

**LAND USE RIGHT TRANSFER SINCE THE ESTABLISHMENT OF THE  
MINISTRY OF LAND AND SPATIAL PLANNING (2015) IN INDONESIA:  
RESULTING CHANGES**

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**Abstract:** *The study seeks to interrogate the resulting changes in land use and transfer since the establishment of the ministry of land and spatial planning in the year 2015 in Indonesia. The establishment of the Ministry of land and spatial planning was as a result of a merger of the pre-existing numerous legislations in Indonesia on land right transfer, bringing in a new land right transfer regime which ought to be interrogated and explained through research. The role of the official certifier of deeds, the Pejabat Pembuat Akte Tanah (PPAT) has been reinforced under the new dispensation. Land use right transfers follow the instruction stated by law in order to earn the legal certainty and legal force of the land use right. The transfer process may be executed within the legal act, one of the acts is the buy and sell statement followed by the notary deed documents as its legal support compiled by authorized officers. The clauses of buying and sale deed are described through law approaches and collect the legal materials, then it will be described in the inductive main idea. The land use right transfer through buying and selling is compiled by using PPAT, and the deed will be a requirement to administrate the legal certificate of the land which later it will be legal ownership document toward the land. The changes to land use right transfer through buying and sell statement by authority provides legal acts are highlighted as an easier way for the buyer in order to transfer the ownership over land in Indonesia.*

**Keywords:** Agrarian Law, Pejabat Pembuat Akte Tanah (PPAT), Land Reform, Buy and Sell Deed, Transfer, Land Use Transfer

**Research Area:** Law

**Paper Type:** Research Paper

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## 1. INTRODUCTION

Land and buildings are precious assets as their ownership is able to be transferred to other people who desire to own them. The ownership transfer of land and buildings consist of two aspects which are the transferor and the transferee of the land use right. Both parties must face the right and duty in accordance with the land use transfer constitution (Harahap, 1986). In Indonesia, there are changes resulting from changes in laws and processes of transfer of land use rights with the pinnacle being the establishment of new functions under the land and spatial planning ministry (Asnawi, 2017). This paper seeks to outline how the transfer of ownership in the land has changed in Indonesia, thanks to the new legal dispensation.

The transfer ownership of land and buildings are much related to an act as it must be followed by legal evidence. The evidence may use several documents such as buy and sale deed, grant, testament, the statement of land and building transfer, and etc. in order to grant the legal certainty of the landlords, every ownership transfer process must follow legal constitution regulation which governs every rights (Harahap, 1986).

Every legal practitioner must be aware of the process need to effectively pass through the interest in land from one party to another. Apart from this, there is a need to understand the various regimes governing land within a jurisdiction. There is land delaminated for public use, whose interests vest in the state and cannot pass from an individual or a company to another, except by the authorization of the state (Meinzen-Dick et al, 2008). Further, there are customary or community lands which are treated as trust land. These can also not freely pass from a party to the next except as provided for under the laws regulating trust or community land.

Private land, which is land owned by citizens in their private capacity can be conveyed from a party to next. However, relevant procedures must guide such transactions. In Indonesia, there has been the development of the land regime over the past; with the nation moving from government land to community land and now private ownership of land being a common aspect of land ownership in Indonesia. It is the concept of the transfer of the right of use in land from a party to the other in Indonesia that is most intriguing (Zhu & Hendricus, 2015). This is a fairly new concept with new rules guiding the same. Interrogation of the rules is there for called for; whether they guarantee good tittle and whether such rules facilitate the rights of Indonesians to own property.

The land use right transfer through buying and sale deed is compiled by granting authorities to sell the land. Authorities granting is the process of where a person grant authorities to other person, who accepts the authorities in the name of him/her to declare the statement (Sardana, 2018). The granted person possessed authorities to administrate the belongings as authorities granter.

While transferring the ownership, through the buy and sell deed could be received by the authorities to sell the land in front of the notary. In this buy and sell process, the certificate of ownership does not directly change caused by several reasons; including taxation and previous challenges in law with transferring authority not clearly spelt out in law (Mawardi, 2013). In the deed, one of reason to sell the land is because of the taxation problems. In the other hand, the ownership transfer that does not follow recent regulation of the state is considered as an illegal movement and law misuse. Thus, the paper sets out to investigate how the post-2015 legal dispensation on the land use right transfer in Indonesia has brought about changes to Indonesian land transfer law; and whether this is a better regime than the previous (Harjanto & Gunarto, 2018).write down the introduction and other paragraphs of the paper in Times New Roman and font size twelve (12).

## **2. LITERATURE REVIEW**

The National Revolution in Indonesia commenced in the year 1945, driven by the political elite of the country as against the policies imposed in the nation by the Dutch. Among the core issues that the revolution sought to accomplish was the revamp of the agrarian land policy (Utrecht, 1969). There was need not only to safeguard the interest of Indonesia as a republic on matters land but also the need to ensure that Indonesians were able to benefit from their own land as individuals or corporations. The much-desired reforms began by the passing of the Act No. 5/1996, with the powers to decide on land issues bestowed on the president who was to exercise such through the parliament (Peluso, 2008). The Act formed the basis for land reform in the country in the years to come; to the present developments considered under this paper.

The 1960 Act performed three major functions. The first being transformation of the agrarian law applicable in Indonesia from the old colonial agrarian system to a system akin to

the new nation of Indonesia. Indonesia was largely a farming nation. Most Indonesians during the colonial period and after were peasant farmers who relied on the land for subsistence farming to support themselves. The colonial agrarian system, however, was a reflection of a commercialized system that where farming was mainly for profit and conducted on a large scale for the benefit of the colonial government (McCarthy, 2010).

A common feature of the colonial land tenure in Indonesia was the dual system of land rights; with Dutch land rights different from Indonesian land rights. This brought about complications and even curtailed the right and mode of transferring the interest in land from one party to another, especially for Indonesians who were considered as indigenous and therefore subject to customary law in the understanding of the (Dutch Lont, 2002). There was a need to come up with a simple land regime that reflected the condition and the situation of the Indonesian people. Indonesians lacked security inland during the colonial system of land ownership and transfer. There was a need to push through for changes that would lead to guaranteeing security in land for Indonesians (Dutch Lont, 2002). This developed through the years following the passing of the Act No. 5/1996.

Buying and selling are the exchange of goods using money. A buying and selling is an agreement between one person and another, where one party binds themselves to deliver the goods to another party who will pay the price on the basis of liking. Land buying and selling is a legal act that is between two parties which according to customary law are more experienced in real, clear and cash terms (Massier, 2008). The legal condition of land sale and purchase according to customary law is the fulfilment of three things, cash, real, and bright (Lukito, 2012). The principles of buy and sell are compiled to government regulation number 24 of 1997 about the land registration started from July 8th, 1997. In accordance with the commandment of buying and sale deed of land by PPAT, the land use right also transferred from seller to the buyer. PPAT deed is a mandatory document in land use transfer registration (Hartanto, 2015).

The buy and sell of land authorities could be executed by using selling authorities. The authorities Granting is regulated in article 1972 BW, it is an agreement of a person to grant his authorities to the authorities' receiver in order to commence a legal action in the name of landlords (Hidayat, 2016). This authority granting is a representation. The granted person must use the authorities to administrate and manage the unsolved business of the granter.

Volmacht is a term for the representation of the person who has been granted to take care of the stuff they asked to handle. This is Indonesia refers to a proxy appointed through a power of attorney to handle business on behalf of another. It originates from the Dutch language as it was used in the colonial system to refer to a document known in the common law legal system as the power of attorney, or a person appointed under a power of attorney. Basically, the Volmacht is the main objective of the authorities granting agreement (Harahap, 2017). By this process, the granted person will have full access and authority to commence legal action in the name of the granting authorities and rights of the landlords.

### **3. METHODS**

The study uses the constitution approach as the study tries to reveal the law itself which is related to land use right transfer through buy and sell statement and selling authorities. The law material used in this study is in the form of secondary data which are law regulation, government regulation, statement deed, and buy and sell deed (Endrawati, 2017). The primary and secondary data are collected and being copied along within other literature

and document publish which in accordance with law material collection of the thematic toward the related topic. The materials are being analyzed by using descriptive methods and inductive main idea patterns.

The research approach adopted for the paper traces back to the principles underlying the issue of land in Indonesia. The agrarian land regime emerges as the key land regime in Indonesia, bot during the colonial era and post-colonial Indonesia (Bowen, 2003). To begin with, is traced to the kind of relationship that exists between land the society in Indonesia. There are close ties between the nation's social setting and the land, and this was picked up by the nation's colonial masters who came up with a divided system; having the Dutch system and the adat system under the colonial land regime (Nurjaya, 2011).

The emergence of Indonesia from the colonial rule brought about a new perspective of land, as the concept of land rights for the indigenous people came about; as this was unfathomable under the colonial rule in Indonesia. Land rights were tied to the social function of land in Indonesia (Ter Haar, 1948). Indonesia people did not acquire personal rights over land but rather were bestowed with customary rights over land as a result of the efforts of their leaders who brought about the development including the Public Court whereby customary rights over land were recognized (Ribot, 2003). Commencing research within a social context, the findings on the struggle for land lands in the Dutch colonial era to present day, whereby a regime has emerged allowing people to transfer their right and interest in land under a contractual agreement, can be presented as in the proceeding paragraphs.

Analyzing the land regime in Indonesia, this can be traced back to the Law 5/1960; a law akin to the colonial land regime established in the country by its colonial masters. This law laid the platform for the Agrarian land regime that the nation has been struggling to break away from (Lucas, 2003). Indonesian economy at the time was premised on agriculture and the law sought to implement agrarian principles that would eventually lead to the tremendous growth of the nation's agriculture-based economy (Contreras-Hermosilla & Chip, 2005).

The research method adopted for the study leads to a brief political history of Indonesia following its independence and the subsequent push towards land reforms in the country. The Communist Party in Indonesia was opposed to the principles of the agrarian law and thus pushed for land reforms based on the peasant ways of life of many Indonesians (Bola, 2017). The process of transferring the right inland in Indonesian had been complicated by the agrarian principles on land as land could not freely be moved between willing parties as evidenced in conveyance practices in various common law jurisdictions around the world (Jayanti, 2017).

The Indonesian government acknowledged the calls for reforms within the Indonesian land regime. However, there was evident reluctance in action as the agrarian land laws favoured the government as well as agricultural organizations that were major contributors to the Indonesian agriculture driven economy; resulting to land ownership inequality in the country (Yulia., 2017) Failure to drive through effective land reforms through legislative and policy changes led to further rising in land ownership inequality in Indonesia.

Land reforms in Indonesia picked up in the latter stages of the twentieth century, with the last two decades of the century seeing the switch in land policy in the country to carter for peasant interests (Putri, 2018). During this time, the government began issuing titles to its citizens. This made the concept of land ownership in the nation to be clearer, as tittle signified the transfer of the right inland to individual peasant owners. The Indonesian

government began recognizing the right to own property vested in its people, including the right to own land which was considered property for redistribution following agrarian land laws and principles (Richard et al, 1997). The titling system in Indonesia was however criticized as it seemed to not to convey full rights in land; but rather a scheme crafted by the government to source out labour from peasants in the nation and to boost the nations' economic output (Kawuryan, 2014). Thus, there was a need for further change and transformation when it came to the issue of land laws in Indonesia.

In the twenty-first century, the Indonesian civil society has been on the rise and the nation has grown more aware of the land regimes in other common law jurisdictions (Supandi, 2012). The efforts of the members of the civil society saw major reforms in the nation, including the merger of land functions under the ministry of land and spatial planning. This has seen the right in land transfer regime investigated under this paper. Indonesian land reforms have not largely been driven through cases litigated and decided in courts of law, but have been propelled by the movements among the peasants, economic leaders as well as the rise of the civil society in the nation (Tarunawan et al, 2016). It is through the consideration of all these factors in Indonesian land reforms that the paper is presented.

#### **4. RESULTS AND DISCUSSION**

##### **4.1 Land Use Right Transfer Through Buy And Sell Deed**

The trade of land use between buyer and seller may use the respective bargaining theory and acceptance theory. In bargaining theory, the important aspects consist of two main points which are offering and acceptance. The process of buying and selling by landlords is started with the offer sent to the buyer that may approve the acceptance. The buy and sell process does not include duties and rights. The duty may appeal if the payment is fully paid. The previous landlord may sue the process of the trade itself. The process of buying and selling land trade does not mandate people to create trade.

According to the acceptance theory, the trade of land use right bind every sectors who come when the deed of offering is written, the acceptance is proved by actual action by the buyer by paying the partial money from the agreed price and sign a statement provided by developer which later stated as statement deed (Adlan, 2016). Based on this agreement deed, the agreement of buy and sell is then written which is called buy and sale deed.

The form of the sale deed is fixed according to the ministry of agrarian number 11 of 1961, according to the decision of home affairs ministry 104/DJA/1997, on august 06th 1997. supported by the regulation of the head of the ministry if defence number 6 of 1989 about the fixation of the deed of officers deed authorization form which is published on September 11th, 1989, it is stated that the old form of deed is still legal and may be used as legal document until December 31th 1989. Article 3 of the regulation states that:

- a. the form of sale deed, bequest, cerditverband (which means credit security on adat/customary land), partial deed and the distribution is already stated in the examples attached in this regulation.
- b. the type of deed except for the listed deed states on act 1 of this article, the form will be determined in future within its regulation.
- c. as the form of an unfinished deed, stated in act 2 of this article, still not determined, they must use the form of another deed in accordance with the regulation of Ministry of agrarian number 11 of 1961 jo the decision of Ministry of Home Affairs number SK 62/DJA/1978.

The sale deed of land is not legal ownership toward the land, it is merely a proof of the buy and sell process and a legal document states that the first party already received amounts of money from a second party (Fitria, 2013). In order to fully transfer the land use right, the buyer must do registration in order to receive the legal certainty and legal force in the form of a new certificate. The certificate became the ultimate legal ownership of the new landlord as stated in article 19 act (2) alphabet c law number 5 of 1960. This presents a challenge as opposed to the titling system previously used in Indonesia, it becomes confusing for some parties to determine at what point a conveyance transaction incomplete and interest completely passes from party A to party B.

The certificate is a strong document that contains juridical and physical information of the land which means, as long as the data could not be proven on the contrary, the juridical and physical within the certificate must be accepted as true information in both daily legal action and legal action on-court (Suhattanto, 2018).

The land reforms introduced in Indonesia are akin to the land regimes witnessed in more advanced legal systems around the world, such as the UK and other common law countries. In as much as the land law in Indonesia has firm rooting on the nation's culture and customs, private ownership of land is becoming more common, thus the advancement in-laws on the transfer of the right inland (Ting et al., 1999).

In most common law countries, the process of transfer of an interest in land commences by the parties entering into a contract for the sale of land, commonly known as the agreement for sale. This agreement is binding between parties and outlines their roles and responsibilities in the process of conveying the interest in such land from the seller to the buyer. In most of these legal regimes, it is a requirement that such sale agreements be in writing. This is to eliminate the element of fraud which could crop up in land transactions and prove costly to the affected party (Larmour, 2002). There is no much difference with the buyer-seller deed system discussed in this paper as evidenced in Indonesia. Parties must first agree between themselves on their desire to transfer the right to use inland from one party to another. Whether this is put in writing or not, an agreement must first exist between a seller and a potential buyer; leading to the issue of the buyer-seller deed (Home, 2007).

In common law countries, there is no requirement for the registration of the agreement for sale for it to bind the parties to their commitments of transacting inland. However, it is a common practice to have the same drafted by a lawyer/advocate/attorney/solicitor of the seller and the same reviewed and accepted by an equivalent party representing the buyer (Van der Molen, 2002). This is usually followed by a stage whereby all relevant documentation with respect to the title in the land whose interests are supposed to pass from the seller to the buyer is sought and compile and presented to the relevant authorities (Bogaerts, 2002). A transfer is then lodged with relevant authorities signify the intention of the seller to transfer the title and interest in land from one party to the next. Afterwards, a title deed or a certificate of title is an issue in favour of the buyer after relevant taxes such as stamp duty has been paid (Toulmin, 2009).

This process is quite similar to the development in Indonesia that is scrutinized in this paper. The transfer of title, as well as interest in land, is becoming a very private affair in Indonesia, with the government working out ways within which to facilitate the wishes of the Indonesian people to pass tittle and the right to use land between them. Further, the Indonesian government is putting in place relevant authorities to ensure that only good tittle in land passes. The requirement of buyer-seller deed in Indonesia ensures that the buyer and

the seller are freely willing to transact inland, and the requirement for registration is a way of ensuring that rightful title passes.

#### ***4.2 Buy And Sell Of Land Within Selling Authorities***

The authority to sell is conducted by deed notary. The authority is related to power and permission to sell the land. The granted person sign sale deed or releasing the right of the land with compensation, determine the requirement of the sale and the price, receive the compensation money and provide a receipt after the payment, and deliver what was sold to the buyer (Rainoer, 2016). The authorized person also possessed a right to face the notary/PPAT, to every person who is related to the implementation of the deed, in order to ask for the details and pay some money to determine the number, deliver the receipt.

The buy and sale of the land through granted authorization have occurred if the buyer and seller reach an agreement over the price and right to the land. The granted person may buy the property of the landlord who gives them the authority, and the landlord may sell their property to the granted person (Hamdi, 2016).

Making a sale and purchase deed is made in the presence of an authorized PPAT which will be carried out later by the first party or the second party, as the proxy of the first party, carried out with the terms and agreements that are common for a sale and purchase of land (Setiabudhi, 2016). The power to carry out and carry out all legal actions is irrevocable and is an inseparable part of the agreement without power. The power is granted by releasing all regulations stipulated by the law governing all causes and the basis for ending power of attorney, in general (Joni, 2016).

This arrangement mirrors the common law principle of freedom of contract which allows parties willing to engage in a legal transaction to come up with the terms of their engagement so that such a transaction may be successful as long as other element so of a contract is evident. This encourages private ownership of land under the Indonesian land regime which was not so common in the past. The right of many Indonesians; to own and dispose of property and with respect to interest and the right for use of land has been recognized. It can be seen as a move away from the Dutch agrarian system and promotion of the interests of the rights of natives, who can now own land and transfer the same as peasant farmers.

#### ***4.3 Advantages And Disadvantages***

There are significant advantages and disadvantages of this system as discussed under the subheadings. Beginning with the advantages; the system has bolstered the right to property for many Indonesians who under previous land regimes were unable to push through to gain right inland (Sri Puspitaningrum, 2001). Buy and sell deed as issued before a deed officer is a much simpler requirement that goes to hour the contractual relationship between a willing seller and a willing buyer; easily paving the way towards the registration of such land and the issuance of a certificate which is adequate proof of title (Hakim, 2015).

Secondly, the issue of land is an emotive factor in Indonesia. The seller-buyer deed mode of transfer is among the ways through which due diligence is ensured in Indonesia; as only good title is allowed to pass from a party to the other. Further, this also helps in avoiding the irregular practices common in Indonesian history whereby land was easily taken away from buyers who had already paid for land but had not yet completed the process of

conveyance, as it could take up to four years to successfully see through a conveyance (Hindrato, 2018). A perfect example of this worrying reality in Indonesia is the 1994 acquisition of 22,000 hectares of peasant land without consent by the PT Hardaya Company (World Rainforest Movement, 2014). This was in full knowledge of the government and such a company belonged to a single individual. The rights of individual peasant Indonesians to own the right for use and transfer of land were downtrodden just like that. Decades later, efforts to achieve justice for those whose land was taken away have been minimal due to the confusion with respect to the land regime in Indonesia then, and the direction land reforms in Indonesia took. However, with the seller-buyer deed regime; it provides a testament on the intention of a party to acquire an interest in land, as well as acceptance by another party to confer such interest; which becomes complete upon the registration of the deed and issuance of a certificate.

A demerit or a challenge to the buy and sell deed system is that it is two-tier and therefore confusing. Individuals could construe that acquisition of the deed is adequate for the rights and interests in land to confer but this is not the case. It has been pointed out that the same need to be registered after issuance and a certificate obtained; which is absolute. This process appears a little bit complex (Tedjosaputro, 2016). However, the main aim is to enhance the acquisition of good title inland in Indonesia.

According to the International Land Coalition, the Indonesian land regime primarily focused on giving out the land for investors, so that economic benefit could be realized from land use. It is reported that the Indonesian government dished out 55 million hectares of land to investors, both foreign and local, leaving out nearly 13 million households in rural Indonesia without land by the year 2003. However, the land reforms implemented in the recent past in the country have seen the number of landless households shift dramatically, with a reduction of nearly 5 million households witnessed; as only 8 million households could be said to be lacking in the land by the year 2013. This is a significant reduction and could be seen as a positive move in the right direction.

The new land regime has worked to improve the ease with which right in land can pass from one proprietor to another. This was a great challenge in Indonesia under the agrarian land policies and principles. Indonesians have pushed over the years for a land regime that would allow them to own and transfer the right inland; particularly based on their peasant way of life. The changes, despite the complexity and confusing steps between the acquisition of deed and registration of the same, were long overdue. Indonesian land regime in relation to the free transfer of land is headed in the right direction. Thus, the system must be lauded for the positive changes it has brought to Indonesia with respect to the emotive subject of land.

## **5. CONCLUSIONS**

The land use right transfer process must be compiled in front of the PPAT. If not, the buyer will face an obstacle to registering their new land and law does not guarantee the legal force and legal certainty toward the land. The sale of land deed through authorization is also compiled in front of the notary in order to bind the sectors when commencing legal action which is related to buy and sell of the right over the land. This system having been introduced with the latter reform in land law has enhanced the chances of acquisition and retention of the right inland by many Indonesians.

## **ACKNOWLEDGEMENT**

The authors thank the Rector of Universitas Narotama, Dean of the Faculty of Law, and Head of the Department of Law Studies, and also to the Rector of Universitas Dr. Soetomo, Dean of the Faculty of Law, and Head of the Department of Law, who gave sufficient space to carry out this individual research and write this manuscript.

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