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Legal certainty of land certificate letter (*Surat Keterangan Tanah* or SKT) in land sale and purchase transactions as proof of ownership

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ABSTRACT

This study examines the legal certainty of the Land Certificate Letter (*Surat Keterangan Tanah*/SKT) in land sale and purchase transactions as proof of ownership. This study aims to analyze the legal status, evidentiary value, and level of legal certainty of SKT use in land transactions. A normative juridical approach was used, employing statutory, conceptual, and case-based analyses of the relevant literature. The results reveal that the SKT serves only as administrative proof of physical land possession and not as legal proof of ownership. The SKT provides prima facie evidence that can be used to register land ownership but does not ensure full legal protection. To guarantee legal certainty, SKT-based transactions must be followed by an official deed of sale before a Land Deed Official (PPAT) and land registration at the National Land Agency (BPN). This aligns with the legal principles of certainty (*rechtszekerheid*) and legal protection (*rechtsbescherming*) under the Indonesian Agrarian Law (UUPA) and Government Regulation No. 24 of 1997.

Keywords: legal certainty; land certificate letter; land sale and purchase; ownership proof; Indonesian agrarian law; SKT; BPN

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RESEARCH & PUBLISHING



1. INTRODUCTION

Land is one of the most important agrarian resources for the Indonesian people. It possesses not only economic value as an investment asset and business commodity but also profound social and cultural significance (Sumardjono, 2014). Consequently, land ownership is highly valued and protected by individuals and communities. In the context of a state governed by the law, the recognition and protection of land rights must be based on the prevailing legal framework to prevent conflicts and ensure legal certainty (Harsono, 2008).

This study found that business age, owner age, and education significantly influence microenterprises' access to Islamic fintech financing in Indonesia. Firms that are 'newer', their entrepreneurs who are older, and those with higher levels of education, exhibit greater access to finance; however firm size, start-up costs and gender do not matter. These results contribute to Islamic fintech literature by demystifying the determinants of microenterprises' borrowing in Sharia-compliant digital lending marketplaces.

Land is a natural resource that forms the primary resource for humanity and is regulated by Law Number 5 of 1960 on the Basic Agrarian Law (Undang-undang Pokok Agraria or UUPA). The Republic of Indonesia until now which societal and economic orders get used to based on the element land, water, space land(s) represent an important object for life side's as a whole in the society (UUPA, 1960).

In Indonesia's land law regime, the administration of land rights is regulated under UUPA (*Undang-undang Pokok Agraria*) as the main legal tool for land control, ownership, use, and management. All land must be registered through a land registration system regulated and controlled by the National Land Agency (Badan Pertanahan Nasional or BPN) pursuant to the UUPA as a measure for obtaining legal certainty and protection for rights holders (PP No. 24/1997). The main purpose of the UUPA is to establish the legal certainty required for granting a secure land rights

In addition, the UUPA requires that land ownership be demonstrated by a land certificate, as it represents the strongest legal evidence of ownership (PP No. 24/1997). However, this is hardly surprising, since on the ground, land frequently lacks secure or complete legality. The UUPA stipulates that only certified land is legally recognized, but in practice, many people still use other forms of documents as titles of ownership, such as the Land Certificate Letter (*Surat Keterangan Tanah/SKT*) (Sitorus, 2012).

Purpose of Land Certificate The land certificate, as stated in Article 1 point 20 of Government Regulation (PP) Number 24 in 1997 on Land Registration, is the official evidence of ownership referred to in Article 19 paragraph (2)(c) UUPA, covering rights to land, management rights, waqf land, condominium property, and mortgage rights recorded in related records (PP No. Article 1, point 19 of the same regulation states that a "land book is" is a document providing juridical and physical data about the registered land object.

Empirical evidence indicates that a large part of the Indonesian population (especially rural and peri-urban communities) holds non-certified land. In many cases, ownership of this type of land is proven only by an, issued 22 head or urban ward leader, using the testimony of community elders and witnesses as well as historical evidence of possession (Sumardjono, 2014). Although the SKT does not possess the same strength as the official land certificate, it is widely used in practice for the sale and purchase of land, even as a supporting document for those in the government's Systematic Complete Land Registration Program (Pendaftaran Tanah Sistematis Lengkap atau PTSLS) (Soekanto & Mahmudji, 2013).

Pursuant to Art 19(2)(c) UUPA, land is registered through certificates of proof of right, which are currently acceptable as conclusive evidence of ownership. Article 4 paragraph (1) PP No.24 of the year 1997 Other provisions concerning Assignment in conjunction with Article 3(a) PP No.24 of the year 1997ab explicitly provided that land registration was to give legal certainty and protection to any holder of a right over a landed property, condominiums, or other registered rights so they could easily prove their rights (PP No. 24 Year 1997).

It also collides with legal complications, as SKT has been established as the cause of the sale and purchase of property, such as buying sale deeds, but it does not officially prove ownership. In multiple transactions based on SKT, various types of legal conflicts occur, from rival physical claims to the same

piece of land by different people, to a situation where someone who has already 'purchased' the land is refused official recognition as the owner because it is not legally definitive (MA No. 2940 K/Pdt/2012). This condition reveals the legal nonexistence and juridical risk due to the use of SKT as evidence of ownership in a land transaction (Harsono, 2008).

N Restrictions: The limitation of the research is that it only considers micro businesses in East Java and certain periods of data. Additional research can widen the spatial spread of samples, diffusion, and impact of sample size for including SMEs, combine Islamic and non-Islamic P2P lending comparison, and be conducted with other criteria such as ethnographic and side platform aspects.

This has become more complicated as the government steps up efforts to legalize assets through PTSL. On the one hand, it becomes a starting point in land possession history, and on the other hand, at present, none of the positive laws in Indonesia explicitly regulate its evidential strength, so there is a possibility of misinterpretation and legal uncertainty (Syahrani, 2010).

Meanwhile, the sale and purchase of land must be done officially in front of Pejabat Pembuat Akta Tanah (PPAT) as evidence of rights transfer. The PPAT is a land transfer and encumbrance officer whose appointment as an official position with the power of attorney to make public deeds related to land is regulated by Government Regulation No. 24 of 2016, amending the above-mentioned government regulation regarding the stipulation of government officials for each area. Such deeds, among others, are sale and purchase agreements as authentic legal evidence to confirm the materialized of a particular legal act (PP No. 24 Tahun 2016).

Hence, it is important to critically evaluate on the legal status and evidential value of the SKT in land sale and purchase transactions. This research attempts to trace whether the SKT as a document can be regarded as a legal valid one in this story, also identify where are the sources of legal risks for all stakeholders and judge how large is any protection that has been provided by law to bona fide purchaser with product of such an SKT, embracing a land administration system which is fair, transparent and legally discent (Sumardjono, 2014; Harsono, 2008).

2. METHOD

In this study, normative legal research is applied, namely a technique of examination on all applicable regulation and other kindred legal sources. The methods used in this research were statutory, investigating the applicable legal regulations related to the legal certainty of Land Certificate Letter (*Surat Keterangan Tanah* or SKT), including Law Number 5/1960 relating to Basic Agrarian Law (UUPA) and Government Regulation Number 24/1997 concerning Land Registration; conceptual, reflecting on land rights, evidence of ownership and principle of legal certainty; and case approaches, analyzing court decisions related to land dispute based on SKT.

The sources of legal materials are primary legal materials (statute and court decisions), secondary legal materials (books, law journals, opinion journal publications of agrarian law experts) and the tertiary sources include library catalogs and indices.

European XXVII (1)43 research at library guides valid for data, then legal provisions are generated out or extracted and analyzed descriptively qualitatively after that data investigations have been actualized through the above search of legal technology. This study seeks to find out and explain how far Indonesian state law can give legal certainty for the use of land sale and purchase of SKT as well as to know the legal status of STK as proof of ownership within national land system.

3. RESULT AND DISCUSSION

3.1 General Overview of the Land Certificate Letter (SKT)

The research uses normative law research methods with the object of analysis being legal norms either in statutory regulations or other sources of law as reference to generalize. The methods employed are the statute approach to see legal arrangements relating to legal certainty of SKT that includes Law Number 5 of 1960 regarding Basic Agrarian Law (UUPA) and Government Regulation Number 24 Year

1997 concerning Land Registration; the conceptual approach, in which one must discuss about land rights concept, ownership evidence and legal certainty principles; and case approaches which is conducting a study on court decision related to the dispute over land based on SKT.

Legal materials are derived from legal documents including regulations and verdicts, article journals, book publications, opinions of agrarian law experts; and based on the hierarchy called Primary Legal Materials (statutory regulation, files and other statutory regulations) Secondary Legal Materials {library books such as articles in popular scientific journal} and Tertiary Legal Materials {legal dictionaries or encyclopedias}.

Land Certificate Letter (*Surat Keterangan Tanah* or SKT) are official statements issued by the village (Kelurahan) or district government confirming that an individual person, organisation does in fact physically possess a portion of land. SKT normally is granted on basis of recognition of local people and also witnesses who have knowledge or were witness to the history of occupation/possession of the disputed land (Harsono, 2008). De facto, the function of the SKT is to determine if an individual actually holds a property in reality, with reference to community consent and witnesses' evidence helping one establish control over land historically.? Usually, the SKT is issued for land that has not yet been registered with the National Land Agency (BPN) and still doesn't have an official ownership certificate (Sumardjono, 2014).

The SKT is not however proof of ownership to the land and is issued by BPN. It is not in reality an instrument of title at all, but one solely evidencing physical control. Position in Law SKT is considered prima facie evidence of land possession (alas hak) and act as a primary or first cause for filing an application to register the new plot. Facultatively, the SKT is not a legal title of ownership; however it can become evidence in obtaining land-sales rights known as sertifikat hak milik developed since Government Regulation Number 24 Year 1997 concerning The Land Registration, namely Article 24 verse (2), providing that such physical and juridical date can be derived from any attestation or statements of anyone believed to be in control on those lands.

Thus, the SKT has a significance in land administration especially for those not yet systematically registered with BPN. The SKT is still an everyday feature in many Indonesian areas, especially those not yet covered by formal land registration activities. This exposes a disconnection of written legal norms with social practices in the field. "Sociologically, the SKT provides a type of limited security and relative certainty about the land they occupy for communities while not having formal recognition – legal certainty.

The SKT is often referred to as a legal basis in many land transactions either when sold, donated or inherited. However, it is risky to use because without actual proof of ownership you may still loose out. These land disputes are caused in many instances by deals concluded on the basis of SKTs since some of the claims overlap or involved unregistered acquisition of title. So, if an SKT is considered a legal government administratively document at the village or subdistrict office level, it will be better for them to understand the benefits of more legal protection through land registration at BPN. Registration of the land is critical to protect the civil rights of SKT holders and to avoid possible mispute in future.

Thus, the SKT has a twofold nature: on the one hand SKT is the administrative recognition of land ownership possession and, on the other hand it serves as a preliminary evidence to be utilized for acquisition of formal land certificate. The SKT, though it does not carry a full weight as evidence of ownership, is one of the most important instruments in land law system for Indonesia especially in areas under development towards expedite land administration.

3.2 Legal Status of SKT in Land Sale and Purchase Transactions

In practice, numerous legal issues arise from SKT-based land transactions, including overlapping Title, Overlapping Claims and Boundary Disputes. Such issues are basically due to shallow information and poor administrative reporting at village or subdistrict levels. Thus, while the SKT is socially valid, it cannot be taken as more than a temporary proof to be reinforced by official land registration. In other words, the 'SKT' acts as a bridging mechanism for protecting possession of land but cannot be held as an exclusive lawful title for awaiting sale and purchase transaction of property. Decree of the Head of

National Land Agency No. Pol a /09/2009 NO refer to as BPN is the only one that can provide full legal certainty for those entering into land transactions. That is to say in land sale and purchase, the SKT has limited evidence value as a mere receipt of physical possession but not crating an incontestable legal ownership. In order for a transaction to be "fully" legally secure, the land also needs to be registered at BPN with all limits as well as the formal ownership certificate.

In reality, a lot of people are still doing transaction in the buying and selling the land based on *Surat Keterangan Tanah* (SKT), especially for untitled local soil area. Nevertheless, Article 37 sub-article (1) of Government Regulation No. 24/1997 provides that a transfer of land rights should only be recorded if there is certain evidence in the form of authentic deed drawn up before a Notary (Pejabat Pembuat Akta Tanah or PPAT). This doctrine shows that land rights transfer should fulfill certain formal requirements to be legally recognized in the system of law and regulations for controlling land (Harsono, 2008). As a result, transactions on land based only on SKT do not meet these formal juridical requirements to be registered with the BPN.

In positive law, the SKT is not vested with an absolute competency to transfer ownership of property. It is nothing more than evidence of temporary administrative control over land occupied by a man. In reality, especially in areas where the BPN has not conducted land registration, SKT-based land sales are still common. The SKT in itself is a proof of the seller's entitlement of the land, but not considered as full ownership on legal basis (Sumardjono, 2014). In civil law and general practice, the SKT has very limited evidential value-it may be a proof of physical possession, if no other party can produce better evidence. This confo unarmed uction with the natio maxim et unum plus juris ad alium transferre potest quam ipse habet, which further indicates that one cannot transfer more rights than one has (Sutedi, 2010). Therefore, if a person only holds an SKT, they are authorized to assign only physical possession and not real ownership.

Play may proceed on it as is. This is in line with at Article 19 paragraph (2)(c) of Law Number 5 of 1960 on the Basic Agrarian Law (*Undang-undang Pokok Agraria* or UUPA), registering land ownership and possession to obtain legal certainty about land rights and also in relation to the possessory title system/institution for unregistered possession; Also, this purpose seems to be interconnected as perceived by Barton. As such, the SKT can be used as a first step in support of gradual legal certainty of land rights through registration and certification (Sitorus, 2012).

The SKT's juridical position in the area of SPT trading contracts is on the ground of administrative and factual recognition, rather than legal acknowledgement CPPUNIT_Unitrido_2737.popmitter -annotationsDoEnd. A transaction of sale and purchase of land on the ground of the SKT shall have validity in no other terms but voluntary transaction between the two parties and accompanied by effective actual physical possession of land. But to have full legal certainty, then this transaction has to be proceeded by the making of a deed of sale before a PPAT and subsequent registration with the BPN so that they are "officially" recorded (PP No. 37 of 1998; PP No. 24 of 2016).

In reality, due to SKT-based land transaction, many sequealae are caused by law such as overlapping ownership, double claim and boundary dispute. These issues are generally manifestations of poor documentation and limited administrative recording at the levels of village or subdistrict (and) level (*Putusan Mahkamah Agung* No 2940 K/Pdt/2012). Thus while the SKT is socially recognized, it can only serve as transitory proof that has to be reinforced by formal land registration. That is, the SKT is a critical interim land possession protection mechanism, but cannot be used as a complete legal foundation for sale and purchase transactions of pieces of lands. Only the land right certificate that has been issued by BPN can guarantee legal certainty and protection upon the parties econtrol in a transfer of land (Sumardjono, 2014). Therefore, in dealing with sale and purchase of land the SKT may be used as an evidence only to confirm physical possession but not a conclusive proof of legal ownership. In order to gain full legal certainty over a transaction, one has to then initiate land registration at BPN to issue a formal certificate of ownership (Harsono 2008).

3.3 Legal Certainty Analysis of Land Sale and Purchase Transactions Based on SKT

Legal certainty (*rechtszekerheid*) is one of the basic principles in Indonesian knowledge about agrarian law. This principle is also explicitly regulated in Article 19 paragraph (1) of Law Number 5 of the year 1960 concerning Basic Agrarian Law (*Undang-undang Pokok Agraria* or UUPA), which generally stipulates, "to guarantee legal certainty, government will organize registration over lands within territory of state of Republic Indonesia according to regulation governing government among others through government regulations." Under this provision, land registration is considered the principal apparatus to secure formal security of tenure over land rights. By registration, each land will get a physical and legal identity that is official recorded in the books and certificates (land book and certificate) of National Land Agency (Badan Pertanahan Nasional or BPN). Thus, the land certificate becomes an absolute and valid evidence of ownership (Harsono, 2008; Sumardjono, 2014).

"Even if it is carried out by the means of SKT without registering to BPN, the legal certainty has not yet passed. The SKT does not grant legal "security" to its holder as it is only for administrative recognition of possession or control and nothing else. It is the best for title dispute as it's the highest and regarded as hard evidence in law. This is substantiated by Article 32 paragraph (2) of Government Regulation Number 24 of 1997 which says that if the lawfully a land certificate is issued to any person or legal entity in good faith in five years period, after it is issued towards the land right object, no one has rights toward that object anymore unless he/she states his/her objection against holders of certificates and offices with regard to the headmen of land office for more detailed information (Sitorus, 2012).

Under this provision certificate holders have better legal right than mere SKT-holders. In fact, many cases show that buyers whose land is acquired based on SKT subject to losing their rights since the same land had already been certified in another party's name who acted in good faith (*Putusan Mahkamah Agung* No. 2940 K/Pdt/2012). Therefore, the SKT based-land transactions have considerable legal risks for buyers especially when the land is already being verified under other names or there is an overlap claim because of the lack of verification administration in village levels (Sumardjono, 2014).

Under the Indonesian land law system, complete legal certainty may only be obtained if a transfer of ownership of real estate is completed through an authentic deed executed before PPAT and registered with BPN. Land registration is not a mere formality instead it is an instrument of law that guarantees every transfer of the land right would be officially recorded and restituted by the state (PP No 37/1998; PP No 24 of 2016). Thus, while a sale and purchase of land through an SKT may civilly be valid as it is performed on the basis of voluntary transaction by complying with the requirements for legal transactions pursuant to Article 1320 Kitab *Undang - Undang Hukum Perdata* (KUH-Pasal), agrarian justice still does not give a full assurance.

In order to safeguard the rights of SKT parties and avoid future disputes, where they wish to rely on an SKT for their transaction, it is strongly advisable that as soon thereafter as possible, each and every transaction based on a SKT be formally registered in BPN. Normatively, under the principle of *rechtszekerheid* (security of legal relations) it is necessary that any civil right was based on a written and authentic law. Hence, the SKT must not be perceived as an autonomous system of legal entitlement to property but as a starting point towards full formal justice in land (Harsono 2008; Sumardjono 2014).

3.4 Juridical Analysis of the Evidentiary Strength and Legal Certainty of SKT in Land Sale and Purchase Transactions.

The Land Certificate Letter (SKT / *Surat Keterangan Tanah*) is a letter from the village head or subdistrict leader that determines the history of ownership of a piece of land. In the Indonesian land law context, allotment letters do not have the legal status of valid evidence of ownership but are simply administrative evidence of possession (Harsono, 2008). From the purview of civil procedural law, the SKT falls into the category of a private deed in so far as it is drawn up by an official unable to make authentic deeds within Article 1868 of the Kitab *Undang-Undang Hukum Perdata* (Indonesian Civil Code). Accordingly, the SKT does not have determinative evidentiary value and is merely deemed as *prima facie* evidence which can be acknowledged by the relevant parties and further confirmed by other types of written proof (for instance witnesses' statement, *girik* or land tax payment).

Courts, for judicial use and purpose may accept signatures to SKTs as circumstantial evidence proving continuous possession over a period of time if an entry has been in the manner recorded therein. The latter are null and void, however, if there is a valid land ownership certificate in another name. Land certificates issued by the BPN are the highest and most authoritative evidence of law as regulated in Article 19 paragraph (1) UUPA and Article 32 paragraph (2) Government Regulation Number 24 Years 1997 (Sumardjono, 2014; Sitorus, 2012). As a result, land deals relying on SKTs alone does not provide enough legal certainty and is bound to be contested in the future especially in areas where overlapping rights prevail yet administrative documents are weak, as convicted by (*Putusan Mahkamah Agung* No. 2940 K/Pdt/2012).

For legal certainty, every land transaction based on SKT must be supplemented with a Sale and Purchase Deed (Akta Jual Beli or AJB) that is drawn up by a Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT), and followed by the registration of the AJB with the BPN to have an officiated certifying title over that land official ownership certificate (*Peraturan Pemerintah* No. 37 Tahun 1998, *Peraturan Pemerintah* No. 24 Tahun 2016). This practice is in accordance with rechtszekerheid (legal certainty) and rechtsbescherming (legal protection) principles of the Indonesian agrarian law system (Harsono, 2008). Moreover, LLS should be supported by improving the legal education of the public and by NFLR (PTSL) to increase awareness of registered land and decrease future potential disputes over land (Sumardjono, 2014).

In other words, the SKT functions as prima facie evidence of land ownership and does not independently constitute unassailable proof of such ownership. Legal certainty is achieved when the land right transfer by means of SKT is subsequently legalized through registration with BPN and granting of a certificate of ownership, which becomes the legal and final evidence of ownership (Santoso, 2010).

4. CONCLUSION

According to the Basic Agrarian Law (Law no. 5 of 1960) and Government Regulation No. 24 of 1997, land within Indonesia can only be owned by holding a Land Certificate issued by the National Land Agency (BPN). The *Surat Keterangan Tanah* (SKT) is only administrative evidence of physical possession and not clear proof of ownership. Thus, land sale and purchase deals conducted only by SKT do not complete proper legal security for the parties. For the purpose of legal certainty, each SKT-based transaction should be also perfected with a Sale and Purchase Deed (AJB) executed before another PPAT followed by recording at the BPN. Therefore, SKT is of value as early proof but needs to be formalized through registration in order for it to be considered legal and protected.

Ethical Approval

Not Applicable

Informed Consent Statement

Not Applicable

Authors' Contributions

MVP a key role in the development of the research framework, legal analysis, and drafting of the manuscript. He also serves as the corresponding author, responsible for coordinating revisions, reference validation, and submission of the article to the journal. MT contributed to conceptual discussions, methodological refinement, and review of the manuscript for academic consistency and coherence.

Disclosure statement

The authors declare that there are no relevant conflicts of interest related to this research.

Data Availability Statement

The data used and analyzed in this research are available upon request from the authors, with due regard to academic ethics and data protection principles.

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