

# Legal Counselling on Certificates as a Guarantee of legal Certainty of Inheritance

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## Abstract

In land law, the word 'land' is used in a juridical sense, as an understanding that has been given an official limitation by the UUPA. Article 4 states that land in the juridical sense is the surface of the earth. Many things need to be considered in land sale and purchase transactions, one of which is the obligation to be made by/and sign a deed in front of a Notary/PPAT so that the transfer becomes legal and has legal certainty. While Notary is regulated in Law No. 30 of 2004, it is stated that public officials are authorised to make authentic deeds and other authorities as referred to in this Law. The purpose of this activity is to provide an understanding to the community regarding the procedures for managing the sale and purchase of land in accordance with legal provisions and to increase public awareness of the importance of Notary / PPAT Deed in Land Sale and Purchase Transactions. Likewise, the enthusiasm of the residents to participate in the activity was very good and many questions arose so that the discussion became very interesting. Based on the explanation above, it can be concluded that the community service carried out in Buahan Kaja Village, Payangan District, Gianyar Regency, Bali Province has been carried out, has been in accordance with the schedule, expected goals and objectives.

## 1. Introduction

Land is an object that currently has a very high value, both has historical value which is the historical value and origin of the history of a plot of land where the relationship between owners that occurs either due to inheritance or due to legal acts of sale and purchase. In addition, it also has economic value, which is something that can always be measured in rupiah. This economic value is a result of the influence of the dimensions of human life and human interaction with the business world. Realising that the condition and value of land in Bali follows the two values above, it is not wrong to say that land in Bali is an excellent investment opportunity in addition to the influence of Bali as a tourist destination with customs and culture that dominate human life in Bali. As a tourism destination, every piece of land in Bali has a high value. The price of land in Bali is very expensive and increases rapidly not only in a matter of years but even months. The price of land in Bali is said to be more expensive than the price of land in Jakarta. Not surprisingly, it is said that the price of land on the Island of the Gods rises up to 400 per cent per year<sup>1</sup>. Apart from the tourist area factor, the price increase is influenced by the classic reason that the land area remains inversely proportional to the increasing population.

Whether we realise it or not, land as an object that is 'permanent' (cannot be increased) causes many problems if it is connected to the increasing population growth.<sup>2</sup> However, the community does not seem to be affected by this, the sale and purchase of land in Bali is increasing as well, precisely this significant increase in price is one of the reasons people make land sales transactions to obtain profits or meet their needs.

This situation is not followed by an understanding from some people about the importance of land titling. Because land when viewed from a business and investment perspective is very influential with the world of inheritance.

Inheritance. Many problems will arise in the world of inheritance when there is a lack of public understanding of the importance of land titling. Land titling is an activity carried out in order to obtain legal certainty over a plot of land that is directly controlled either obtained through a legal act such as buying and selling, or by law due to inheritance. A land certificate is a

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proof of the right to ownership of a plot of land that should be owned by someone who is entitled to prove his ownership.

There are many things that need to be considered in the pensertipatan of land either due to sale and purchase or due to inheritance, one of which is the obligation to be made by / and sign a deed before a Notary / PPAT so that the transfer becomes valid and has legal certainty. However, not many people are aware of the importance of the Notary/PPAT Deed in the sale and purchase of land or in the case of inheritance. Most importantly in the case of inheritance, because many cases occur that ownership of a land plot is not carried out based on legal acts. It is very risky when a problem occurs where there are several or more than one heirs who fight over one plot of land where the inheritance occurs only as a mere verbal utterance from the testator to one of the heirs. The result of this is that all the heirs who are entitled to the land have the right to take possession of it, because of course the name on the old certificate, which has not been reversed, still bears the name of the testator. This opportunity will certainly be seized because land already has a high economic value. Awareness of the importance of making certificates in the case of inheritance needs to be increased because it is one of the efforts to avoid disputes and struggles over a parcel of land which is land that should be owned by all the heirs who are entitled to it.

In principle, the transfer of land rights in land law is the concept of 'Light and Cash'. Bright means that it is done in front of an authorised public official. Cash means that the sale and purchase price of the land/building must be paid in full. In the case of inheritance, the full payment can be measured by the completion of the land tenure process. So in principle, if it has not been paid in full, a Sale and Purchase Deed cannot be issued.

The legality aspect of land is very important to anticipate the emergence of legal problems in the future. The legality aspect is not only proof of ownership but also to provide certainty to the parties that there is a legal owner of the land.

In addition to the legal certainty obtained, by visiting the Notary/PPAT, the community will get legal advice. The legal advice / counseling includes buying land that has not been titled, heirs, land classified as absentee, buying on credit, through auctions or other information, so that people avoid legal problems or minimise risks in the future. Where this authority is regulated in the Notary Position Law. So it is important to know the importance of land titling in order to ensure legal certainty in terms of inheritance.

Many factors cause information about the law to not reach the community, especially in the regions, one of the causes of the lack of information is due to lack of socialisation from the government and also considering the problems in the field of land and inheritance in the family and the various regulations that apply so that it is difficult to understand, especially for citizens in the village. Based on this background and looking at the importance of land titling in terms of inheritance in relation to the guarantee of legal certainty for the heirs and heirs, it is necessary to hold a form of community service regarding 'Legal Counseling on Land Titling to Ensure Legal Certainty in Terms of Inheritance' for residents in Buahian Kaja Village, Payangan District, Gianyar Regency, Bali Province". So that the purpose of the dissemination of legal information is as an effort to improve the knowledge and legal awareness of its citizens, thus the community inland titling gets certainty, order, and legal protection as a party with rights and interests.

Furthermore, the objectives to be achieved in this community service activity are:

1. To provide the community with an understanding of the importance of land titling.
2. To provide the community with an understanding of the procedures for obtaining land certificates resulting from inheritance and to minimise problems of land ownership as a result of inheritance...

## 2. Method

The problem was solved by involving lecturers of the Faculty of Law as a service team who then provided an understanding of land titling to ensure legal certainty in the event of inheritance, along with how to manage it and associated with applicable laws and regulations. After being given exposure, counseling and forms of socialisation, the participants will be actively involved where the opportunity is given to the participants to ask questions related to

the socialisation or counseling material. In addition, the activity will also be complemented by the provision of related documents, so as to provide suitable solutions to solve the problems and obstacles they face.

. The realisation of service activities in Buahan Kaja Village, Payangan District, Gianyar Regency, Bali Province is divided into 3 (three) stages. The 3 (three) stages can be described as follows:

Number	Stages	Implementation Time	Activities
1	Stage 1	February - July 2021	Discussion with the service team regarding the material and implementation of activities. Initial discussions with Buahan Kaja Village officials regarding the timing of the service implementation
2	Stage 2	August - September 2021	Implementation of legal counselling with the topic of Legal Counselling on Land Titling to Ensure Legal Certainty in the Event of Inheritance, attended by krama followed by local village officials.
3	Stage 3	October 2021	Submission of result report

### 3. Result and Discussion

The target audience in this community service is every head of family who is a resident of Buahan Kaja Village, Payangan District, Gianyar Regency, Bali Province, who is more likely to inherit property rights to land plots based on the appointment made by the Village Head and villagers who want to participate in obtaining legal information about the extension material to be provided.

The suitable method used in carrying out this activity is in the form of providing counseling and lectures as a form and effort of socialisation, followed by questions and answers to obtain results and solutions as a form of problem solving and obstacles faced by residents, equipped with showing and giving examples of related documents. The facilities used are laptops and LCD projectors to make it easier for residents to understand the topics presented.

Buahan Village, Payangan Sub-district, Gianyar Regency, Bali Province, is an arts and tourism area with an impact on property prices (land and houses) in the community. Buahan Kaja Village is located in Payangan Sub-district, which is part of Gianyar Regency. It is the northernmost sub-district with an area of 75.88 km<sup>2</sup>. This sub-district has the largest area compared to other sub-districts, which is 20.62 per cent of the area of Gianyar Regency (368 km<sup>2</sup>). Payangan sub-district consists of 9 villages namely, Melinggih Kelod, Melinggih, Kelusa, Bresela, Bukian, Puhu, Buahon, Buahon Kaja, and the last one is located in the far north is Kerta village which borders directly with Kintamani sub-district, Bangli Regency<sup>4</sup>. The atmosphere of the activity can be seen in Figure 1.



Figure 1. Atmosphere during the activity

Community Service activities in Buah Kaja Village, Payangan District, Gianyar Regency, Bali Province can be said that the enthusiasm of the community is quite high. This can be seen when the team distributed material handouts followed by community participation in following the lecture, listening and taking notes on important things presented in the lecture, besides that there were also several community members who asked questions. At the end of the event, none of the participants left the venue.

Participants left the venue. This shows that the community really needs counselling in the field of law. So that the Community Service lecture material presented by the team with the theme of Legal Counselling for Land Titling to Ensure Legal Certainty in the event of Inheritance is very on target.

The location of the socialisation was held at the Village Hall, precisely behind the Village Head Office. The lecture material which took + 60 (sixty) minutes was delivered by Ricardo Soediono, S.H, M.H as Team Leader from the Faculty of Law, Cipta Wacana Christian University. After giving the lecture, participants were given the opportunity to ask questions. One of the participants, I Wayan Suradnya, as LPM asked the team whether the transfer of land ownership rights through inheritance must be made a certificate as proof of rights. The question was answered by one of the other team members, that the transfer of land rights through inheritance is important because only a land certificate can prove ownership of land rights, which includes the subject of the land rights owner and all complete data on the juridical and physical data of the land plot. When ownership of a parcel of land can be proven through a land certificate, it certainly fulfils the aspect of legality so that it is not possible for anyone other than the name listed on the certificate to own it unlawfully. Then asked again by I Mde Adi Gunawan as the Head of Hamlet asking how to process inherited land that has not been titled? The answer given by the service team is that the transfer of land rights, which is carried out by way of sale and purchase, exchange, grants, inclusion in the company and other legal acts of transfer of rights, except for the transfer of rights through auction can only be registered if proven by a deed made by an authorised PPAT. Thus, it means that every transfer of land ownership rights, which is carried out in the form of sale and purchase, exchange or grant, must be made before a PPAT. Sale and purchase, exchange or grant in the conception of customary law is a legal act that is clear and cash in nature.

Meanwhile, with cash means that the completion of the legal action before the PPAT also means the completion of the legal action carried out with all its legal consequences. This means that the legal action cannot be cancelled again, unless there is a defect in substance regarding the transferred land rights (property rights), or defects regarding the capacity and authority to act on the land plot. This means that in order for the transfer of land rights, and in particular land ownership rights, to be carried out correctly, a PPAT who will make a transfer of land rights must ensure the truth about the land rights (ownership rights), and about the capacity and authority to act of those who will transfer and accept the transfer of land rights. In relation

to the object of the transferred land rights the PPAT must check the correctness of the documents:

1. In the case of registered land parcels or ownership rights over apartment units, the original certificate of the right concerned. In the event that the certificate is not submitted or the certificate submitted does not match the registers at the Land Office;
2. Regarding land parcels that have not yet been registered: a letter evidencing the old land title which has not been converted or a letter from the Head of the Village/ Kelurahan stating that the person concerned controls the land parcel in good faith, and that no problems have arisen in connection with his/her control of the land; and a certificate stating that the land parcel concerned has not yet been titled from the Land Office, or for land located in an area far from the position of the Land Office, from the right holder concerned, corroborated by the Village Head; and in the event that the letter cannot be submitted, the PPAT is obliged to refuse to make a deed of transfer of land rights including property rights on the land to be transferred before the PPAT based on a power of attorney made by a valid Notary. Because the deed of sale and purchase agreement based on the granting of power of attorney is the basis for the PPAT to make a deed of sale and purchase.

As for the power of attorney made before a Notary, whether the person at the time of appearing before the Notary is acting:

1. For himself
2. As a power of attorney, with various variations, among others, the power of attorney is notarial or under hand
3. As a guardian or parent or as a curator
4. As a director or commissioner, or as a member of the board or a member of the committee of a company, or as the chairman or secretary of a foundation, cooperative, etc.

After the question was answered by one of the service team, one of the villagers named I Made Asmakayana asked about how important it is to register the transfer of land rights through inheritance? This question was answered by the service team where it was explained that one of the reasons for the end of a person's ownership of land is due to death. Because this legal event results in the transfer of property from the person who died, both material and immaterial property to the heirs of the deceased person. With the death of a person, there will be heirs, heirs and property. Heirs are people who die and leave property, while heirs are people who are entitled to the property of the deceased. And the assets left behind can be immaterial or material, material assets include land, houses or other objects. The Law of Inheritance is a law that regulates the inheritance of the property of a person who has died to be given to those who are entitled, such as family and society who are more entitled. There are three laws of inheritance that apply in Indonesia, namely: Customary Inheritance Law, Islamic Inheritance Law and Civil Inheritance Law. Each region has different laws in accordance with their kinship system.

The transfer of ownership rights to land is regulated in Article 20 paragraph 2 of the UUPA, namely that ownership rights can be transferred and transferred to other parties. The definition of the word 'switch' is a transfer of rights because the owner of the right has died.

If a landowner dies, his/her right automatically passes to his/her heirs. Article 20 paragraph (2) of the UUPA states that land ownership rights can be transferred and can be transferred. The transfer of land ownership rights can occur due to legal actions and legal events. The transfer of land ownership rights due to legal actions can occur if the holder of the land ownership right intentionally transfers the rights held to another party. Meanwhile, the transfer of land ownership rights due to legal events occurs when the holder of the land ownership right dies, then automatically or without any deliberate legal action from the right holder, the ownership right passes to the heirs of the right holder. Inheritance of land ownership rights must still be based on the provisions of the Basic Agrarian Law and its Implementing Regulations. The transferee of a land title or the holder of a new land title must

be an Indonesian citizen in accordance with the provisions of Article 9 of the Basic Agrarian Law and Article 21 paragraph (1) of the UUPA that only a single Indonesian citizen can have a property right, without distinguishing between men and women who have the same opportunity to obtain a land title and to obtain the benefits and results, both for themselves and their families. In connection with the question posed earlier, another villager, I Made Ariawan, asked how the implementation of land rights due to inheritance? And was answered coherently by the service team as follows: Land rights have a very important role in human life, because the more advanced the society, the more densely populated it is, it will increase the importance of the position of land rights. In the UUPA it has been determined that land in the entire territory of the Republic of Indonesia must be registered, this is in accordance with Article 19 paragraph (1) of the UUPA which reads:

'To ensure legal certainty, the Government shall establish a Land Registry, which shall be regulated by Government Regulation.' In addition, it is also regulated in the provisions of Article 23 paragraph (1) of the UUPA which reads as follows:

"A hak milik, as well as any transfer, extinguishment and encumbrance with other rights, must be registered in accordance with the provisions referred to in Article 19. referred to in Article 19"

Meanwhile, the Government Regulation as referred to in Article 19 paragraph 1 of the UUPA is Government Regulation No. 10 of 1961 which has now been enhanced by Government Regulation No. 24 of 1997 concerning Land Registration. According to Article 29 of Government Regulation No. 24 of 1997, it states:

- 1) Land rights, management rights, waqf land and ownership rights over apartment units are registered by recording them in a land book containing the juridical and customary fiisk data of the land parcel concerned, and as long as there is a measurement letter, it is also recorded in the measurement letter.
- 2) The recording in the land book and the recording in the measuring instrument as referred to in paragraph (1) shall constitute evidence that the right concerned, its right holder and the land parcel described in the measuring instrument have been legally registered in accordance with this Government Regulation.
- 3) The recording of rights as referred to in paragraph (1) shall be carried out on the basis of the evidence referred to in Article 23 and the official report referred to in Article 28".

The land book system means that every land right that must be registered under Government Regulation No. 24 of 1997 must be copied from the land book for the issuance of a certificate. A certificate is a proof of land rights to ensure legal certainty consisting of a copy of the land book and measurement letter sewn together with a cover paper issued by the National Land Agency. The explanation of the Drawing or Situation or Measurement Letter consists of the right number, measurement letter number, Province, Regency, Sub-district, Village, land condition, land location and explanation. The Situation Drawing is signed by the Head of the Land Registration Section on behalf of the Head of the National Land Agency. Registration of transfer of rights due to inheritance is required in order to provide legal protection to the heirs and for the sake of the orderliness of the land registration administration, so that the data stored and presented always shows the latest situation.

The inheritance process occurs due to the death of a person with the death of a number of assets, both material and immaterial with no distinction between movable and immovable goods. Basically, the process of transferring a person's wealth to his heirs called inheritance occurs only because of death, therefore new inheritance will occur if three requirements are fulfilled, namely:

- 1) There is someone who dies.
- 2) There are people who are still alive as heirs who will receive inheritance when the heir dies.
- 3) There is a certain amount of property left by the testator.

The transfer of rights is no longer made in front of the Village Head or under the hand, but must be made in front of a Land Deed Official appointed by the Minister of Home Affairs cq. Directorate General of Agrarian Affairs, one for each one or more Districts. Where a Land Deed Official has not yet been appointed for a Sub-district, the Sub-district Head who heads the Sub-district shall be temporarily appointed by virtue of his office as Land Deed Official. For all deeds of transfer of rights, in accordance with the provisions of Agrarian Ministerial Regulation No. 11/1961 and Minister of Home Affairs Decree dated 6 August 1977 No. SK.104/DJA/1977, forms printed at the Post Office must be used.

According to the LoGA, it is not enough for a deed to be issued, but the process of transferring the name of the former owner to the Land Deed Official must be carried out in order to obtain a certificate. But the existence of a deed is sufficient to obtain a property right, because the right has been transferred, but it does not yet have legal certainty in the future. Because to guarantee legal certainty legal certainty must be proven by a certificate, not by a deed.

There are two systems used in land registration for the first time, namely the systematic land registration system and the sporadic land registration system. Systematic land registration, namely land registration activities for the first time which is carried out simultaneously which includes all land registration objects that have not been registered.

Meanwhile, sporadic land registration is a land registration activity for the first time regarding one or several land registration objects in the area or part of the area of a village / family individually or in bulk. Data changes can occur in juridical data in the form of transfer of land rights due to the legal act of buying and selling land. Changes in the form of transfer of rights must also be registered in the context of maintaining land registration data as stipulated in Article 37 of Government Regulation No. 24 of 1997.

The certificate will be issued in accordance with the physical and juridical data that have been registered in the land book. Such is the implementation of the transfer of land ownership due to inheritance that should be carried out by the heirs, if they register their land based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles in conjunction with Government Regulation Number 24 of 1997 concerning Land Registration.

Based on the description of the service activities above, the following conclusions can be drawn:

1. In principle, the community service carried out has been carried out as expected and in accordance with the schedule, service objectives. When conducting community service activities using the method of counseling and lectures on 'Land Titling to Ensure Legal Certainty in the Event of Inheritance', before the counseling and lectures were held many residents did not understand the importance of this, after the service team from the Faculty of Law of Cipta Wacana Christian conducted counseling / lectures and conveyed, that certificates as proof of rights are absolute in terms of their relation to ownership of land rights, especially in the case of inheritance to be made, so that in addition to determining the entitled subject also avoids problems that might arise as a result of inheritance where land that has not been titled will give rise to rights for all heirs to own it.
2. The obstacles encountered are more a lack of information so that people do not understand the importance of land certificates in owning land rights, in addition to difficult access to information and the lack of socialisation on the matter. In addition, there was reluctance on the part of residents due to the strong family nature of the case, even though the problem had entered the realm of law and its resolution required legal institutions to resolve it.

#### **4. Conclusion**

Based on the description of the implementation of the activities and conclusions above, as for what can be suggested in the implementation of community service which is one part of the Tri-dharma of Higher Education, through the Cipta Wacana Christian University Bachelor of

Law Study Programme is expected to continue to seek funding for community service activities in the fields of science, technology and art (IPTEKS).

strive for funding for community service activities in the fields of science, technology and art (IPTEKS). Given that not all people in rural areas understand the laws and regulations. Likewise, so that people better understand, obey, and implement the rules issued by the government, it is very important to carry out continuous and sustainable community service.

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