undesirable in land registration in Indonesia. Cases of dual certificates still frequently occur in several regions in Indonesia, causing the holders of land certificates to accuse each other that their certificates are valid regardless of the fact that one of the dual certificates is fake, where the object stated on the certificate is not genuine. Therefore, to obtain legal certainty regarding land title certificates, one of the holders of dual certificates files a complaint to the National Land Agency as the authorized institution in the field of land. If the proof process through the National Land Agency does not shed light, the authority to prove the dual land certificate is continued to the jurisdiction of the Court deemed competent in providing legal certainty to the rights holders and canceling one of the certificates.

The implications of the position of the binding agreement for the sale and purchase of land rights in the perspective of land law regulated in Law No. 5 of 1960 provide a strong foundation for the enforcement and legal protection of land transactions in Indonesia. However, it is important to note that this position also affects the relationship with the provisions found in the Indonesian Civil Code (KUHPerdata) and other related laws.

One relevant article in the context of the binding agreement for the sale and purchase of land rights is Article 1320 of the Indonesian Civil Code. This article states that an agreement is law for those who make it, and it must be carried out in good faith. It means that the sale and

purchase agreement of land rights must be made in good faith by both parties, and the obligations stated therein must be complied with.

Article 1320 of the Civil Code reads:

"An agreement binds the parties who make it. The agreement must be implemented in good faith." In the context of a binding agreement for the sale and purchase of land rights, this emphasizes the importance of an honest and transparent agreement between the seller and the buyer. Good faith in agreeing is the key to maintaining the validity and validity of land transactions. Apart from that, Article 1567 of the Civil Code is also relevant in this context. This article states that if the seller promises ownership rights to an object, then the seller is deemed to guarantee the existence and strength of these rights.

Article 1567 of the Civil Code reads:

"If the seller promises ownership rights to an object, he is deemed to guarantee the existence and strength of these rights."

In a land rights sale and purchase agreement, the seller is deemed to guarantee that he has legal rights to the land being sold. This emphasizes the importance of the validity of ownership rights to the land being sold and encourages sellers to provide accurate and honest information to buyers.

By considering the position of the binding agreement for the sale and purchase of land rights about the articles contained in the Civil Code, it appears that the agreement must comply with the principles of honesty, good faith, and the validity of property rights. This helps maintain legal certainty, protect the rights of the parties involved, and improve integrity in land transactions in Indonesia.

3.2 The Urgency of the Position of the Binding Agreement for the Sale and Purchase of Land Rights in the Perspective of Land Law as Stipulated in Law No. 5 of 1960

The urgency of the position of the binding agreement for the sale and purchase of land rights in the perspective of land law regulated in Law No. 5 of 1960 is highly significant in maintaining stability, justice, and legal certainty in the Indonesian land sector. It is based on several crucial reasons that form a strong foundation for the importance of the role of such agreements:

- a. **Protection of Ownership Rights:** The binding agreement for the sale and purchase of land rights provides strong legal protection for legitimate land ownership rights. With a valid and registered agreement, landowners' rights are more guaranteed and protected from invalid claims or disputes.
- b. **Legal Certainty:** In the context of land law, legal certainty is highly important to encourage investment and sustainable development. The position of the sale and purchase agreement of land rights ensures that land transactions are carried out with clear procedures and comply with applicable legal requirements, thereby creating legal certainty for all parties involved.
- c. **Transparency and Accountability:** The binding agreement for the sale and purchase of land rights also promotes transparency and accountability in land transactions. With a valid and registered agreement, the transaction process becomes more

transparent and legally accountable, thus reducing the risk of illegal practices or fraud in land trading.

- d. Economic Development Catalyst: Investment in the property sector is one of the main drivers of economic growth in Indonesia. The position of the sale and purchase agreement of land rights provides a strong foundation for legitimate and sustainable property transactions, which in turn will drive broader economic development.
- e. Empowerment of Society: Through the binding agreement for the sale and purchase of land rights, society can access and utilize land rights legally and systematically. This provides opportunities for people to own valuable assets and improve their overall welfare.

By understanding the urgency of the position of the binding agreement for the sale and purchase of land rights from the perspective of land law as regulated by Law No. 5 of 1960, it can be understood that the role of such agreements is not only as transactional instruments but also as pillars that build the foundation of justice, legal certainty, and sustainable development in Indonesia.[11] Normatively, BPN is the only institution/agency in Indonesia that has been authorized to carry out the mandate to manage land affairs, and BPN performs its tasks in the field of land nationally, regionally, and sectorally. BPN was established based on Presidential Decree No. 26 of 1988 concerning the National Land Agency. As per the operational guidelines of BPN, the leadership of this institution then issued Decree No. 11/KBPN/1988 jo Land Agency Decree No. 1 of 1989 regarding the organization and working procedures of BPN in provinces and districts/cities. Subsequently, the position and role of the BPN Agency were strengthened by the Government through the establishment of Deputy V, which examines and resolves land disputes and conflicts. As regulated in the regulation of the Head of BPN-RI No. 3 of 2006 concerning the Organization and Working Procedures of BPN-RI, the examination and handling of land disputes and conflicts are under the authority of Deputy V (five) and also oversee the directorate of conflicts, disputes, and land cases.[4].

The connection between the binding agreement of buying and selling land rights and the provisions found in the Indonesian Civil Code (ICC) serves as the legal foundation underpinning property transaction processes in Indonesia. For instance, Article 1320 of the ICC serves as a primary basis, affirming that an agreement is binding upon those who make it. It implies that the agreement of buying and selling land rights must be made in good faith by both parties, and the obligations stated therein must be fulfilled. The wording of Article 1320 of the ICC states: "An agreement binds the parties who make it. The agreement must be executed in good faith." It indicates that in the context of the binding agreement of buying and selling land rights, honesty, good faith, and valid agreement between the seller and the buyer are fundamental principles that must be upheld. Thus, the transaction process becomes more transparent and filled with integrity. Additionally, Article 1567 of the ICC is also important to consider. This article asserts that a seller who promises ownership rights over an object is deemed to guarantee the existence and strength of that right. The wording of Article 1567 of the ICC states: "If the seller promises ownership rights over an object, he is deemed to guarantee the existence and strength of that right."

In the context of the agreement of buying and selling land rights, the seller is considered to guarantee that they have valid rights over the land being sold. It emphasizes the importance

of the validity of land ownership rights being sold and encourages the seller to provide accurate and honest information to the buyer. Considering the position of the binding agreement of buying and selling land rights about the articles found in the ICC, it is evident that the agreement must adhere to the principles of honesty, good faith, and validity of ownership rights. It helps to maintain legal certainty, protect the rights of the parties involved, and enhance integrity in land transactions in Indonesia.[12]

In practice, the resolution of land disputes is not only conducted by the National Land Agency but can also be resolved by the General Courts and Administrative Courts. While the General Courts mainly focus on civil and criminal matters in land disputes, the Administrative Courts handle land disputes related to decisions issued by the National Land Agency or other regional officials concerning land. According to Article 53 Number 1 of Law No. 5 of 1986 concerning Administrative Courts: "An individual or a legal entity whose interests are harmed by an Administrative Decision may file a written lawsuit with the competent Court containing demands for the contested Administrative Decision to be declared null and void, with or without a claim for compensation and/or rehabilitation." [4].

In the 1945 Constitution, it is explicitly stated in Article 33 paragraph (3) that "The land, the waters and the natural resources contained therein shall be under the control of the state and shall be used for the greatest prosperity of the people." In this regard, Law Number 5 of 1960 concerning Basic Agrarian Principles elaborates on the definition of "land," which includes not only the surface of the earth but also the body of the earth beneath it and what lies beneath the water. The definition of land encompasses the surface of the earth (later referred to as "tanah" or land) along with what lies beneath it (the body of the earth) and what is under the water. Meanwhile, in this law, a distinction is made between the concepts of "bumi" and "tanah," where "tanah" is defined as "Based on the state's right of control, various rights over the surface of the earth, referred to as land, can be granted and owned by individuals or jointly with others or legal entities." From this article, we can see the existence of land.

Article 1567 of the Civil Code further reinforces the urgency of such agreements by emphasizing that a seller who promises ownership rights over an object is deemed to guarantee the existence and strength of those rights. This underscores the importance of the validity of ownership rights over the land being sold and encourages sellers to provide accurate and honest information to buyers. Thus, the integrity of land transactions is maintained, and legal certainty for the parties involved is ensured. Moreover, the urgency of the binding agreement for the sale and purchase of land in the context of land law also includes the protection of legitimate land ownership rights, ensuring legal certainty, and promoting economic growth through sustainable investments in the property sector. Therefore, such agreements are not merely transactional instruments but also pillars that build the foundation of justice, integrity, and sustainable growth in the Indonesian land sector.[13].

4 Conclusion

1. The position of the binding agreement for the sale and purchase of land in the perspective of land law regulated by Law No. 5 of 1960 has significant implications in

various aspects of social, economic, and legal life in Indonesia. Firstly, the agreement ensures strong legal enforcement, providing certainty to the parties involved in property transactions. By adhering to the applicable laws, both stipulated in the legislation and the Civil Code, the integrity and legitimacy of land transactions are ensured, thereby creating a stable and orderly environment in the land sector.

2. Resolving land disputes through the principle of Pancasila justice as the root of Indonesia's legal ideals has the consequence that in the dynamics of national life, as a worldview adopted, it will guide thoughts and actions. Legal ideals are ideas, concepts, creations, and thoughts regarding law or perceptions of the meaning of law, which essentially consist of three elements; justice, utility or benefit, and legal certainty.
3. The sale and purchase agreement for land also serves as a tool to protect ownership rights. With a valid and registered agreement, the rights of landowners are guaranteed and protected from invalid claims or disputes. It provides security and certainty to landowners, facilitating sustainable and orderly property development. The role of the binding agreement for the sale and purchase of land is not limited to property transactions alone but also has broad implications in promoting sustainable economic growth. By creating a conducive legal environment for investment in the property sector, the agreement becomes a significant driver in infrastructure development and broader regional development, ultimately positively impacting the overall welfare of society.

5 Recommendations

1. It is expected that considerations of these shared justice values regarding land or land will inevitably differ in various regions, depending on the social structure of specific populations that prioritize specific functions for the land. Incorrectly assigning value to land occupied by a particular community may lead to conflicts within the community itself.
2. It is expected that there will be a guarantee of legal certainty to be realized in this land registration, including the certainty of the registered rights status, the certainty of the rights subject, and the certainty of the rights object. Land registration produces Land Certificates or certificates of rights over land as valid evidence.
3. It is expected that rural land will be used for social and economic life. Social activities, such as family, schooling, worship, recreation, and sports, are carried out within the village; while economic activities such as farming, gardening, animal husbandry, and logging in forests are carried out outside the village. However, in urban areas, because land values are economically significant, land use is carried out as efficiently and effectively as possible, which may result in mixed-use.

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