



Binding Sale and Purchase Agreement and Power of Attorney Over Land in the Perspective of the Principle of Horizontal Separation

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Abstract

This study explores the application of the horizontal separation principle in land ownership and transfer in Indonesia, focusing on the Binding Sale and Purchase Agreement (PPJB) and the power of attorney in land transactions. The horizontal separation principle, derived from customary law, ensures that land ownership does not automatically include ownership of buildings or plants on the land. This research examines how this principle affects legal processes related to land rights transfers and the challenges it poses in the context of sale and purchase agreements. By analyzing legal documents, court rulings, and relevant literature, the study identifies key issues such as ambiguous ownership rights and procedural complications that arise from the separation principle. The findings highlight the need for legal clarity and reform to enhance property rights protection and dispute resolution effectiveness in Indonesia's land law system.

Keywords: *horizontal separation, land ownership, Binding Sale and Purchase Agreement, power of attorney, Indonesia*

INTRODUCTION

The relationship between land and humans is so close that it is felt to have a connection that is rooted in the mind. It is understandable that almost all human activities are carried out on land. In the industrial sector, land is also a necessity in carrying out business operations. The industries in question are the tourism industry, mining industry, factory industry and others. Therefore, land is very much needed by every human being, both on a small and large scale. Because the need for land is included in the primary category, a system is needed that can regulate the use and allocation of land.

The state is essentially an organization of power that includes or unites a group of people who are then called a nation and the state as an organization of power has an authority so that the state can impose its will on all people covered by the organization. Therefore, the state has the authority to regulate and carry out the function of allocating land to be used in accordance with the purpose of using the land.

Article 33 paragraph (3) of the Constitution states that the earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. This confirms that the state does not act as a land owner but only controls the land and regulates the use of the land.

The national land law system is a system that adheres to the principle of horizontal land separation. This principle of horizontal land separation is a principle that states that buildings and plants on the land are not part of the land. This means that land ownership does not automatically include ownership of buildings and plants on it.

This principle actually strongly supports the main provisions contained in Article 33 paragraph (3) above. Because basically, if at any time the state needs land, water, or even natural resources contained underground for the public interest (the prosperity of the people), the state can use the land even though the land has been occupied by land ownership rights.

The rules regarding land contained in the UUPA are the principle of horizontal separation derived from customary law, this is because the majority of the national population adheres to the principle of customary law. Based on this concept, a person who has rights to land in the form of vacant land is allowed to rent the vacant land to someone else (land lease). The purpose of obtaining land in a rental system is not to transfer ownership of the land but only to take advantage of the land, whether it will be used for plantations or buildings because in a lease there is no transfer of ownership rights.

Based on the description, the purpose of this writing is to answer the problem of how the transfer of land rights through a Sale and Purchase Agreement and the power of attorney for buildings on the land that do not belong to the landowner?, so that through this discussion it can ensure the application of the principle of horizontal separation of land and discuss the application of the Sale and Purchase Agreement (PPJB) and the power of sale and purchase in a sale and purchase transaction as a transfer of land rights.

METHOD

This study employs a normative juridical method with a descriptive-analytical approach to analyze the principle of horizontal separation in the context of land rights transfer in Indonesia. Data is collected through literature review, including laws and regulations, legal literature, and other relevant documents, specifically concerning the Binding Sale and Purchase Agreement (PPJB) and the power of attorney in land sales. Additionally, this research examines court decisions and relevant literature to understand the application of the horizontal separation principle in land law practice.

The analysis is conducted by examining the formal and substantive legal aspects of the PPJB and the power of attorney deed for selling. This study evaluates the effectiveness and challenges of implementing the horizontal separation principle and its impact on the protection of land ownership rights and the objects on it. The descriptive-analytical method is used to provide a comprehensive overview of the implementation of the horizontal separation principle in the context of land rights transfer in Indonesia.

RESULTS AND DISCUSSION

The basic concept of land sale and purchase transactions is transparent and cash. Transparent means it is done openly, the object and subject of the owner are clear, and the documents and proof of ownership are complete. Every subject and legal entity can obtain the right to own a land, as a result every right to land including the object that is integrated into the land as a legal case (Supriadi, 2007) However, in practice, for various reasons, the clear and cash concept is often not fulfilled, so another instrument is needed, namely through a sales and purchase agreement.

PPJB as a binding sign of a sale and purchase transaction while waiting for things that have not been completed. The unfulfilled requirements for a deed of sale and purchase could be because the payment has not been paid in full/installments, the certificate is still in the process of being divided or other processes, not being able to pay taxes or other conditions.

If the form is PPJB Not Yet Paid Off, then there is no power in it, except for the requirements for fulfilling an obligation. Meanwhile, if the payment has been paid off and a PPJB Paid Off is made, then it is accompanied by the Power of Attorney to sell from the seller to the buyer. Article 1792 of the Civil Code states that the Granting of Power of Attorney is an agreement by which a person gives power to another person, who receives it, to carry out an affair on his behalf.

Regarding the competence of granting power of attorney to another person, there are requirements that must be met by both the grantor and the recipient of the power of attorney. For the grantor, the requirements are legal competence, free will, and having the right to be granted power of attorney. This means that all of these requirements speak about his/her competence in relation to the actions or objects that are clearly granted power of attorney.

For the power of attorney, there are requirements that are more or less similar to the principal, namely being legally competent, able to carry out duties and not in a conflict of interest. The power of attorney must not be in a position that creates a conflict of interest with the principal.

In making a power of attorney, it is very possible that the power of attorney is invalid. An invalid power of attorney can occur because the grantor or recipient of the power of attorney does not meet the competency requirements. In addition, the power of attorney becomes invalid because of an absolute power of attorney. In land transfer transactions, the use of an absolute power of attorney is prohibited. This is written in Article 26 of the UUPA which prohibits absolute powers of attorney.

Often, people in the process of transferring land first make a PPJB before a Notary because the cost is low and is only bound by an agreement but the transfer of land rights has not been fulfilled. PPJB is a basic agreement made by the parties, both the seller and the buyer, before making an AJB before the PPAT. (Putu Arya Bagus Utama, et al, 2021)

PPJB is a type of obligatory agreement, namely an agreement where the parties agree to bind themselves to make the transfer of a certain object to another party, so that the existence of PPJB basically does not result in the transfer of ownership of an object from the seller to the buyer. This stage is only an initial agreement and must be followed by a transfer agreement (levering), namely the signing of the AJB before the local PPAT (Made Ara Denara Asia Amasangsa, and I Made Dedy Priyanto, 2019)

The clause in the deed of power of attorney to sell can be included as a clause in the PPJB, or it can stand alone, in the form of a separate deed. So, when signing, you sign two deeds: the PPJB and the Deed of Power of Attorney to Sell. In the case of the Power of Attorney to Sell being included as a clause in the PPJB, then only the PPJB deed is signed. If the clause states/regulates in clear words that the seller grants the power of attorney to sell to the buyer, then when all the requirements are met to upgrade the PPJB to a Deed of Sale and Purchase.

PPJB paid in full or Deed of Sale and Purchase is a deed made by the Land Deed Making Officer (PPAT). The PPAT will check the land certificate at the land office in the Level II area where the land is located or the National Land Agency (BPN) to ensure that the certificate is not burdened with rights or disputes. Making a Deed: After the documents are complete and in accordance, the PPAT will make a Deed of Sale and Purchase which must be signed by the seller, buyer, and witnesses (usually employees of the PPAT office). Therefore, the making of AJB by

the PPAT without any payment distribution transaction from the buyer to the seller should be considered legally flawed based on the laws and regulations in Indonesia.

Apart from that, there are also several other examples that cause AJB to become legally flawed or invalid, including:

- a. PPAT who is not authorized because the location of the property is outside the PPAT's work area
- b. Lack of capable legal subjects. Incompetent legal subjects are legal subjects who do not yet fulfill the requirements to carry out legal acts and so on
- c. The object of the sale and purchase is not valid because the land object above it is in dispute or does not have a valid certificate. Furthermore, if the land is being burdened with rights, or objects attached to the land such as buildings do not belong to the landowner.
- d. Inconsistency of the Contents of the Deed with reality. If the contents of the AJB do not match the facts or actual circumstances of the transaction, such as: (1). The sale and purchase price does not match that agreed verbally or in writing in the PPJB, which is different from that written in the AJB. (2). The identity of the land or the wrong party. In cases like this, the AJB can be considered legally flawed because it contains information that is incorrect or does not match reality.

The transition from the colonial land law system to the new agrarian law or what is called Law Number 5 of 1960 concerning Agrarian Principles is to lay the foundation for legal certainty of land rights. Legal certainty in question is certainty regarding the legal subject of land rights; certainty regarding the location, boundaries, size/area of land or certainty regarding the object of rights; as well as certainty regarding the status of land rights which is the basis for relations between land and legal persons/entities. Changing the old agrarian legal system to a new agrarian legal system is also intended to eliminate all concepts of agrarian law that are no longer appropriate to the situation in post-independence Indonesia.

The statement that Indonesian national agrarian law is built from Indonesian customary law means that the concepts in customary law are used to build national agrarian law. There are many concepts in customary law, including: the concept of the eternal relationship between land and its people, the concept of the customary head as the regulator of customary territory, the concept of customary territory only for members of the customary association, the concept of the clear and cash principle in land sales and purchases, and the concept of land ownership is different from the ownership of buildings, plants and the like on the land. Customary law itself is the basis for national land law, including in this case the application of the principle of horizontal separation in national land law. This is in accordance with the considerations of Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA) letter a, namely: "that in connection with what is mentioned in the considerations above, there needs to be a national agrarian law, which is based on customary land law, which is simple and guarantees legal certainty for all Indonesian people, without ignoring elements that are based on religious law."

Discussing customary law cannot be separated from the existence of one of the foundations of rights in customary law, namely customary rights. Customary rights are closely related to the concept of customary law regarding land. Another term for customary rights is ancient rights or lordship rights. In his book *De Indonesier en zijn grond* (Indonesians and Their Land), Van Vollenhoven calls the term customary rights, ancient rights or lordship rights in Dutch with the term *beschikkingsrecht*.

Customary rights are the authority that according to customary law is held by customary law communities over a certain area which is the living environment of its citizens to take advantage of natural resources, including land, in that area, for the continuity of their lives and livelihoods, which arise from the physical and spiritual relationships passed down from generation to generation and are unbroken between the customary law community and the area in question.

The concept of horizontal separation is important to discuss because land ownership does not necessarily include what is on the land. Agrarian law is built on customary law, so the concepts of principles/foundations in customary law are *mutatis mutandis* also adopted by agrarian law, although they are often not explicitly stated in the articles of the UUPA.

In civil law, there is a principle of accession or the principle of attachment, buildings and plants on it and are one unit with the land are part of the land in question. So the right to land automatically because of the law, also includes ownership of buildings and plants on the land that is being claimed, unless there is another agreement with the party that builds or plants it as stipulated in Article 500 and 571 of the Civil Code, but this is not the case in land law after Law Number 5 of 1960 which originates from customary law which adheres to the principle of horizontal separation.

In such cases, the buildings and plants on it belong to the land, but based on Customary Law adopted by Indonesian Land Law, it regulates the principle of horizontal separation (horizontal *scheiding*). Buildings and plants are not part of the land. Thus, ownership of the land does not automatically become ownership of the buildings and plants on it.

Based on the concept of customary law as the main source in the development of National Land Law, there are principles in customary law that are applied in National Land Law, including religious principles written in UUPA Article 1, national principles (Articles 1, 2, 9 UUPA), principles of democracy (Article 9 UUPA), principles of community, equality and social justice (Articles 6, 7, 10, 11, 13, and 13), principles of planned land use and maintenance (Articles 14 and 15) and principles of horizontal separation.

The principle of horizontal separation is the principle that separates ownership between land and objects on it, such as buildings, trees, gardens, sites, works of art such as temples, statues and other objects that have different usage rights from those of the landowner (Badriyah Harun, 2013). Betty Rubianti quoted Boedi Harsono's opinion stating that with the existence of this horizontal separation principle, the subject of the land rights holder can be different from the subject of building ownership, so that land and buildings will be subject to different laws, land will be subject to land law, while the building will be subject to debt law which regulates the power of rights over non-land objects. So in land law, it adheres to the horizontal separation principle *mutatis mutandis* where this principle emphasizes that land and buildings are not a unit. Setting aside the principle of attachment/*accessie* adopted by the Civil Code Article 500 and Article 571.

Therefore, based on the provisions of the horizontal principle, buildings and plants on the land are not part of the land in question. Thus, land rights do not necessarily include ownership of buildings and plants on it.

In relation to land registration, foreigners can occupy or occupy a house with rental rights or usage rights. This is regulated in Law No. 1/2011. It should be noted that land law in Indonesia adheres to the principle of horizontal separation which allows for the separation of land ownership from ownership of objects above or below the surface of the land. As a result, the elimination of land rights does not result in the elimination of rights to objects attached to or below the land.

CONCLUSION

Transfer of land rights by way of sale and purchase on a land object on which a building has been built is an example of a complicated legal problem that requires a coherent legal construction so that one conclusion can be drawn. In legal facts, the villa building stands together with an agreement not to sell the object. However, the defendant committed an unlawful act by selling the object unilaterally. And the methods of transfer were carried out by turning their backs on the provisions and procedures for land transfer in accordance with statutory regulations.

The principle of horizontal separation is essentially in order to fulfill the principle of utility (*zweckmassigkeit*) and justice (*gerechtigkeit*), namely the philosophy is in order to maximize the function of land for human life, which in turn can support the realization of people's welfare and prosperity. The essence of the principle of horizontal separation in customary land law is philosophically based on considerations in order to maximize the function of land for the life of customary law communities. This philosophy is adopted in national land law, where the state requires land to be managed, utilized and managed properly. The state does not want the land it has given to be abandoned by its rights holders.

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