

## The Evidentiary Power of an Authentic Deed Buying and Selling Land in the Digital Age

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### ABSTRACT

Land sale and purchase transactions are one type of agreement that is regularly carried out by members of the community. As evidence of the existence of a land sale and purchase agreement, it must be accomplished by the parties in front of an authorized official, specifically a Notary / Land Deed Official. In order to ensure legal certainty over the transfer of property rights to land, it is written in the form of an authentic deed. It is aimed for the validity of land ownership, proof of ownership of property rights is required. In practice, there are frequently cases related to land sale and purchase deeds and certificates of ownership that result in cancellation by both judicial institutions and authorized officials. In today's digital era, electronic devices can be used as a means of supporting land sale and purchase transactions that must be carried out based on the principles of accuracy and applicable law.

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## INTRODUCTION

Members of society in order to carry out their work of life and living always have relationships with each other, both within the national, regional and global scope. One of the most frequent relationships is *a sale and purchase agreement, a sale and purchase binding agreement*, especially a sale and purchase agreement for land including buildings on it.

The acquisition or transfer of land rights, especially to property rights (*eigendom rights*), certainly aims for legal protection and legal certainty over the rights attached to the land. Based on property law (*van zakenrecht*) applicable in Indonesia, land is classified as a fixed or immovable object. Legal protection and legal certainty over property rights owned by a person as a member of the community is guaranteed by the state constitution which stipulates that "everyone is entitled to protection over the property he controls and is entitled to have private property rights that cannot be taken over arbitrarily by anyone".

In practice or facts in the community, land sale and purchase deeds made by Notary/Land Deed Officials as authentic deeds, have the opportunity to be sued by parties who feel aggrieved. It is not uncommon for a court decision to declare that the land sale and purchase deed is canceled, even the Notary/Land Deed Official has the status of co-defendant or co-defendant, including the National Land Agency which issues a Certificate of Ownership, as proof of one's ownership of land obtained based on a sale and purchase binding agreement.

Based on these facts, the problem that arises is to what extent does the evidentiary power of the deed of sale and purchase of land affect the validity of the Certificate of Ownership?

## LITERATURE REVIEW

In the digital age, the evidentiary power of an authentic deed in the buying and selling of land has taken on a new dimension. Traditional paper-based deeds have been replaced with electronically executed ones, leading to more efficient and convenient real estate transactions. With the advent of blockchain technology, the integrity and security of these digital deeds have been significantly enhanced. Each transaction is recorded as an immutable block, providing a transparent and tamper-proof ledger that can be easily verified by all relevant parties. This not only reduces the risk of fraud but also expedites the entire process, saving time and resources for both buyers and sellers. Moreover, the use of digital signatures and encryption ensures the authenticity and non-repudiation of the deeds, bolstering their evidentiary power in legal disputes or property disputes.

However, the shift to digital deeds also raises certain challenges that need to be addressed. Ensuring the privacy and protection of sensitive information in an increasingly interconnected world becomes paramount. Robust cybersecurity measures must be implemented to safeguard against unauthorized access and data breaches. Additionally, there may be concerns regarding the admissibility of digital deeds in courts, especially in regions where traditional documentation still holds sway. Therefore, efforts are

required to establish a universally accepted legal framework that recognizes the validity and evidentiary power of digitally executed deeds. Despite these challenges, embracing the use of authentic digital deeds in the buying and selling of land can revolutionize the real estate industry, streamlining processes, enhancing security, and fostering trust in an increasingly tech-driven world.

## METHODOLOGY

This research is a type of *normative* legal research (*doctrinal research*) based on legal norms or positive law as secondary data. As it is understood that "legal research conducted by examining library materials or secondary data is called normative legal research". The data sources used are laws and regulations, legal documents, court decisions, and supported by real facts and relevant legal cases. The data analysis method is based on a qualitative descriptive method that is applicable which refers to existing data and facts.

## RESULTS AND DISCUSSION

One of the most common types of agreements made by members of the community is a sale and purchase agreement. Basically, a sale and purchase agreement involves a seller and a buyer, where the seller is obliged to transfer ownership of an object (*zaak, goods*), and the buyer is obliged to pay the agreed price. The seller's obligation is a right for the buyer, while the buyer's obligation is a right for the seller. An agreement that creates rights and obligations for the parties that are reciprocal is called a reciprocal agreement.

The law that regulates agreements is Civil Law (*private law, privaate recht*) which regulates the relationship between people and people, people and objects, and people and their families. The relationship between members of society governed by civil law is equal or equal, between one party and another, including the relationship between sellers and buyers. In fact, the main basis is the law of engagement or the law of agreements / contract law. For this reason, in making a sale and purchase agreement, it is important for the parties to understand that their respective rights and obligations arise. In reality, disputes or lawsuits that arise in the future, usually stem from the non-performance of the obligations of each party. In this case, in accordance with the agreement, the buyer did not pay the land price or the seller did not hand over ownership of the land. As Raymond Wacks puts it, "*can the law of contract be properly understood without an appreciation of the concepts of rights and duties?*".

In reality, the parties in making agreements binding the sale and purchase of land, including houses and objects on them, are often carried out not based on an authentic deed, which is made before a Notary/Land Deed Official, but only based on an underhand deed (*onderhandeings acte*). Various factors have led to the sale and purchase of land based on an underhand deed, including ignorance of the law, mutual trust, misuse of the power to sell by other parties, low cost, local customs, practicality of making, and various other factors. Difficulties may arise if the buyer goes through the process of registering the land for a certificate of title at the National Land Agency.

Members of the community who need legality or validity for the land sale and purchase agreement they have made, must go to a Notary / Land Deed Official, to make a deed of sale and purchase. The deed made by the seller and the buyer in front of a Notary / Land Deed Official is called an authentic deed, which serves as a means of proving land ownership. Basically, an authentic deed is a deed made in the form prescribed by law, made by or before an official authorized to do so, and executed at the place where the deed is made. The official authorized to make a land sale and purchase deed that acts as an authentic deed is a Notary / Land Deed Official.

In relation to the official authorized to make a land sale and purchase deed as an authentic deed is a Notary, as stated by Habib Adjie, "that a notary is a public official who is the only official authorized to make authentic deeds regarding all acts, agreements, and stipulations required by general regulations, or by those concerned desired to be stated in an authentic deed". Thus, the existence of a land sale and purchase deed in an authentic form is very influential as written evidence, if at any time there are other parties who do not recognize the validity of the sale and purchase agreement that has been made, or who claim to have rights to the land and the objects on it.

Indonesia, both juridically and factually, its legal flow is more likely to adhere to the *positivistic* legal flow, as a characteristic of the Continental European legal system, known as the *civil law system*. This national legal system prioritizes written law in the form of legislation. This condition is in accordance with Hans Kelsen's *Stufenbau Theory* that the law is arranged in tiers from the highest, to the lowest, which boils down to the *grundnorm*, the higher law as the basis of the lower law. The fact that the law applies nationally is clearly seen in the provisions of the formation of laws and regulations, that the level or level that must be obeyed is the laws and regulations that apply as positive law.

In order, the laws and regulations are successively in the form of the Constitution, Decrees of the People's Consultative Assembly, Laws / Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, Provincial Regional Regulations, and Regency / City Regional Regulations. In essence, lower legal regulations must be sourced from higher regulations, with the threat of annulment if they conflict. The basic norm that applies nationally, namely Pancasila as the source of all sources of legal order (*rechts order*), as the precepts written in the Preamble of the 1945 Constitution, which also applies as a legal ideal (*rechtsidee*) in the life of the nation and state. Written law in the form of legislation must be applied in authentic deeds and Land Rights Certificates.

In the application of legal enforcement relating to authentic deeds and certificates of land rights, including buildings on it, is the authority of the state. Land is the surface layer of the earth located in the territory of the Unitary State of the Republic of Indonesia, which acts as the object of a sale and purchase agreement in social life. The laws and regulations relating to land, especially the regulations on basic agrarian regulations, mandate, "that the entire territory of Indonesia is one unit of homeland of all Indonesian people who are united as the Indonesian nation". Based on this provision, it means that the state power,

which in practice is exercised by the government, is the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency. Thus, the government has the authority to regulate and organize legal relationships, namely between people and legal acts concerning land and buildings on it.

National land law basically boils down to customary law (*adat recht, adat law*). The legal consequence is that the application or implementation of a land sale and purchase agreement must be in accordance with customary law. "For this reason, the land sale and purchase agreement as outlined in the form of an authentic deed must be based on the principles or principles of customary law, namely the cash principle and the clear principle". The cash principle mandates that the transfer of property rights by the seller and the payment of the land price by the buyer are carried out simultaneously. In this case, cash or cash on hand does not mean that payment and repayment are made immediately. This means that the buyer makes payments in accordance with what is agreed with the seller, such as payments can be made in installments or gradually. Thus, in the sale and purchase of land in installments, the principle of cash is still fulfilled even though the method or method of payment is in *installments*.

In addition to the principle of cash in land sale and purchase, the principle of light also applies, that the land sale and purchase agreement is carried out openly or not covered up, if it is carried out before a Notary / Land Deed Making Officer. The function of the sale and purchase of land carried out before a Notary / Land Deed Official is to guarantee the correctness of the land status, the right holder, and the validity that the implementation of the sale and purchase agreement is carried out in accordance with applicable law. Consequently, the principle of light and cash has been realized in the land sale and purchase binding agreement carried out before a Notary / Land Deed Official, and at the same time as evidence that there has been a process of transferring land rights from the seller to the buyer. Thus, the legal regulations regarding the sale and purchase of land have been fulfilled and implemented, both regarding the transaction process, as well as the validity of the certificate document.

Furthermore, the Notary / Land Deed Official issues a Land Sale and Purchase Deed which functions as an authentic deed. As an authentic deed, the validity and correctness of its contents are guaranteed by law. In addition, the existence of a sale and purchase deed that acts as an authentic deed also provides legal certainty for the parties.

The existence of legal certainty over the land sale and purchase deed made before a Notary / Land Deed Official as an authentic deed, is in line with Lon Fuller's Legal Certainty Theory, that there must be certainty between legal regulations and legal implementation, so that positive law can be implemented, if it has entered into the realm of behavior, actions, and factors that can affect how the law works.

The evidentiary power of an authentic deed is perfect, "namely giving the parties and their heirs, or those entitled to them, a perfect proof of what is contained in it". Thus an authentic deed can be used as evidence, in the form of writing, in addition to other evidence, as it is determined that evidence consists

of written evidence, witness evidence, testimony, confessions and oaths. The authentic deed acts as the main evidence, if there is another party who postulates that he has a right, asserts his rights, or denies the rights of others, and points to an event, then he is required to prove the existence of the right or event.

An interesting case of judicial decision is in Nganjuk, where there was a dispute between the seller and buyer of land on which a house was built. The seller and buyer entered into a sale and purchase transaction before a Notary. The agreed price of the land was partially paid by the buyer, and the Certificate of Title in the name of the seller was pledged by the buyer, even though the price had not been paid in full. The seller soon passed away, and the only heir was her husband, as sole heir. The seller's Certificate of Title by her husband was registered with the BPN to be renamed in her name, both the seller's heirs and the buyer, both claiming that the disputed object land is theirs. "The District Court canceled the sale and purchase of the land, while the State Administrative Court canceled the Certificate of Title in the name of the seller's husband".

Based on these judicial decisions, it can be seen that the existence of a deed of binding sale and purchase of land made before a Notary as an authentic deed affects the issuance or cancellation of a certificate of ownership of land. The Sale and Purchase Deed is valid as perfect and main evidence, which affects the validity of the Certificate of Ownership as proof of legal land ownership. Cancellation of the agreement binding the sale and purchase of land results in the cancellation of the certificate of ownership of the land. In essence, the existence of a deed of sale and purchase and Certificate of Ownership as a form of legal protection for the subject of rights and the object of rights. In this case, it is in accordance with Satjito Rahardjo's Legal Protection Theory which teaches that the purpose of law is to integrate and coordinate various interests in society, by regulating protection and restrictions, and protecting a person's interests by allocating his basic rights based on power to the government in the context of these interests.

Today, we as members of society live in the digital era. This era is often referred to as the industrial era 4.0 or 5.0. The government through the Ministry of Agrarian Affairs and Spatial Planning-National Land Agency has officially issued a regulation on the use of electronic land certificates. In this certificate, *hash code*, *CR code*, and *single identity* are used. The application of this Regulation of the Minister of Agrarian Affairs and Spatial Planning-National Land Agency applies to the first electronic land certificate for land that has not been registered, or the replacement of analog certificates to electronic certificates for land that has been registered, by coming to the Office of the National Land Agency under the condition of meeting the requirements supported by documents related to the land sale and purchase agreement.

The driving factors for the issuance of electronic land certificates, namely factors facilitating land registration, legal certainty factors, legal protection factors, and factors reducing conflicts or disputes, factors reducing litigation in court, and increasing property registration in order to improve business ease

rankings. In addition, it is also driven by the factor of avoiding forgery, the electronic signature factor, the security guarantee factor, and the data integrity factor.

The regulation and nature of electronic transactions must be understood carefully and correctly by the parties performing legal acts, such as the sale and purchase of land, as well as by Notaries/Land Deed Officials and the National Land Agency. "Electronic transactions are legal actions carried out using computers, computer networks and or other electronic media" Basically, electronic certificates, namely certificates that are electronic in nature, which contain electronic signatures, and identities that indicate the status of legal subjects of the parties to electronic transactions, which are issued by electronic certification organizers.

The application of electronic transactions can be applied or carried out, both in the public and private spheres. Electronic transactions can be carried out on the basis of electronic contracts or other contractual forms. In addition, the implementation of electronic transactions requires an electronic signature that functions as the signatory's approval of electronic information or electronic documents signed with an electronic signature. In digital transactions, cashless payments can be applied, such as mobile banking or other virtual transactions. Thus, electronic transactions in today's digital era, as a global or international process, are caused by the exchange of ideas and culture based on the advancement of the world's telecommunications infrastructure and the internet. Similarly, electronic buying and selling transactions must adjust to national, regional and global regulations and policies. In line with *Sonya Meier's teaching*, "a contract is that not expressly prohibited by legal provision may nevertheless be held invalid, if it infringes certain standards or value regarded as important in particular society".

## CONCLUSIONS AND RECOMMENDATIONS

A land sale and purchase deed made before a Notary / Land Deed Official is called an authentic deed which functions as a means of proving the transfer of ownership rights to land, in the form prescribed by law, made by or before an official authorized for that, and carried out at the place where the deed was made.

The function of a land sale and purchase deed made before a Notary / Land Deed Official is to guarantee the correctness of the land status, the right holder, and the validity that the implementation of the sale and purchase agreement is carried out in accordance with applicable law. In addition, it is also proof that there has been a process of transferring land rights from the seller to the buyer, based on legal regulations regarding land sale and purchase, both regarding the transaction process and the validity of the certificate document.

The sale and purchase deed is the main basis for the issuance or replacement of a land title certificate. Thus, the cancellation of the sale and purchase deed can result in the cancellation of the land title certificate. As an authentic deed, this deed has perfect and absolute evidentiary power, and

provides legal certainty and legal protection for the parties, namely the seller, buyer, and other third parties involved in it.

The driving factors for the issuance of electronic land certificates are factors facilitating land registration, legal certainty factors, and legal protection factors, factors reducing conflicts or disputes, factors reducing litigation in court. Furthermore, it is driven by the factor of avoiding forgery, the electronic signature factor, the security guarantee factor, and the data integrity factor.

Electronic sale and purchase transactions must be carried out carefully and correctly by the parties to the legal act of sale and purchase of land, the Notary / Land Deed Official and the National Land Agency, because it is used with computer media, computer networks and or other electronic media, as well as the electronic issuance of certificates, which contain electronic signatures, and identity indicating the status of the legal subjects of the parties to the electronic transaction, issued by the organizer of the electronic certificate.

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