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Reformulation of Sale And Purchase Agreement Regulations in Creating Legal Certainty and Justice in The Transfer of Land Rights in Indonesia

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Abstract

Even though Indonesia has promulgated Act Number 5 of 1960 concerning Basic Agrarian Principles Regulations, this regulation cannot provide legal certainty and justice for the parties in the sale and purchase of land rights agreements. When judges decide cases involving property rights sale and purchase agreements, they base their decisions on legal procedures and sources, which demonstrate this uncertainty and injustice. The legal sources as references are varied, sometimes BW (Burgerlijk Wetboek, Adat Law (Customary Law), or Act Number 5 of 1960 with Government Regulatiion Number 24 of 1997. This article uses a normative legal research method. In analysis, to create a land rights sale and purchase agreement that can provide legal certainty and justice, the issue needs to be regulated, especially regarding the issue of the various legal sources, and the responsibility of the state in providing legal certainty. For sales and purchase agreements to provide legal certainty and justice, the state must move from a negative publication system to a positive publication system to realize the constitutional rights of Indonesian citizens in Article 28 D UUD 1945.

Keywords: Land; Reformulation; Sale and Purchase.

1. INTRODUCTION

The classic issue of land rights transfer in Indonesia remains a fascinating subject of research to this day. Legal unification regarding the diversity of land purchase and sale agreements in Indonesia was not always possible with the enactment of Law Number 5 of 1960 concerning Basic Agrarian Law, followed by Government Regulation Number 10 of 1961 and an amendment by Government Regulation Number 24 of 1997 concerning Land Registration. With the promulgation of Law Number 5 of 1960 on 24 September 1960, legal unification occurred formally. However, once Law Number 5 of 1960 was passed, it became apparent that certain of its provisions were not thorough and all-encompassing, which led to the creation of new legal problems. The Basic Agrarian Law is not based on BW/Burgerlijk Wetboek (Dutch colonial law). According to the BAL (Basic Agrarian Law), Book II of the Civil Code's property laws on immovable land objects are nullified; Nevertheless, Book III Agreements addressing agreements pertaining to land ownership are left intact. This thus

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frequently leads to disagreements among jurists and in a number of court rulings about the legitimacy of agreements on the transfer of land rights.

Those who consider the agreement on land rights must be based on Adat Law because of the assumption that if the provisions of the Basic Agrarian Law do not provide complete provisions or norms, then the norms must be based on norms in Adat Law or customary law[1]. Customary law serves as a complement to norms, which are believed to lessen social land conflicts[2]. For those who believe that the transfer of land rights must comply with the general provisions in the Civil Code, Book III of the Civil Code is consulted by those who maintain that the basis for the transfer of land rights is an agreement. Apart from that, there is also an opinion that the transfer of rights must be based on its entirety to the provisions contained in Government Regulation Number 24 of 1997, This regulation states that any transfer of land rights, whether through sale and purchase or otherwise, can only be registered if proven by a PPAT deed (Article 37 paragraph 1 PP Number 24 of 1997). Therefore, based on these provisions, the basis for buying land is the sale and purchase deed drawn up by the PPAT[3].

According to J Kartini, [4] Due to the standards' uncertainty about the selling and purchase of land rights, two distinct understandings have emerged. First Opinion, the clauses requiring the sale and purchase of land to be supported by a PPAT deed also, essentially mandate that the transactions take place in the presence of the PPAT. If it is violated, it will bring consequences, there is no valid sale and purchase agreement. The second opinion, in the framework of the transfer of land rights which aims to provide strong evidence, the evidence referred to PP No. 24 of 1997 must be in the PPAT deed. But even so, this does not mean that if it is not carried out before the PPAT, a sale and purchase of land becomes invalid.

It is abundantly evident from the provisions of Government Regulation Number 24 of 1997 that a PPAT Sale and Purchase Deed is the sole means of transferring rights in Indonesian property sales and purchases. Nonetheless, there is diversity or pluralism in the actual practice of land sale and purchase agreements as well as differences in court decisions, especially when it comes to legal sources. People will become confused and hesitant to learn which clauses should be included in a land sale and purchase agreement if this is disregarded. Expectations for legal clarity will be greatly exceeded, as the public is uncertain about the laws that law enforcement will apply, leaving them perplexed about which standards to follow. In light of this, this essay will look at legal concerns about the reformulation of land rights sale and purchase agreements to provide clarity on the transfer of property rights in Indonesia. Normative legal research methodologies are employed in this paper using multiple approaches. To accomplish its goals, this study will employ three different approaches: the legislation approach, the conceptual

1 M Yazid Fathoni, "Kedudukan Hukum Peralihan Hak Atas Tanah Secara Adat Dalam Persfektif Hukum Positif Indonesia," *Jurnal Ius Kajian Hukum Dan Keadilan* 8, no. 1 (2020).

2 Mustafa Bola, "Legal Standing of Customary Land in Indonesia: A Comparative Study of Land Administration Systems," *Hasanuddin Law Review* 3, no. 2 (2017): 175–90.

3 A PPAT (land-deed official) is a public official authorized to make certain land deeds (Article 1; point 24 Government regulation Number 24 of. 1997 concerning Land registration

4 J Kartini Soejendro, *Perjanjian Peralihan Hak Atas Tanah Yang Berpotensi Konflik* (Yogyakarta: Kanisus, 2005). hlm. 72

approach, and the comparative approach. Through a conceptual approach, the concepts of transfer of land rights will be studied in depth and comprehensively to develop a model or system for regulating the transfer of land rights through sale and purchase that is ideal for Indonesia. Meanwhile, through a comparative approach, several concepts used in other countries will be compared to obtain an overview of various alternative legal regulations.

2. ANALYSIS AND DISCUSSION

2.1. The Concept of Transfer of Rights in the sale and purchase of land rights

In the Civil doctrine, the transfer of objects in the form of property rights can occur for two reasons. First, it is based on an obligatory agreement, which imposes rights and obligations on the parties, and second, because things and rights are being delivered/levering. Robert Joseph Pothier calls the first a consensual contract and the second a real contract, namely between simple consent and one that requires the delivery of things,[5] the first is called an abstract system and the second is called a causal system. In the causal system, the ownership rights of an object are considered transferred or concluded from the *obligatory* agreement, If the title of the agreement is valid then the ownership rights of an object are deemed to have transferred from the seller to the buyer immediately upon the agreement being reached.

In general, the causal system in Indonesian literature is often associated with the transfer of property rights implemented by the Dutch Government through the Burgerlijk Wetboek. Soebekti[6] said that the system of transferring land rights in the Dutch legal concept is causal, as a way of obtaining property rights, namely through levering. Levering itself must be based on a legal title and carried out by the owner of the object or the person who has legal capacity on the object (Beschikkingsbevoegdheid*)*. The agreement which serves as the foundation for the transfer of rights to the land through a sailing-purchasing system, exchange, or gift, is the legal title in concern. Owners or those with a power of attorney are examples of people who are capable of acting legally or freely.

In contrast to Soebekti's opinion above, PJW Schutte[7] emphasized that the Netherlands uses a mixed system, that is, one that combines an abstract system with a causal system, rather than a pure causal system. According to Schutte, neither BW (Burgerlijk Wetboek) nor NBW (Niew Burgerlijk Wetboek) displays a pure causal system like in France. This is more similar to what is implemented in Austria.[8]

5 Martin Hogg, *Promises And Contract Law (Comparative Perspective)*, Third Edit (London: Cambridge University Press, 2014). Hlm. 154

6 Soebekti, *Aneka Perjanjian* (Bandung: Alumni, 1992). p. 12

7 PJW Schutte, "The Characteristics of an Abstract System for the Transfer Of," *Per/Pelj* 15, no. 3 (2012). p. 137.

8 Jan M. Smits, *Elgar Encyclopedia of Comparative Law* (London: Edward Elgar Publishing Limited, 2006). p. 96

In a pure causal system, as practiced by the French state or what Jan Hallebeek calls extremely causal[9], land rights are deemed to have been transferred, concluded from the obligatory agreement, [10] (Civil Code article 1583). Aside from the required consent, *levering* or delivery is not a distinct act or type of legal activity. Delivering an item is just the buyer's actual act of taking control of it so they can exercise all of their rights as its new owner.

> *"Delivery is no separate requirement for the transfer of real rights, and it is also no juridical act. It is nothing more than a mere physical act utilizing which the transferee is placed in control of the thing so that he can exercise the powers of the owner".*[11]

Therefore, when *levering* under a purely causal system, the basis for the transfer of land rights, or the cause, is what matters most and not the seller's attitude, will, or legality in doing so.[12] The transfer of land rights is directly concluded at the time of the obligatory agreement (*the animus transferendi et accipiendi dominii*)[13] or from a deed, which is essentially the seller's will to transfer his land rights and the buyer's will to accept ownership of the land.

In a pure causal system which derives from Roman Law, the foundation of the transfer is crucial. *A iusta causa tradisionis* denotes the rationale or the legal foundation for delivery (the legal basis for delivery). The transfer of ownership is deemed to occur as a result of a consensus (agreement) between the parties. Thus, the concept of consensualism in a pure causal system refers to both the transfer of rights and the agreement that is seen to have occurred.

> *Consensual contracts appear to have been established in Roman law sometime in the first century BC. They arose by mere agreement, without the need for any form or any physical act, such as delivery which was a prerequisite for 'real' contracts.*[14]

Apart from that, the buyer who obtains the rights must obtain the rights from the person who has the rights, the seller cannot transfer the rights beyond what he owns (*nemo plus iuris ad alium transferre potest, quam ipse haberet*).[15]

In contrast to the causal system, the abstract system has different characteristics, as is in Germany. The abstract system differentiates between obligatory and delivery/ levering agreements as two different legal acts.

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9 Jan Hallebeek, "Transfer of Ownership : Traditionalism or Consensualism ?," *Codicillus* 45, no. 1 (2004): 6–16.

10 Caslav Pejovic, "Civil Law and Common Law: Two Different Paths Leading to The Same Goal," *Victoria University of Wellington Law Review* 6 (2001): 747–54.

11 Pejovic.

12 In French law and some related systems it is often said that for an obligation in contract to be enforceable it must have an underlying *causa* or *cause* E. Allan Farnsworth, *Comparative Contract Law* (London: Oxford Handbooks Online, 2012). P.6

13 Geof Monahan, *Essential Contract Law* (London: Cavendish Publishing, 2014). p. 36

14 Peter De Cruz, *Comparative Law in A Changing the World* (London: Cavendish Publishing Limited, 1999). P. 395

15 *As the ownership of the acquirer is derived from the ownership of the transferor, the transferor cannot transfer more rights than she has been entitled to exercise (nemo plus iuris ad alium transferre potest, quam ipse haberet)*Gerrit Pienaar, "The Effect of the Original Acquisition of Ownership of Immovable Property on Existing Limited Real Rights," *Potchefstroom Electronic Law Journal* 18, no. 5SpecialEdition (2015): 1479–1505, https://doi.org/10.4314/pelj.v18i5.07.

"Unlike the situation in a causal system, obligatory agreement and delivery are distinguished from each other in an abstract system as being two separate juridical acts. The obligatory agreement creates only an obligation that obliges the parties to perform, but it does not result in the transfer of real rights. To bring about transfer (and for the execution of the obligatory agreement) the transferree also has to take control of the thing by means of an act of delivery (traditio), or immovables need to be registered. In German law, there are two conditions for the transfer of property: the agreement of the parties and the delivery of the goods (article 929 of the Civil Code)"[16].

Consequently, the agreement simply establishes the parties' rights and obligations in an abstract system. Another legal act is necessary to transfer ownership of an object: the transferee, who is the buyer or recipient of the rights, must deliver or levering the thing to acquire control of it. This legal action is known as a *traditio*, and it calls for the registration of immovable things. *the principle of traditionalism* in an abstract system refers to levering or delivery as the foundation for the transfer of rights, while the *principle of consensualism* in the causal system refers to consensus, which basis of the obligatory agreement as the foundation for the transfer of rights.[17] The seller or transferor must transfer the object and the buyer or transferee must have the intention to own the object. The intention to transfer objects by the seller and the buyer's intention to have these objects is what in the abstract system is called a real agreement. Therefore, this real agreement is an independent agreement that must be fulfilled in the act of transferring rights.

Thus, in the abstract system, we can see that there are two legal acts, namely the existence of an obligatory agreement and the existence of a real agreement/delivery. The question that arises is if the obligatory agreement is void, will the real agreement be void? This was answered by Schutte

"Should delivery take place on account of a void obligatory agreement or other juridical fact, the specific real right will be transferred to the transferee notwithstanding its being null and void, on condition that a valid real agreement exists. The effect of this is that a valid obligatory agreement is not a requirement for the transfer of real rights in an abstract system".[18]

It is abundantly evident from the aforementioned remark that the *real agreement* (delivery) remains intact even in a scenario where the *obligatory agreement* is void. It should be noted, nonetheless, that *real agreements* constitute the foundation for *obligatory agreements.* The parties cannot enter into a *real agreement* without an *obligatory agreement.*

2.2. Correlation between the system of transfer of rights with the land registration system in Various Coutries

To provide alternative regulations for land sale and purchase agreements in Indonesia, the following will provide an overview of concepts and regulations in other countries.

16 Schutte, "The Characteristics of an Abstract System for the Transfer Of." pp. 123
17 Schutte. pp.123
18 Schutte. pp. 123

If we look at the other countries, the transfer of land rights system cannot be separated from the land registration system. These things are interrelated. The idea of transfer of rights in the sale and purchase of land has been broadly explained within the previous sub-chapter, where it was split into a causal system and an abstract system. The conclusion is based on two factors; firstly, an obligatory agreement that imposes rights and obligations on the parties, and secondly the *levering*/delivery of material rights. The first is called a consensual contract and the second is a real contract, namely between a simple agreement and one that requires delivery of things. In the causal system, the ownership rights of an object are considered to have been transferred or concluded from the obligatory agreement, if the title of the agreement is valid, then the ownership rights of an object are considered to have transferred from the seller and the buyer immediately when an agreement is reached, while the abstract system depends on the object being delivered or *levering*. In the land registration system, there are two systems, namely registration of title and registration of deed. Both land registration systems still use deeds as a source of evidence of the transfer of rights, but what is different is the registration results.

Registration of title is similar to registrations carried out by public officials. In both the United Kingdom and the United States, title registration is considered a transfer system intended to replace the past method of transfer, which was previously only by a deed.[19] Registration of rights (registration of title) has different characteristics from registration of the deed, registration of the deed only records the transfer of rights, and the position is often insecure. The official's role in the process of registration of deed is merely to document the transaction; they are not obliged to investigate if the seller who transfers his land through sale and purchase is the owner and has the authorization to transfer the land. In contrast, when rights are registered, the land being transferred must be owned by the seller, or the official must attest to the fact that he does, or that he is authorized to transfer it. The findings of the investigation into land ownership serve as the foundation for this formal assurance. In addition, registration of deeds only provides a genealogy of transfers for those who need it (recording of evidence) but does not guarantee certainty regarding the ownership of these land rights. Meanwhile, the registration of the title system aims to provide valid proof of transactions to third parties and provide legal protection for the land.[20] Protection is by providing rights or titles (by production of the original title papers or certified copies).[21]

> *"Registration of title and recording of evidence or muniments of title are not the same. In title registration, the state provides a public record of the title itself upon which a prospective purchaser or someone else interested may rely. On the other hand, recording acts provide for the recording of deeds of conveyance and other instruments, without guaranteeing the title, leaving to the prospective purchasers or other persons interested to examine the*

19 James Edward Hogg, "Registration of Title to Land Author (s): James Edward Hogg Stable URL : Http://Www.Jstor.Org/Stable/787804" 28, no. 1 (2017): 51–58.

20 Antonio H. Noblejas And Edilberto H. Noblejas, *Registration of Land Title and Deed* (Manila: Rex Book Store, 2007). P. 39

21 R. G. Patton, The Torrens System of Land Title Registration (Minesota: Minesota Law Review, 1935). P. 519

instruments in the records and formulate their conclusions as to their effect on the title".[22]

Registration of title is primarily concerned with the legal ramifications of registering (the legal consequence of that fact), whereas registration of deeds exclusively focuses on the registration of legal acts (legal facts) carried out by parties relating to land objects. [23]

This system was created by Sir Robert Torrens in 1858 [24], which in its development was later adopted by many countries around the world like Australia, hongkong, and Canada, facilitating the sale and purchase of land[25]. The Torrens principle has three principles, namely: mirror, curtain, and insurance [26]. Mirror, that the resulting land registration is a reflection of legal interests in land related to the ownership. Curtain, the land office will not reopen the investigation into the ownership of the land in the face of objections from those who believe they possess registered land but whose name is not on the main list of land owners. Insurance, that information or data held by the land office is guaranteed by the state. A more detailed explanation of this will be explained as follows:

> *"The mirror principle involves the proposition that the register of title is a mirror which reflects accurately and completely and beyond all argument the current facts that are material to the title. With certain inevitable exceptions [such as overriding interests] the title is free from all adverse burdens, rights, and qualifications unless they are mentioned in the register. The curtain principle provides that the register is the sole source of information for proposing purchasers who need not and, indeed, must not concern themselves with trusts and equities which lie behind the curtain. The insurance principle is that, if through human frailty (in the Registry), the mirror fails to give a correct reflection of the title and a flaw appears, anyone who thereby suffers loss must be put in the same position, so far as money can do it, as if the reflection were a true one. (Yet no provision is made for indemnity in Malaysia, Sudan or Fiji, each of which would claim to operate an effective register of title.)"*[27]

In contrast to the positive publication system which places the results of registration as the basis for determining ownership of a land right, the negative publication system on the other hand does not place registration as determining someone as the owner of a land right. A person is considered to be the legal owner of a land right depending on the method of obtaining a land right. This principle is known as *nemo plus iuris ad alium transferre potest quam ipse habet* (no one can transfer more rights (to another) than he himself has." Or A maxim meaning that one cannot transfer legal rights greater than those that one lawfully possesses). Therefore, even though the land has been registered in someone's name, as long as someone else cannot prove otherwise, the owner whose name is registered at

22 Narciso Pena, *Registration of Land Titles and Deed* (Manila: Rex Book Store, 2008). p. 35

23 Jaap Zevenbergen, *Systems of Land Registration Aspects and Effects* (Rotterdam: Publications on Geodesy, 2018). P. 48

24 Jenny Schultz, "Judicial Acceptance of Immediate Indefeasibility in Victoria," *Monash UL Rev.* 19 (1993): 326.

25 Zhixiang Seow, "Rationalizing the Singapore Torrens System," *Sing. J. Legal Stud.*, 2008, 165.

26 I Gusti Nyoman Guntur, "Pendaftaran Tanah," Cetakan Pertama, Sekolah Tinggi Pertanahan Nasional, Yogyakarta, Hlm 34 (2014). P. 40

27 S Rowton Simpson, Land Law and Registration, Surveyors Publications (London, 1976). P. 45

the land office has a strong legal standing. On the other hand, even though the land has been registered in someone's name, the owner's name will change in the land office's register if the opposing party can demonstrate that the person whose name is listed there obtained the right illegally, either through them or their predecessor.

Therefore, under the negative publication system, the landowner listed in the land office register may at some point have their name deleted if the other party can prove that they are the legitimate owner. The basis is *nemo plus iuris* or in the concept of land registration, this concept means that a person cannot register a right to land in his name if the right does not belong to him. This means that under the negative publication system changing the name of the land owner in the land office register is typical because the objective is to establish a justice (value).[28]

In addition, in the negative publication system, the state does not fully guarantee that the name in the land office register has a legal position that cannot be contested but only confirms that the person whose name is registered has a strong position.

A positive publication system that places the results of registration as the basis for determining ownership of land rights in a title/right in certificate[29]. On the other hand, registration is not taken into account for evaluating someone's ownership of a right under the negative publication system. A person is considered to be the legal owner of a land right depending on the way of obtaining a land right. This principle is known as *nemo plus juris ad alium transferre potest quam ipse habet* (No one can transfer more rights (to another) than he himself has). Therefore, the owner whose name is registered at the land office has a stronger position even when the land has been registered in someone else's name, provided that person cannot prove otherwise. On the other hand, even though the land has been registered in someone's name, the land office will alter the owner's name in the register if the opposing party can demonstrate that the person whose name is listed there obtained the right illegally, either through them or their predecessor.

The positive publication system is a reflection of the registration of the title, while the negative publication system is a reflection of the registration of the deed. Generally, countries in the world tend to this general picture. However, according to Dekker[30], this assumption oversimplifies the relationship. Dekker revealed that there is random pluralism by giving examples of the use of registration and publication systems in several countries in the world.

	Negative	**Positive**
Registration of deeds	e.g. France	e. g. South-Africa
Registration of title	e. g. Germany	e. g. Australia

28 M Yazid Fathoni, "Konsep Keadilan Dalam Pengelolaan Dan Pemanfaatan Sumber Daya Alam Menurut Undang-Undang Pokok Agraria Tahun 1960," *Jurnal IUS: Kajian Hukum Dan Keadilan* 1, no. 1 (2013): 44–59.

29 For a certificate of title issued with "limited as to title", the title for that land remains indefeasible Brian Ballantyne, Options for Land Registration and Survey Systems on Aboriginal Lands in Canada, Geomatica, vol. 55 (Canadian Science Publishing 65 Auriga Drive, Suite 203, Ottawa, ON K2E 7W6, 2001). p. 33

30 H.A.L. Dekker, *Nationale Grondboekhoudingen, Overzicht Kadaster-Systemen, National Land Recordings, Overview of Cadastral Systems* (Leiden: Numij B.V. (Dutch), 1986). P. 64

Dekker clarified that even though we employ title registration, the publication system may still be adversely affected, even though we also use registration of deeds.

Nonetheless, nations that employ an abstract system typically registration of titles using a positive system, whereas nations that employ a causal system use the registration of titles with a negative system. However, like with the aforementioned nations, the relationship as outlined is often not always consistent and varies.

2.3. The Ideal Regulatory Model for Transferring Land Rights through sale and purchase in Indonesia

In some customary law provisions, the sale and purchase of land rights are considered to occur when an agreement is reached or agreed upon by the parties without the need for formalities or a separate juridical act. This suggests that the transfer of land rights in this country is more closely aligned with a causal system. With the promulgation of Act Number 5 of 1960 concerning Basic Agrarian Principles Regulations with its implementing regulations in Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997, there was a change in the momentum for the transfer of land ownership rights to sellers and buyers.

Even though these regulations do not clarify and distinguish between the separation of the obligatory agreement and the land transfer transport deed, Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997 assume that ownership of land rights is transferred after the sale and purchase deed is made in the presence of a Land Deed official or Land Titles Registrar. (Indonesia: PPAT/Pejabat Pembuat Akta Tanah).

After the enactment of Law Number 5 of 1960 concerning Indonesia's Agrarian Principles, normatively there was a difference in the time or moment when the transfer of property rights (over an immovable thing, or especially land) occurred from the registration, namely registration of the *acta van transport* at the Land Registration Office, whereas in the Basic Agrarian Law 1960 system and the implementing regulations when the transfer of property rights occurs by making a sale and purchase deed at the Land Deed Making Officer, not at the time of registration. [31]

If we look at the concepts used in the Indonesian Civil Code and the concept of the Basic Agrarian Law through Government Regulation Number 10 of 1961 and Government Regulation Number 24 of 1997, both have a similar concept. The concepts in these two government regulations are similar to those in the Netherlands today with a mixed system.

The transfer of land rights through sale and purchase under Act Number 5 of 1960 and Government Regulation Number 24 of 1997 is more directed towards an abstract system but without denying the causal system. It cannot be denied that the laws in the Indonesian state have influence from Dutch law because of colonialism time. The idea of land rights transfer is nearly identical to that of state-owned BW and NBW, where the

31 Bayu Seto Hardjowahono, "Naskah Akademik Rancangan Undang Undang Hukum Kontrak," *Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Ham RI*, 2013. p. 39

transfer is thought to have happened as a result of a genuine deed. The difference is that in Government Regulation Number 24 of 1997, the transfer occurs when the authentic deed is made, wherever under BW it is at the time the authentic deed is registered. However, both types of regulation consider the deed made as the basis for delivery/ *levering*.

The land and price are agreed upon by the parties before the PPAT deed is prepared, and this serves as the foundation for the legally binding agreement. Following the agreement, the parties move forward with the next legal action by referencing their agreement in the PPAT deed as the foundation for land delivery or levering. Consequently, even though they are not included in the Land Registration Regulations or the Basic Agrarian Law of 1960, land sale and purchase agreements result in a mixed causal-abstract system, which is why it should be stressed. By using a causal-abstract system, the sale and purchase agreement for land rights can be void if the parties take legal action based on fraud, coercion, mistake, or other things that are against the law. If the agreement is declared void, the sale and purchase PPAT deed and its registration will likewise be rendered illegal or lacking legal standing. Furthermore, the transfer of land rights should be regarded as never having happened if it is only based on a contractual or causal agreement without employing the sale and purchase PPAT document as the delivery/levering deed. This transfer of land rights is not carried out to provide legal certainty regarding land ownership.

This causal-abstract system must be directed into a positive publication system. The negative publication system in Government Regulation Number 24 of 1997 does not guarantee legal certainty of people's rights to land, this is what is often pointed out as one of the causes of the rise in land cases in Indonesia. Because the state presents itself as not guaranteeing the accuracy of the data included in the land title certificate when it implements a negative publication scheme. For the time being, the state's presentation of the facts is accurate, provided the opposing side is unable to produce evidence to the contrary. Apart from not being able to provide legal certainty, especially in the use and utilization of land for investment purposes, and its transfer of rights. Changes to the publication system in a positive direction are needed to provide legal certainty regarding land ownership.

This positive publication system is needed as a state constitutional responsibility. Agrarian Law in line with the objectives of the 1945 Republic of Indonesia Constitution as the legal basis for the formation of the UUPA, namely "protecting the entire Indonesian nation, advancing general welfare, making the life of the nation intelligent, and participate in implementing world order based on freedom, eternal peace, and social justice[32]. To show the state's political will in implementing this constitution, guarantees from the state are needed as in the positive publication system, the legal certainty, and the compensation for the injured party. By implementing this principle, the state will

32 Indah Sari, "Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)," *Jurnal Mitra Manajemen* 9, no. 1 (2020)., P. 20

carry out careful research on every transfer of land rights through sale and purchase, and the state will seriously apply the precautionary principle.

This principle in the positive publication system is called the "insurance principle". This principle expresses the existence of compensation or guarantees in a positive publication system. If the registration carried out by the state is proven to be incorrect or has a mistake regarding the registered land, then the government must provide compensation to the injured party. Examining the positive publication system guiding concepts, called the mirror principle, the curtain principle, and the insurance principle, makes it evident how to assess the achievement of these principles in Government Regulation Number 24 of 1997. The mirror principle can be fulfilled, the curtain principle is not fulfilled but provides some guarantee because it is considered to have strong legal evidence, while the insurance principle can be said to be completely unfulfilled.

3. CONCLUSION

To create a sale and purchase land agreement that can provide legal certainty and justice, the issue of certainty regarding sale and purchase land agreements in Indonesia needs to be clarified. This issue pertains to the legal foundation of the sale and purchase agreement, the transfer of rights system, as well as the land registration publication system implemented which delineates the state's obligations and functions in the registration of land sale and purchase agreements. Because the sale and purchase of land is a matter of agreement, the basic regulation of the agreement must employ the concepts in the Civil Code with the transfer of ownership still under Government Regulation Number 24 of 1997, while the principles in customary law can be used as a legal basis, especially only for the sale and purchase of land that is not registered. The transfer of rights system in this sale and purchase agreement can use a mixed system of causal-abstract system. For sales and purchase agreements to provide legal certainty and justice, the state must move from a negative publication system to a positive publication system. The land sale and purchase agreement will provide legal certainty to the holder if the transfer registration is only based on the sale and purchase PPAT deed and supported by a positive publication system. This makes it simpler for the government to uphold the citizens' constitutional rights, which include the freedom to possess property and to be assured of its safety.

REFERENCES

Ballantyne, Brian. *Options for Land Registration and Survey Systems on Aboriginal Lands in Canada*. *Geomatica*. Vol. 55. Canadian Science Publishing 65 Auriga Drive, Suite 203, Ottawa, ON K2E 7W6, 2001.

Bola, Mustafa. "Legal Standing of Customary Land in Indonesia: A Comparative Study of Land Administration Systems." *Hasanuddin Law Review* 3, no. 2 (2017): 175–90.

Cruz, Peter De. *Comparative Law in A Changing the World*. London: Cavendish Publishing Limited, 1999.

Dekker, H.A.L. *Nationale Grondboekhoudingen, Overzicht Kadaster-Systemen, National Land Recordings, Overview of Cadastral Systems*. Leiden: Numij B.V. (Dutch), 1986.

Farnsworth, E. Allan. *Comparative Contract Law*. London: Oxford Handbooks Online, 2012.

Fathoni, M Yazid. "Kedudukan Hukum Peralihan Hak Atas Tanah Secara Adat Dalam Persfektif Hukum Positif Indonesia." *Jurnal Ius Kajian Hukum Dan Keadilan* 8, no. 1 (2020).

———. "Konsep Keadilan Dalam Pengelolaan Dan Pemanfaatan Sumber Daya Alam Menurut Undang-Undang Pokok Agraria Tahun 1960." *Jurnal IUS: Kajian Hukum Dan Keadilan* 1, no. 1 (2013): 44–59.

Guntur, I Gusti Nyoman. "Pendaftaran Tanah." *Cetakan Pertama, Sekolah Tinggi Pertanahan Nasional, Yogyakarta, Hlm* 34 (2014).

Hallebeek, Jan. "Transfer of Ownership : Traditionalism or Consensualism ?" *Codicillus* 45, no. 1 (2004): 6–16.

Hardjowahono, Bayu Seto. "Naskah Akademik Rancangan Undang Undang Hukum Kontrak." *Badan Pembinaan Hukum Nasional Kementerian Hukum Dan Ham RI*, 2013.

Hogg, James Edward. "Registration of Title to Land Author (s): James Edward Hogg Stable URL : Http://Www.Jstor.Org/Stable/787804" 28, no. 1 (2017): 51–58.

Hogg, Martin. *Promises And Contract Law (Comparative Perspective)*. Third Edit. London: Cambridge University Press, 2014.

J Kartini Soejendro. *Perjanjian Peralihan Hak Atas Tanah Yang Berpotensi Konflik*. Yogyakarta: Kanisus, 2005.

Monahan, Geof. *Essential Contract Law*. London: Cavendish Publishing, 2014.

Noblejas, Antonio H. Noblejas And Edilberto H. *Registration of Land Title and Deed*. Manila: Rex Book Store, 2007.

Pejovic, Caslav. "Civil Law and Common Law: Two Different Paths Leading to The Same Goal." *Victoria University of Wellington Law Review* 6 (2001): 747–54.

Pena, Narciso. *Registration of Land Titles and Deed*. Manila: Rex Book Store, 2008.

Pienaar, Gerrit. "The Effect of the Original Acquisition of Ownership of Immovable Property on Existing Limited Real Rights." *Potchefstroom Electronic Law Journal* 18, no. 5SpecialEdition (2015): 1479–1505. https://doi.org/10.4314/pelj.v18i5.07.

R. G. Patton. *The Torrens System of Land Title Registration*. Minesota: Minesota Law Review, 1935.

Sari, Indah. "Hak-Hak Atas Tanah Dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)." *Jurnal Mitra Manajemen* 9, no. 1 (2020).

Schultz, Jenny. "Judicial Acceptance of Immediate Indefeasibility in Victoria." *Monash*

UL Rev. 19 (1993): 326.

Schutte, PJW. "The Characteristics of an Abstract System for the Transfer Of." *Per/Pelj* 15, no. 3 (2012).

Seow, Zhixiang. "Rationalizing the Singapore Torrens System." *Sing. J. Legal Stud.*, 2008, 165.

Simpson, S Rowton. *Land Law and Registration*. *Surveyors Publications*. London, 1976.

Smits, Jan M. *Elgar Encyclopedia of Comparative Law*. London: Edward Elgar Publishing Limited, 2006.

Soebekti. *Aneka Perjanjian*. Bandung: Alumni, 1992.

Zevenbergen, Jaap. *Systems of Land Registration Aspects and Effects*. Rotterdam: Publications on Geodesy, 2018.