



Analysis of Sale and Purchase Deed Made before Land Deed Making Officials in Gianyar Regency

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ABSTRACT

In order to comply with the principle of freedom of contract, this study examines the content of sale and purchase deeds made before Land Deed Making Officials in Gianyar Regency as well as their form in relation to Article 1868 of the Civil Code. According to this study's findings, the sale and purchase agreement executed in front of Gianyar Regency's Land Deed Making Officer, in accordance with Article 1868 of the Civil Code, is a legitimate document. Although the form and content of the act are regulated by this Ministerial Regulation, its annexes may restrict flexibility and run the danger of breaching the law if the parties' agreement is not accommodated.

INTRODUCTION

The 1945 Constitution of the Republic of Indonesia establishes that the Republic of Indonesia is a State of Law (Mahfiyyah & Hafidz, 2021; Wahid et al., 2019). The principle of the Rule of Law ensures clarity, order, and legal protection, necessitating that every individual, society, government, and other state institutions fulfill their rights and obligations by the law (Sihombing, 2023). The fourth paragraph of the Preamble to the 1945 Constitution articulates the aspirations of the Indonesian populace to establish an equitable and prosperous society (Safitri, 2020). The attainment of these objectives and principles is executed through comprehensive development encompassing multiple facets of life, aiming to enhance the quality of life for the Indonesian populace (Minto, 2007; Saputri et al., 2020).

Civil law connections in society have evolved. Public awareness of the significance of ensuring legal certainty is growing, necessitating legal regulations to govern and resolve civil relationships, particularly in the property sector. Legal certainty regarding land registration is governed by Article 19 of Law Number 5 of 1960 on Basic Regulations of Agrarian Principles (hence referred to as the Basic Agrarian Law). The regulations about land registration are delineated in Government Regulation 24 of 1997 on Land Registration, particularly in Article 1, paragraph (1) (Aurelia et al., 2024).

The execution of land registration, as mandated by Article 19 of the Basic Agrarian Law, necessitates that the registration of land rights, transfer of rights, and issuing of proof of rights be conducted via a deed prepared by the Land Deed-Making Officer (Wulandari, 2020). Land Deed-Making officers are public officers authorized to create legitimate deeds pertaining to specific legal actions regarding land rights (Maryano & Hariansah, 2024).

The Land Deed Making Officer aids the Head of the Land Office in executing specific land registration tasks by compiling deeds that serve as the foundation for modifications in land registration data. Actions undertaken by land deed-making officials possess the validity of authentic deeds, as affirmed by public officials (Firanda, 2023; Nuryanto et al., 2022). The process, format, substance, and procedures for creating deeds that serve as the foundation for land registration about the transfer of rights to land and apartments are governed by the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 8 of 2012, which amends the Regulation of the Minister of State Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 regarding the Provisions for the Implementation of Government Regulation Number 24 of 1997 on Land Registration (hereinafter referred to as the Land Registration Implementation Regulation) (Fathoni et al., 2024; Firmansyah & Jamilah, 2022; Noor et al., 2023; Puspadma, 2023).

Conversely, the formation of a genuine deed must adhere to Article 1868 of the Civil Code. The item specifies that a genuine deed must fulfill all cumulative criteria (Japar, 2022). Suppose a deed, despite being signed by the parties, fails to satisfy the requirements of Article 1868 of the Civil Code. In that case, it cannot be deemed an authentic deed and possesses legal validity solely as a private

document. Consequently, the deed executed by the Land Deed Making Officer must adhere to applicable laws and regulations to serve as a robust foundation for the registration of rights transfer and land rights encumbrance, thereby preventing future litigation or claims from aggrieved parties (Wahyuni et al., 2024).

The Sale and Purchase Deed is a deed that the Land Deed Making Officer can create as a Party Deed or a Party Deed. M. Isa Arif states that a land deed made by a Land Deed Making Officer is a document prepared by a public official, specifically the Land Deed Making Official, serving as evidence of the execution of particular legal actions concerning land rights (Imam, 2023; MARANANTA, 2024; Muttakin et al., 2021; Sari, 2022). The document executed by the Land Deed Making Officer is referred to as a *partij* (party) deed, as it is created in the presence of a public official, specifically the Land Deed Making Officer (Arif, 1978; Tjandraningsih, 2023). The Deed of Sale and Purchase executed by the Land Deed Making Officer signifies the parties' intent to legally formalize the transaction involving the sale and purchase of the specified material object.

Before executing a sale and buy deed must be predicated on a mutual agreement between the parties that satisfies the legal criteria outlined in Article 1320 of the Civil Code. Subsequently, the Land Deed Making Officer may commence the preparation of the sale and purchase deed by the relevant laws and regulations. This is governed by the Land Registration Implementation Regulation, subsequently amended by the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2022 regarding the Delegation of Authority for Determining Land Rights and Conducting Land Registration Activities (hereinafter referred to as the Regulation on the Delegation of Land Registration Authority). Furthermore, the deed must be drafted in compliance with the code of ethics to ensure its legal validity and serve as conclusive evidence in court (Khadijah et al., 2023).

The Land Deed Making Officer is authorized to prepare a sale and purchase deed, an authentic document, by the standards outlined in the Regulation on the Delegation of Land Registration Authority. The format, provisions, and contents of the sale and purchase document are delineated in the Appendix to the Regulation on the Delegation of Land Registration Authority (Al Ayubi et al., 2024; Kuncoro et al., 2019; Saputro et al., 2021). A Deed of Partial is an authentic document created by the intentions of the parties before public officials, relying solely on the declarations or desires of the parties facilitated by public officials. Consequently, the Making Officer must execute the Deed of Land by the agreement established by the parties (Sasangka, 2005).

Nonetheless, the Land Registration Implementing Regulation predetermined the structure of the deed prepared by the Land Deed Making Officer. Therefore, if the Land Deed Making Officer fails to adhere to the format established by the National Land Agency, the Head of the Land Office may deny the registration of the deed. A deed that fails to adhere to this format is inadmissible as evidence for the execution of particular legal acts concerning land rights or property rights over flats, hence rendering it unsuitable for

substantiating alterations in data pertinent to land registration resulting from such legal acts.

As a Deed of Partij, the sale and purchase agreement fundamentally consists of an accord between the parties, articulated in the form of a deed and executed in the presence of an authorized public official. Consequently, the relevant authorities must validate the parties' agreement to guarantee its authenticity, free from force, pressure, or intimidation by the opposing party. This underscores the significance of the idea of freedom of contract. It is presumed that the sale and purchase deed must adhere to the stipulations outlined in the Land Registration Implementing Regulation, as detailed in the accompanying attachment. In such a scenario, there exists a possibility that any agreement between the parties, which has not been formalized or articulated in the sale and purchase document, will remain unaddressed. The legal purchasing and selling process, as specified in the genuine deed, constitutes an agreement predicated on the parties' consent to execute the transaction. The freedom of contract should continue to be upheld as per the agreement. As prescribed in the Regulation, the format of the deed must not diverge from or disregard the principle of contractual freedom.

According to the aforementioned problem definition, two primary issues underlie this research. The Land Deed Making Officer possesses the authority to create a legitimate land sale and purchase deed, as outlined in Article 2, paragraph (2) of Government Regulation of the Republic of Indonesia Number 24 of 2016, which amends Government Regulation Number 37 of 1998 regarding the Regulations on the Position of Land Deed Making Officials (hereinafter referred to as PPAT Position Regulations). The Deed of Partial encapsulates the agreement between the parties. The standard rules in the Land Registration Implementing Regulation constrain the shape of the sale and purchase document. Hence, the parties' agreement cannot always be fully accommodated. Concerning watersheds, a legitimate deed must comply with Article 1868 of the Civil Code, which states that the deed's format is dictated by law, and the standard format should not constrain the content. Consequently, clarification is required from the National Land Agency concerning the feasibility of incorporating language in the deed to encompass all parties' agreements. Otherwise, the deed may be deemed legally flawed and could forfeit its standing as an authentic deed, reducing it to merely a written document.

Concerning *das sein*, the sale and purchase deed drafted by the Land Deed Making Officer is a legitimate Party Deed that embodies the intentions and agreement of the parties in the presence of public officials. The Land Registration Implementing Regulation prescribes a standard structure for sale and purchase deeds, potentially constraining the comprehensive inclusion of the parties' agreement. The sale and purchase deed must incorporate provisions that uphold freedom of contract, ensuring that the agreement authentically represents the parties' voluntary intentions without duress or coercion. The sale and purchase deed should accurately embody this autonomy rather than merely adhere to a conventional template that may inadequately represent the transaction.

LITERATURE REVIEW

Authority Theory

By the rule of law, which upholds the principle of legality in Indonesia, governmental authority is derived from laws and regulations. These laws and regulations establish government authority through three mechanisms: attribution, delegation, and mandate (Ridwan, 2016; Wardana, 2020). Authority is the legal prerogative conferred to a position by the statutes and rules that regulate it. Authority in state administrative law can be acquired via attribution, delegation, and mandate (Ardhita & Yunanto, 2023). Attribution authority confers direct power to a position by rules and regulations. Delegation is the transfer of authority executed by the rule of law. Unlike the former, a mandate constitutes a delegation of authority to perform obligations when the authorities are incapacitated (Ghansham Anand & Kn, 2018; Kumara Putra, 2021).

Comparative Theory of Law

Soerjono Soekanto asserts that the utilization of comparative law is predicated on its advantages in offering a foundational comprehension of legal systems and elucidating the distinctions and resemblances across diverse legal domains (Soekanto, 2014). The principal objective of comparative law is to facilitate the development of regulations, which include aiding in the creation of new regulations, preparing for the uniform harmonization of rules, and conducting preliminary assessments of foreign regulations for potential adoption. Comparative law encompasses the judicial domain, influencing the entire judicial system, international treaties, and legal translation. A way for studying law is the comparative approach, which primarily emphasizes the comparison of two or more distinct legal systems (Suherman, 2008).

Freedom of Contract Theory

The notion of freedom of contract cannot be understood unconditionally, as it is constrained by legal rules, public order interests, and moral standards (Subekti, 2005). This restriction seeks to rectify the inequity in the contractual relationship between parties possessing disparate bargaining power. The agreement is founded on contractual freedom between two parties of equal standing, achieved through reciprocal negotiation (Rezaldy et al., 2024). Nevertheless, several corporate agreements currently occur without an equitable bargaining process. Conversely, one party frequently establishes the conditions in a pre-prepared standard agreement and presents it to the opposing party for endorsement. This offers minimal possibility for the opposing party to negotiate the current arrangements. This type of agreement is called a standard agreement or adhesion agreement. According to Article 1320 of the Civil Code, the principle of freedom of contract pertains to the agreement's content, namely the liberty to decide 'what' is agreed upon and 'with whom' the agreement is established. The contract is legally binding as specified in Article 1338, paragraph (1) of the Civil Code. This idea is founded on the universal tenet of voluntary autonomy (Widijawan, 2018). Freedom of contract constitutes a human right that can only be exercised within the bounds of the law. Bentham, a proponent of utilitarianism, posits that freedom of contract entails an individual's capacity to

act unencumbered, contingent upon their bargaining position, to fulfill their needs (Kosasih & Haykal, 2021).

METHODOLOGY

This study employs juridical-empirical legal research by gathering information directly from the field. A juridical-empirical methodology is employed to assess and quantify the effectiveness of the implementation of relevant laws and regulations (Basiman et al., 2023; Soemitro, 1990). This research employs several methodologies, including legislative and conceptual approaches (Salmon, 2024; Subekti et al., 2023). This study utilizes primary data acquired directly from research subjects via interviews, as well as secondary data gathered through library research on pertinent legal literature. The gathered data is thereafter subjected to thorough examination as an extensive study resource, with the findings given as descriptive analysis.

RESULT AND DISCUSSION

Article 1338, paragraph (1) of the Civil Code embodies the notion of contractual independence. The article's term 'all' encompasses legally controlled and unregulated agreements. According to these regulations, each deal is obligatory for the parties, and each individual possesses the autonomy to consent, provided it does not contravene decency and public order as outlined in Book III of the Civil Code. Moreover, the stipulations in Book III are predominantly supplementary laws (annulled recht) rather than mandatory laws (winged recht).

The notion of freedom of contract cannot be understood unconditionally, as legal rules, public order interests, and moral standards constrain it. The limitation of the principle of freedom of contract seeks to rectify the inequity in contractual relationships between parties lacking balanced or equal bargaining power. Agreements are fundamentally predicated on contractual freedom between two parties of equal standing, achieved through a negotiation process. Nevertheless, numerous corporate agreements now do not undergo an equitable negotiation process. Conversely, one party frequently establishes the conditions in a standardized agreement template that has been printed and subsequently presents it to the other side for endorsement. This restriction restricts the other party's ability to negotiate the stipulated parameters. This type of contract is called a standard, uniform, or adhesion agreement.

The agreement is asserted to have satisfied the concept of freedom of contract upon fulfilling Article 1320 of the Civil Code, invoking the applicability of Article 1338 paragraph (1) of the Civil Code. Article 1320 of the Civil Code delineates the prerequisites for the validity of a contract, but Article 1338, paragraph (1), has a provision that implicitly illustrates the notion of contractual freedom. Regardless of the degree of freedom in contracting, an agreement is not valid unless the stipulations of Article 1320 of the Civil Code are satisfied.

All stipulations in the accord are documented in writing, executed by authorized public officials, and possess the status of valid deeds. Consequently, all areas of consensus between the parties must be incorporated in the deed. The document substantiates the presence of an agreement about a specific issue, the

degree to which the accord was established, and the written agreement complies with the stipulations of Article 1320 of the Civil Code. This is stipulated in Article 1338, paragraph (1) of the Civil Code.

Assume that an agreement fulfills the legal requirements, including the existence of a contract between the parties, a legally competent subject, a transparent object, and a purpose that does not contravene the Law. In that instance, the agreement can be deemed consistent with contractual freedom.

The Land Deed Making Officer possesses the authority to create authentic deeds, including sale and purchase deeds, under Article 1868 of the Civil Code and other regulations, such as Law Number 30 of 2004 regarding the Notary Position, Law Number 2 of 2014 amending Law Number 30 of 2004 concerning the Notary Position, as well as the Regulations of the PPAT Department and the Regulations of the Land Registration Implementer. While the Annex to the Land Registration Implementation Regulation possesses equivalent legal authority to its main text, the stipulations governing the sale and purchase deed frequently fail to entirely reflect the parties' agreement, which may compromise the deed's authenticity. To address this issue, enhancements and elucidations from pertinent agencies must reconcile the disparity between stringent regulations and practical necessities. Amending the Land Registration Implementation Regulation is crucial to clarify that the Annex solely governs the fundamental structure of the deed. The deed's content may be modified per the parties' agreement, provided it does not contravene the Law. The formulation of technical guidelines and the participation of Land Deed Making Officials in revisions will facilitate a balance between regulation and practical flexibility. This technique allows the sale and purchase deed to maintain its role as a legitimate document, ensuring legal certainty by the parties' requirements.

According to the Attachment of the Land Registration Implementation Regulation, the sale and purchase deed is unfilled. The Land Deed Making Officer's sale and purchase deed is frequently regarded as an administrative adjunct in transferring land rights. The parties execute the sale and purchase deed in the presence of the Land Deed Making Officer, accompanied by a binding agreement before the execution of the sale and purchase deed. This aims to mitigate potential future dangers. The Land Deed Making Officer drafts the sale and purchase deed by incorporating the parties' agreements, as the deed represents their mutual accord.

The sale and buy deed is formulated according to the Attachment in the Land Registration Implementation Regulation, serving as a standard template with the blank sale and purchase deed. Nevertheless, Land Deed deed-making officials frequently modify the content of the deed by adding or subtracting information. Typically, the terms of the sale and purchase deed are supplemented with a notation indicating that this addition constitutes an agreement between the parties by applicable laws and regulations. The Land Deed Making Officer is not obligated to adhere to the blank sale and purchase deed outlined in the Attachment to the Land Registration Implementation rule; this rule guides the Officer in drafting a sale and purchase deed. Consequently, the Land Deed Making Officer is permitted to exercise creativity in augmenting

the contents of the sale and purchase deed if the parties' agreement is not reflected in the existing blank sale and purchase deed. The addition typically pertains to a transaction about tax obligations.

The National Land Agency, specifically the Gianyar Regency Land Office, has affirmed that the sale and purchase deed, as outlined in the Attachment to the Land Registration Implementation Regulation, may be supplemented provided the parties mutually agree upon it and do not contravene existing regulations. Including the sale and purchase deed does not alter its status as an authentic deed, rendering it a private deed.

Assume the description above pertains to the Attachment of the Land Registration Implementing Regulation, which governs the blank of the sale and purchase document. The Attachment to the Land Registration Implementation Regulation governs not only the form of a deed, as outlined in Article 38 of the Law on the Position of a Substitute Notary, but also the content of the clause specified in the deed of sale and purchase. In practice, the Land Deed Making Officer, while adhering to the provisions outlined in the Attachment to the Land Registration Implementation Regulation, also incorporates additional content into the sale and purchase deed if there exists an agreement between the parties that has not been addressed. The deed's contents encompass the comparison, premises, body, and conclusion of the sale and buy document.

Making Officials frequently assert that the Land Registration Implementing Regulation should solely govern the format of the sale and purchase deed without delving into the substantive content of the article clauses as outlined in the Attachment to the Land Registration Implementation Regulation. The purpose is to ensure that the arrangements for the sale and purchase deed, within the jurisdiction of the Land Deed Making Officer, are consistent with the notarial arrangements specified in Article 38 of the Law on the Position of Substitute Notary. The objective is not to standardize the sale and buy deed, as it is a document specific to the parties involved, often containing numerous agreements that must be incorporated into the deed. Nevertheless, the sale and purchase deeds outlined in the Attachment to the Land Registration Implementation Regulation have proven inadequate. Furthermore, it facilitates adaptation to the progression of an ever-intricate period. The provisions in the Annex to the Land Registration Implementing Regulation hinder Land Deed Making Officials from adapting to the parties' agreements, which are increasingly comprehensive and intricate with time.

The findings of the interview regarding genuine actions can be articulated as follows:

1. The interview with Mr. Putu Agus Indra Bangsawan, the Land Deed Making Officer in Gianyar Regency, revealed that the Deed of Sale and Purchase was created and prepared by the Attachment in the Land Registration Implementing Regulation, serving as the standard format and template for the Deed of Sale and Purchase. Nonetheless, Land Deed deed-making officials frequently modify the content of the deed by adding or removing elements. Typically, the terms of the sale and purchase deed are supplemented with a notation indicating that this addition constitutes

an agreement between the parties by applicable laws and regulations. The Land Deed Making Officer is not obligated to adhere to the blank sale and purchase deed specified in the Attachment to the Land Registration Implementation Regulation; the regulation serves as a reference for the Land Deed Making Officer in creating a sale and purchase deed. Consequently, the Land Deed Making Officer is permitted to use creativity in supplementing the terms of the sale and purchase deed if the parties' agreement is not reflected in the current blank document. The inclusion in the sale and buy deed does not alter the status of the authentic deed to that of a private deed. The aforementioned description pertains to the Attachment of the Land Registration Implementing Regulation governing the sale and purchase deed's format. Consequently, the Attachment to the Land Registration Implementation Regulation encompasses not only the deed's form, as outlined in Article 38 of the Law on the Position of a Substitute Notary but also the substantive content of the clauses within the sale and purchase deed. In practice, the Land Deed Making Officer, while adhering to the provisions outlined in the Attachment to the Land Registration Implementation Regulation, also incorporates additional content into the sale and purchase deed if there exists an agreement between the parties that has not been addressed. The deed includes the comparison, premises, body, and conclusion of the sale and buy document.

2. The interview results with Mr. I Nengah Renaya, the Land Deed Making Officer in Gianyar Regency, revealed that the Deed of Sale and Purchase in the Attachment to the Land Registration Implementation Regulation is a standardized form frequently regarded as an administrative adjunct in the land rights transfer process. Consequently, the Land Deed Making Officer is permitted to use creativity in augmenting the contents of the sale and purchase deed if the parties' agreement is not reflected in the existing blank document. The document also stipulates the legal domicile of both the seller and the buyer to address potential future issues.
3. The interview with Mr. A. A. Gede Agung Suryaningrat, the Land Deed Making Officer in Gianyar Regency, revealed that the Deed of Sale and Purchase, as outlined in the Attachment to the Land Registration Implementation Regulation, is incomplete. The Land Deed Making Officer drafts the sale and purchase deed by including the agreements between the parties, as the deed reflects the parties' actions. Assume that the basis of the sale and purchase deed of the Land Deed Making Officer is not established in the Attachment to the Land Registration Implementing Regulation. In that scenario, the Land Deed Making Officer may incorporate the Premise by the parties' requirements. Nonetheless, the absence of any additions to the premises poses no issue. Similarly, the provisions of the sale and purchase deed executed by the Land Deed Making Officer may be modified or supplemented by the requirements or agreements of the parties while adhering to the relevant laws and regulations. Despite adhering to the conventional format outlined in the

Land Registration Implementing Regulation, Land Deed Making Officials frequently modify or supplement the deed's contents based on the parties' agreement, including stipulations related to tax payments.

4. The interview results with Mr. A I Gusti Ngurah Putu Berna Adiputra, the Land Deed-Making Officer in Gianyar Regency, revealed that the sale and purchase deed was executed by the parties in the presence of the Land Deed-Making Official, preceded by a binding sale and purchase agreement. This aims to mitigate potential future dangers. Land Deed Officials frequently modify the substance of the deed by adding or subtracting relevant information. The Land Deed Making Officer executes this deed by the parties' agreement (*partij action*), which may be preceded by a binding sale and purchase agreement to mitigate future hazards. Moreover, the sale and purchase deed serves as the foundation for the transfer of land rights. It employs a standardized blank deed established by the government via the Attachment to the Land Registration Implementation Regulation. The document encompasses legal stipulations deemed crucial in land acquisition and disposition transactions, including details regarding the subject matter, which comprises the type and number of the right, the date and number of the survey letter or situational drawing, the area and location of the property being sold, along with the sale or purchase price. Furthermore, the deed includes a declaration from the seller affirming that the item being sold is devoid of conflicts, is not subject to seizure, is not encumbered as collateral for debts—whether documented in the certificate or otherwise—and is free from any further burdens in any form.
5. The interview results with Mr. I Gede Widiastika, Coordinator of the Sub-Maintenance of Land Rights, Space, and Development of Land Deed Making Officials at the Gianyar Regency Land Office, indicated that sale and purchase deeds prepared by the Land Deed Making Officer, as outlined in the Attachment to the Land Registration Implementation Regulation, may be amended provided that the parties mutually agree upon such modifications and do not contravene existing regulations. Including the sale and purchase document does not alter its status as a genuine deed, rendering it a deed under hand.

CONCLUSIONS AND RECOMMENDATIONS

The authority of the Land Deed Making Officer to execute a sale and purchase deed is derived from attribution. Article 1868 of the Civil Code serves as the foundation for the sale and purchase deed as a legitimate document, reinforced by the Notary Position Law, the Substitute Notary Position Law, the PPAT Position Regulation, and the Land Registration Implementation Regulation. The Annex to the Land Registration Implementation Regulation, which governs the form and substance of the deed, may constrain the parties' agreement, diminish flexibility, and pose a danger of contravening the Law. In the execution of sale and purchase deeds by Making Officials in Gianyar Regency, it was observed that Article 38 of the Law on the Position of Substitute

Notary delineates that each deed comprises an introduction, a main body, and a conclusion. Conversely, Articles 95 and 96 of the Land Registration Implementing Regulations address the substance of the deed.

Land Deed Officials must regularly coordinate with the local Land Office when preparing a sale and purchase deed, particularly if alterations to the terms are required. There is apprehension that altering article clauses without mutual consent may reduce genuine deeds to mere private agreements. The Land Deed Officials and the Ministry of Agrarian and Spatial Planning/National Land Agency must interact to improve their synergy.

ADVANCED RESEARCH

In writing this study, we realize that there are still many shortcomings of this research from all aspects considering the limitations of the researcher himself. Therefore, we hope for criticism and suggestions that can help us in the future in continuing to write research that is the same or different from this research in the future.

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