Journal of Private and Commercial Law
ISSN: 2599-0314 (Print) 2599-0306 (Online)
Vol. 10 Issue 2 (2026) 175-204
DOI: https://doi.org/10.15294/jpcl.v10i2.49237
Submitted : 2026-05-13
Revised : 2026-07-08
Accepted : 2026-09-10
Published : 2026-09-18
Available online : September 18, 2026

Validity of Land Rights Exchange Conducted by Private Law Subjects and Public Law Subjects

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Abstract

One of the methods of transferring land rights between private legal subjects and public legal subjects is land rights exchange. Land rights exchange occurs when an owner of a land right exchanges their right with another land right owned by another owner. Land ownership between a private legal subject and a public legal subject is valid if the applicable law is fulfilled. This research aims to investigate the validity terms in land right exchange between private legal subjects and public legal subjects. This research employs a legal normative method, with the approach methods applied being the statute approach and the case approach. As a result of this research, the land right exchange between

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private legal subjects and public legal subjects is valid as long as it fulfills the material and formal requirements stipulated in Law 5/1960, Government Regulation 24/1997, and other relevant regulations. At the very least, a land rights exchange is valid if the legal subject can exchange the land rights and the exchange process is conducted by the applicable law.

Keywords

Legality, Exchange, Subject of Private Law, Subject of Public Law.

A. Introduction

Indonesia is an agricultural country, where the majority of the population works in the agricultural sector. Therefore, land is an essential element in social life, especially in Indonesia. When viewed from an economic perspective, land is considered to provide numerous benefits to individuals. It is not uncommon for many people to compete with each other to obtain land rights, thereby controlling as much land as possible. The government needs to regulate this so that land can be used regularly and effectively, thereby providing maximum benefits for the state and its people. Law No. 5/1960 on Basic Agrarian Principles ("UUPA") provides a regulation as well as an understanding for everyone regarding the land law system in Indonesia and the land rights that can be owned.

Initially, land rights arise from the state's right to control, as stipulated in Article 4 of the UUPA, which states that land rights are granted to individuals either alone or jointly with other people and legal entities. The holder of such land rights cannot necessarily determine the land rights that can be owned, because it is the authority of the state to determine what land rights can be owned or granted to individuals and legal entities. These land rights are regulated in Article 16, paragraph (1) of the UUPA. These land rights are divided into three types: permanent land rights, land rights to be determined by law, and temporary land rights.[1]

[1]Urip Santoso, Hukum Agraria Kajian Komprehensif (Jakarta: Prenada Media Group, 2017).

Land rights granted by the state to individuals and legal entities, as described above, must be registered. This is in connection with achieving legal certainty regarding land rights ownership. Additionally, land registration serves as a form of protection for landowners' rights against the actions of other parties seeking to control the land. Land registration is done by applying to the Office of the National Land Agency (BPN) or the local Land Office.[2] After the application for land rights registration is submitted to the District/City Land Office, a land certificate will be issued as proof of rights consisting of a copy of the Land Book and Measurement Letter that is covered and bound together, the form of which is determined by the Minister of Agrarian Affairs or the Head of the National Land Agency.

Land rights can be transferred and assigned to other parties.[3] Transfer means that the land right passes from its owner to another party due to a legal event such as inheritance. On the other hand, transfer refers to the process by which land rights are transferred from one party to another through legal actions such as sale and purchase, exchange, grant, participation in company capital, or auction. The transfer of land rights can not only occur between fellow private law subjects or public law subjects, but can also occur between private law subjects and public law subjects. The private law subjects in question are individuals and legal entities. In contrast, the public law subjects in question are legal entities or associations formed for the benefit of the public or the state. Efforts to transfer land rights between private law subjects and public law subjects are pursued through the exchange of land rights. Exchange of land rights is a legal action in the form of the transfer of a property right on the land concerned to the party exchanging it. To determine the validity of the land rights exchange, the

[2]Reda Manthovani and Istiqomah Istiqomah, "Pendaftaran Tanah Di Indonesia," Jurnal Magister Ilmu Hukum 2, no. 2 (2021): 23, https://doi.org/10.36722/jmih.v2i2.744.

[3]Miftahul Khair Patahuddin, Harly Stanly Muaja, and Doortje Durin Turangan, "Pengaturan Terhadap Peralihan Hak Milik Atas Tanah Melalui Jual Beli Tanah Menurut UU No. 5 Tahun 1960 Tentang Peraturan Dasar Pokok - Pokok Agraria," Correspondencias & Análisis 13, no. 15018 (2023): 1–23.

fulfillment of the conditions for implementing the exchange act should be reviewed.

There is a case regarding the transfer of land rights carried out by way of exchange between private legal entities, namely PT Wismilak Inti Makmur Tbk., and public legal entities, namely the Polda Jatim(Polda Jatim). PT Wismilak Inti Makmur Tbk. is a limited liability company that can only own land rights in the form of HGB and Use Rights. Meanwhile, Polda Jatim is a government institution that can only be granted the Right of Use. In this case, PT Wismilak Inti Makmur Tbk. Exchanged land rights in the form of HGB for land with the status of Right of Use owned by Polda Jatim. This certainly raises questions about the capacity of each legal subject as the holder of the land rights. Each legal subject in this case should have changed the land rights first, so that when they are exchanged, they can be owned by legal subjects who are entitled to receive the land rights. However, in this case, there is no change in land rights to adjust the legal subjects who are entitled to hold the land rights.

In previous research about the conversion of a HGB into Rights of Ownership, it was stated that when a HGB is to be converted into Rights of Ownership, the HGB must first be relinquished to the state, after which the state will grant Rights of Ownership to applicants who meet the requirements. Therefore, in the case of PT Wismilak Inti Makmur Tbk. and Polda Jatim, the HGB should first be relinquished to the state, after which the state will grant a Right of Use to the Polda Jatim. This is because the Polda Jatim is not the subject of the HGB and is therefore not entitled to acquire the HGB owned by PT Wismilak Inti Makmur Tbk., which is exchanged for a Right of Use as stipulated in Article 36 of the UUPA.[4]

This issue is highly complex when viewed through the lens of land law principles, specifically the principle of legal certainty, as every legal

[4]Christine Jetty Juliana G. Goni Amira Nurfadilah Mamonto, Marthin Luther lambonan, "Pengalihan Hak Guna Bangunan Menjadi Hak Milik Berdasarkan Peraturan Pemerintah Nomor 18 Tahun 2021 Tentang Hak Pengelolaan, Hak Atas Tanah, Satuan Rumah Susun, Dan Pendaftaran Tanah," Lex Administratum, 2025, 10.

act must comply with statutory provisions. In this case, if the Polda Jatim were to directly acquire the HGB without going through the proper transfer mechanism, such an action would potentially be legally flawed, thereby invalidating the agreed-upon exchange. Based on this, it is necessary to study the validity of the exchange of land rights between private law subjects and public law subjects to obtain prescriptive legal solutions.

The research was conducted using a legal research method, employing both a statutory approach and a case approach. The statute approach is used by referring to laws and regulations related to the research topic.[5] The case approach is used by analyzing cases relevant to the topic. The legal materials used are both primary and secondary, obtained through library research. The legal problems identified will be analyzed using the inventoried legal materials to obtain prescriptive research results.

B. Land Rights

Before the establishment of the UUPA in Indonesia, colonial agrarian law remained in effect, resulting in legal dualism and, in some cases, legal pluralism. Legal dualism is a condition where there is an area with multiple groups of residents. In this context, legal dualism is prevalent in the Dutch East Indies region, which comprises three distinct groups of residents: Europeans, foreigners, and natives. The three groups apply different laws; for Europeans and foreigners, Western land law applies, while for indigenous groups, customary land law applies. Therefore, legal pluralism arises because there are several rules of land law. To ensure legal certainty in the face of legal dualism and legal pluralism, it is necessary to have a national agrarian law that applies to the people of Indonesia, currently known as UUPA.[6] The UUPA is expected to promote the prosperity of the people, as stated in

[5]Peter Mahmud Marzuki, Penelitian Hukum (Edisi Revisi) (Prenada Media Group, 2005).

[6]Sri Hajati et al., Politik Hukum Pertanahan Indonesia, Pertama (Jakarta: Prenada Media, 2021).

Article 33 of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the UUD NRI 1945).

In realizing the prosperity of the people, as stated in Article 33 of the 1945 Constitution of the Republic of Indonesia, an important role of the state is required. The state, as an organization of power of all the people at the highest level, is given the right to control land.[7] This is stated in Article 2 paragraph (1) of the UUPA, which is based on the provisions in Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, the state has the right to control the earth, water, and airspace, including the natural resources contained therein at the highest level.

Referring to Article 2 paragraph (2) of the UUPA, the state's right to control the land is given to:

a. Regulate and organize the allocation, use, supply, and maintenance of the earth, water, and airspace;
b. Determine and regulate legal relationships between a person and the earth, water, and space;
c. Determine and regulate legal relationships between persons and legal acts concerning the earth, water, and space.

The granting of such authority is solely intended for the prosperity of the people. Therefore, it does not mean that the state has the right to own land, but the state is given the right to regulate and manage land.[8] In regulating and managing the land, the state can grant land rights to a person or legal entity that needs it, as stated in Article 4, paragraph (2) of the UUPA.[9]

The land rights in question are the land rights listed in Article 16 paragraph (1) of the UUPA, namely:

1. Right of Ownership

Right of ownership is a land right that is strong, hereditary, and fulfilled as stipulated in Article 20 of the UUPA. The right of ownership will continue even if the holder of the right of ownership

[7]Hajati et al.
[8]Afifah Kusumadara, "Perkembangan Hak Negara Atas Tanah: Hak Menguasai Atau Hak Memiliki," Media Hukum 20, no. 2 (2013): 1–10.
[9]Hajati et al., Politik Hukum Pertanahan Indonesia.

dies, and it will then be passed on to their heirs. There is no time limit for right of ownership, like other land rights. A right of ownership can only be owned by an Indonesian citizen (WNI) as stipulated in Article 21 paragraph (1) of the UUPA. In addition to Indonesian citizens who are entitled to hold Rights of Ownership, the State Bank can also own Rights of Ownership to land needed for housing its employees.[10]

Based on Article 22 of the UUPA, there are several ways to acquire a right of ownership, including those obtained through customary law, those determined by law, and those obtained through a government stipulation. Rights of Ownership obtained according to the provisions of customary law occur due to the process of land growth on the riverbank. This land growth usually occurs because, during floods, the rivers in a particular village turn, leaving new land.[11] This new land is called tongue land, which, according to customary law, belongs to someone whose land is adjacent to the new land. Meanwhile, Rights of Ownership were established by law on September 24, 1960, with the enactment of the UUPA, providing a form of legal certainty amid the existence of legal dualism.[12] The acquisition of Rights of Ownership by government stipulation occurs when the government grants Rights of Ownership through a formal declaration or regulation. The government may only grant Rights of Ownership to land directly controlled by the state. After obtaining a property right, a certificate of land rights will then be given as proof of ownership of the land.

Holders of land ownership rights are permitted to transfer their rights to others. The transfer can be through sale and purchase, exchange, or grant. Based on Article 19 of the UUPA, the transfer of land ownership rights to another person must be registered in accordance with the provisions of land registration contained in Government Regulation No. 24 of 1997 concerning Land Registration (PP No. 24 of 1997). A right of ownership can be revoked and become state land again if the land is used for the public interest, so that the holder of the right of ownership is obliged to release the land to the

[10]Hajati et al.
[11]Hajati et al.
[12]Hajati et al.

state, which will then be given adequate compensation by Article 18 of the UUPA.[13]

2. Right to Cultivate

Article 28 paragraph (1) of the UUPA defines right to cultivate as the right to work on a piece of land directly controlled by the state for a specific period for agricultural, fishery, or livestock enterprises. The period can be extended if the company requires additional time to utilize the right to cultivate.[14] Unlike right of ownership, right to cultivate can be owned by Indonesian citizens and legal entities established under Indonesian law, and domiciled in Indonesia, as stipulated in Article 30, paragraph (1), of the UUPA. The land that can be granted to the legal subject of a right to cultivate is state land, so the transfer must go through a government stipulation, which in this case is given by the Minister of Agrarian Affairs or a designated official. A right to cultivate can be transferred to another party by sale and purchase, declaration of capital in a company (*inbreng*), exchange, grant, and inheritance.

3. Right to Build

Right to build, regulated in Article 35 of the UUPA, is a right granted by the state to construct and own buildings on land that does not belong to the individual for a specified period. Although there is no building on the land, the right to use it has been attached, and it cannot be transferred to another party, even by lease. The legal subjects entitled to be holders of building use rights are the same as holders of business use rights stipulated in Article 36 paragraph (1) of the UUPA, namely Indonesian citizens and legal entities established under Indonesian law and domiciled in Indonesia. Building use rights can be attached to state land, management right land, and freehold land.[15] In addition, the right to use buildings on state land is obtained through a government

[13]Hajati et al.
[14]Hajati et al.
[15]Hajati et al.

stipulation, which is then granted a decree granting the right to use the buildings and must be registered in the land book at the Land Office.

The acquisition of a building use right on freehold land is done through an agreement between the freehold holder and the prospective holder of the building use right, as outlined in the deed of a Land Deed Official (PPAT). The term of a building use right on state land can be extended under the conditions stipulated by law and regulation, specifically in Article 40, paragraph (1) of Government Regulation No. 18/2021 on Management Rights, Land Rights, Flat Units, and Land Registration (PP 18/2021). Building use rights must not disturb public order, meaning that the holder of a building use right must prioritize the public interest. Building use rights can be transferred to other parties in ways similar to the transfer of Rights of Ownership.[16]

4. Right to Use

Right to use is a right granted to a person to use and/or benefit from land controlled by the state or land owned by others, based on permission from the authorized official or an agreement with the landowner, except through a lease agreement or land management agreement.[17] In contrast to other land rights, Article 41 of UUPA regulates the subject of right to use, namely Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law and domiciled in Indonesia, and foreign legal entities with representatives in Indonesia. Land that can be granted with right to use includes state land, land with management rights, or land with ownership rights. The right of use on state land or the right of use on land with a new management right must be registered in the land book at the Land Office, which will subsequently be issued a certificate of land rights as proof of the rights stipulated in Article 54 of PP 18/2021.

The term of the right of use depends on the needs of the right-of-use holder. If the right of use is on state land and land with management rights, it is granted for a maximum period of 30 years. It can be

[16]Hajati et al.

[17]Theresia Pasaribu, "Aspek Hukum Hak Pakai Dan Peraturannya," Hukumproperti.com, 2013.

extended for a maximum of 20 years, and can be renewed for a maximum period of 30 years or granted according to the required period as stated in Article 52 of PP 18/2021. This provision aims to fulfill land needs sustainably.[18] Regarding the right of use on freehold land, it cannot be extended; however, a new right of use can be granted upon the agreement of the parties, as outlined in a PPAT deed. When the period of the right of use has expired, the land must be returned to the state, and the certificate of the right of use must also be submitted to the Land Office.[19]

5. Right of Lease

The right of lease, as stipulated in Article 44 of the UUPA, is a right granted to a person or legal entity to lease land owned by another person for building purposes for a specified period, and the lessee is obligated to pay rent to the landowner. According to Article 50 paragraph (2) of the UUPA, it will be further regulated by legislation, but in reality, until now, there has been no legislation regulating the right to lease buildings. In this building lease, the leased property is vacant land with established Rights of Ownership, free from any buildings or other structures.[20] The leasing of the land is intended to erect a building on the land so that the building erected becomes the property of the lessee unless there is another agreement.[21]

Article 45 of the UUPA regulates the subject of building lease rights, namely Indonesian citizens, foreigners domiciled in Indonesia, legal entities established under Indonesian law and located in Indonesia, and foreign legal entities that have representatives in Indonesia. In making this building lease agreement, the parties need to pay attention to the limitations contained in Article 44 paragraph (3) of the UUPA, namely that the contents of the agreement do not contain elements of extortion. In addition to the tenant of the land, which in this context refers to the holder of the lease right for buildings, the lease right can be

[18]Hajati et al., Politik Hukum Pertanahan Indonesia.
[19]Hajati et al.
[20]Urip Santoso, Perolehan Hak Atas Tanah (Jakarta: Prenada Media Group, 2015).
[21]Santoso.

transferred to other parties with the landowner's permission.[22] If the prohibition is violated, the lease relationship between the landowner and the tenant will automatically be terminated.

6. Right to Open Land

The implementation of the right to open land is not by Article 4 paragraph (1) of the UUPA, which does not authorize the utilization of land as stipulated in Article 4 paragraph (2) of the UUPA.[23] Instead, it is only a form of realization of the *ulayat* rights of customary law communities. In customary law, there are various types of land rights, one of which is *ulayat* rights. *Ulayat* rights are the authority of customary law communities to regulate or manage land in their territory, namely *ulayat* land.

7. Right to Collect Forest Products

The right to collect forest products is a right granted only to Indonesian citizens, as stipulated in Government Regulation No. 6/1999 concerning Forest Concessions and Collection of Forest Products in Production Forests (PP 6/1999). Article 1 point 11 of PP 6/1999 stipulates that forest products that can be collected are timber or non-timber products from production forests, in the amount and type specified in the permit.

8. Other rights that are not included in the aforementioned rights will be stipulated by law, as well as temporary rights as mentioned in Article 53.

1. Lex Certa: Three Level Classification of Influencer Activities

The most significant contribution of POJK No. 13/2025 is the classification of activities carried out by influencers who collaborate with securities companies. Article 106 (2) outlines three distinct categories of collaboration, each with different legal implications.

[22]Santoso.

[23]Hajati et al., Politik Hukum Pertanahan Indonesia.

C. Validity of Transfer of Land Rights

Article 37 paragraph (1) of Government Regulation No. 24/1997 stipulates that the transfer of land rights can be accomplished through sale and purchase, exchange, *inbreng* grant, and other legal actions related to the transfer of rights. Article 1457 of the BW defines sale and purchase as an agreement by which one party is bound to deliver an object in exchange for a price agreed upon by the other party. In the case of the sale and purchase of land, it means that one party binds itself to transfer its land rights to the buyer, accompanied by payment by the buyer of the agreed-upon price. The transfer of land rights must be accompanied by a juridical transfer *(juridische levering*), which is carried out by changing the name of the land rights owner on the certificate through the Land Office.

According to Boedi Harsono, the sale and purchase of land is a legal act that permanently transfers title to land from the seller to the buyer, executed simultaneously with the buyer's payment of the agreed price to the seller.[24] In the transfer of land rights through sale and purchase, it must be ensured that the party transferring the rights is the party entitled and authorized to do so, and that the party acquiring the rights meets the requirements to hold land rights. Under customary law, the nature of land sales and purchases, according to Maria S.W. Sumardjono, is:[25]

1. Cash, means that the transfer of rights is carried out by the seller simultaneously with payment made by the buyer; thus, the transfer of rights is considered valid even if the purchase price has not yet been paid in full.
2. Real, means that the expressed intent must be followed by concrete actions demonstrating the purpose of the sale and purchase; for example, if the seller has received money from the buyer, an agreement is drawn up in the presence of the village head.

24Edgar Brdge Tatulus, "Tinjauan Terhadap Tanggung Jawab Para Pihak Dalam Pembatalan Jual Beli Tanah Karena Tidak Terlaksananya Suatu Proses Peralihan Hak Atas Tanah," *Lex Privatum* VI, no. 10 (2018): 22–31.
25Urip Santoso, "Kajian Teoritis Jual Beli Hak Milik Atas Tanah," Perspektif, 1999.

3. Transparent, means that the legal act must be carried out in the presence of the village head as a sign that the legal act does not violate applicable regulations. Thus, the sale and purchase of land rights is valid if it meets both substantive and procedural requirements.

The substantive requirements for the sale and purchase of land rights are that the seller has the right and authority to sell the land, and the buyer of the land rights is a legal entity that meets the qualifications to hold the land rights being sold. Meanwhile, the formal requirements for the sale and purchase of land rights include the preparation of a deed of sale and purchase of land rights by a Public Notary (PPAT), followed by registration with the Land Office to be recorded in the land registry and the amendment of the name on the certificate. This is to fulfill the principle of publicity in agrarian law, thereby ensuring legal certainty. Land rights that can be transferred through sale and purchase include ownership rights, building use rights, business use rights, and use rights over apartment units.[26]

Article 1666 BW defines a grant as an agreement whereby the grantor, during their lifetime, gratuitously and irrevocably transfers property for the benefit of the grantee, who accepts such transfer. Furthermore, Article 1667 of the Civil Code stipulates that a grant may only encompass existing property.[27] The legal validity of a grant is contingent upon fulfilling the requirements set forth in Article 1320 BW, which comprise mutual consent, the legal capacity of both the grantor and the grantee, a defined object, and a lawful cause.[28] Failure to satisfy these statutory conditions renders the grant void. In the context of land rights, a grant is defined as an act whereby the grantor, during their lifetime, gratuitously conveys land rights to the grantee.

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[26]Santoso, Hukum Agraria Kajian Komprehensif.

[27]Hengky Prasetyo, "Analisis Yuridis Tentang Pelaksanaan Pembatalan Hibah Tanah Oleh Pemberi Hibah (Studi Kasus Putusan PN No. 95/Pdt.G/2004/PN Smg)," Jurnal Ius Constituendum 1, no. 2 (2016): 1–14, https://doi.org/http://dx.doi.org/10.26623/jic.v1i2.549.

[28]Intan Novitasari, "Tinjauan Yuridis Peralihan Hak Milik Atas Tanah Melalui Akta Hibah Di Hadapan Notaris," Politika Progresif: Jurnal Hukum, Politik, Dan Humaniora 2, no. 2 (2025): 134.

Under agrarian law, the grant of land rights must be executed through an authentic deed drawn up by a PPAT, as stipulated in Article 37, paragraph (1) of PP 24/1997. Such an authentic deed serves as the legal basis for registering the transfer of title on the land title certificate at the Land Office. The objective of this requirement is to guarantee legal certainty for the parties involved and to prevent future disputes. This principle is reinforced by Article 19 UUPA, which mandates the registration of grants to provide legal certainty for the rights holder, given that a grant, in its strict sense, is defined as a voluntary transfer of property.

One of the efforts to transfer land rights is through inclusion in the company (inbreng). Inbreng is the transfer of land rights from a shareholder to a company that is a legal entity, where the land becomes a form of capital for the shareholder concerned. In this case, the land office records the transfer of rights in the land book, certificate, and other registers by crossing out the name of the old right holder in the land book, certificate of rights, and other public registers and affixing the signature of the head of the land office or a designated official. The name of the company as the new holder of the land rights is written on the page and column in the land book.

Of all the efforts to transfer land rights, the discussion is focused on the transfer of land rights through exchange. Exchange of land rights is a legal action in the form of the transfer of ownership rights to the land concerned to the party who exchanges it. In BW, the concept of exchange is regulated in Chapter VI. According to Article 1541 BW, an exchange is defined as an agreement by which both parties promise to give one thing reciprocally in exchange for another. Although conceptually it can use the definition from BW, the exchange referred to in BW and the National Land Law are different. Exchange in BW has not resulted in the transfer of land rights. Exchange in terms of transferring land rights must be followed by legal delivery (juridische levering). According to Subekti, an exchange is a consensual agreement in the sense that it is valid when the parties involved have agreed on the goods that are the object of the agreement.[29] Exchange is a method of

29Subekti, *Aneka Perjanjian* (Bandung: Citra Aditya Bakti, 1995).

transferring land rights originating from customary law. Currently, the exchange has undergone modernization while still respecting the nature of cash, real, and transparent as recognized by customary law.[30] The reflection of these characteristics is evident in the transfer of land rights between the grantor and the recipient, jointly based on the Deed of Exchange made by the Land Deed Official (PPAT).

Based on the aforementioned elaboration, the functions of the Deed of Exchange executed by a PPAT are as follows:[31]

1. Evidentiary Instrument, It serves as legal proof that a land rights exchange has indeed been executed between the parties, while also functioning as evidence of the transfer of title from the first party to the second party and vice versa.
2. Prerequisite for Registration of Rights Transfer, It constitutes a formal requirement for registering the transfer of land rights at the Land Office. The primary objective of registering the transfer of land rights is to satisfy the principle of publicity and to ensure legal certainty. Once the transfer is registered and the land title certificate is issued, the legal status of the ownership title becomes definitive, thereby establishing legal certainty. Furthermore, through the registration of the rights transfer, third parties are legally presumed to have knowledge of the new land titleholder (constructive notice).

The transfer of land rights is considered valid if it fulfills the legal requirements of both an exchange agreement and a legal act of transferring rights. The stages in the registration of the transfer of land rights through exchange are as follows:[32]

a. *Preparation of Deed of exchange by PPAT*

At this stage, the parties must prepare several important documents, including their land rights certificates, proof of rights letters, and identification documents, as well as other supporting

[30]Urip Santoso, Pendaftaran Dan Peralihan Hak Atas Tanah (Jakarta: Prenada Media, 2010).

[31]Steven Wongso, "Keabsahan Tukar Menukar Dengan Objek Hak Atas Tanah Secara Lisan (Studi Putusan Pengadilan Negeri Depok Nomor 211/Pdt. G/2018/PN. Dpk)," Indonesian Notary 2, no. 1 (2020): 9.

[32]Santoso, Pendaftaran Dan Peralihan Hak Atas Tanah.

documents. Once these documents are complete, the PPAT must inspect the Land Office to verify that the land title certificates are consistent with the registers at the local Land Office by presenting the original certificates. In addition, the PPAT also needs to obtain permission to transfer rights from the relevant agencies if necessary and the parties as prospective recipients of land rights must make a statement by the provisions in Article 99 paragraph (1) of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 (Permen ATR/Head of BPN 3/1997).

b. *Implementation of Deed Making of Exchange by PPAT*

The making of the Deed of Exchange by the PPAT must be by the form listed in Appendix IIa of the Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration. The execution of the Deed of Exchange must be attended by the parties concerned or authorized to another person, witnessed by at least 2 (two) witnesses who fulfill the provisions of the legislation.

c. *Registration of Transfer of Land Right Originating From The Exchanger*

After the Deed of Exchange is signed by the parties, witnesses, and PPAT, the PPAT is obliged to submit the deed and other documents to the Land Office for registration of the transfer of land rights no later than 7 (seven) working days from the date of signing. After receiving the application, the Land Office shall give a receipt. The PPAT, based on such submission, shall deliver written notification to the parties and submit the receipt obtained from the Land Office.

d. *Submission of Certificate*

The land rights certificates that have been recorded are then handed over to the land rights holders by the PPAT.

Based on the aforementioned discussion, it can be concluded that prior to executing the legal act of exchange, the parties must reach a mutual agreement regarding the exchange of the land rights, specifically identifying the land titles to be exchanged and the mechanisms of implementation. However, the exchange agreement alone cannot be deemed legally valid to convey title, as it has not yet resulted in the actual transfer of ownership rights. Consequently, an authentic Deed of Exchange must be drawn up by a Land Deed Official PPAT and subsequently registered with the Land Office for the transfer of land rights to be legally valid and enforceable.

Before the exchange is carried out, the parties conduct an exchange agreement. The exchange agreement is obligatory, meaning that it creates rights and obligations for the parties. The parameters of the validity of the exchange of land rights are determined as follows:[33]

a. *The fulfillment of the legal requirements of the agreement as stipulated in Article 1320 BW, among others:*[34]
    1) Agreement;
    2) Capacity;
    3) Specific object, and
    4) A permissible cause.
b. *The fulfillment of the legal requirements of a legal act of transfer of rights according to the National Land Law*
    1) Material requirements, consisting of:
    a. The parties are entitled to exchange the land rights concerned.
    b. The parties are authorized to exchange land rights.
    c. The object of the exchange of land rights can be exchanged and is not in dispute; and
    d. The parties qualify as the right subjects of the land rights being exchanged.

[33]Wongso, "Keabsahan Tukar Menukar Dengan Objek Hak Atas Tanah Secara Lisan (Studi Putusan Pengadilan Negeri Depok Nomor 211/Pdt. G/2018/PN. Dpk)."
[34]Leonora Bakarbessy and Ghansam Anand, Buku Ajar Hukum Perikatan (Sidoarjo: Zifatama Jawara, 2018).

2) The formal requirements consist of:
The formal requirement for the validity of the legal act of exchange is the existence of an Exchange Deed made by a PPAT, which serves as evidence of the parties' implementation of the land rights exchange.[35]

If the conditions mentioned above are met, then the legal act of transferring land rights through exchange is valid and legally enforceable.

D. Case Analysis of PT Wismilak Inti Makmur Tbk (Private Legal Subject) with Polda Jatim (Public Legal Subject)

According to a report from JawaPos.com, the polemic over the ownership of the Graha Wismilak building, involving the East Java Regional Police, suggests that the HGB (Right to Build/HGB) of the building is legally flawed. This is because the Decree (SK) of the Regional Office of BPN, which is the basis for its issuance, has never been registered. The Directorate of Criminal Investigation of the Polda Jatim, Kombespol Farman, stated that in the absence of a registered decree, the HGB, which is the right to the land, cannot be issued. However, the HGB of the land rights can be issued. The lawyer of PT Wismilak Inti Makmur Tbk, Sutrisno, said that the transfer of ownership of the building was legally valid. PT Gelora Djaja purchased the building in its empty condition, with no activity in the building. Sutrisno also said that the HGB listed was owned by an individual. This is in contrast to the police's opinion, which argues that the transfer of ownership of the building was procedurally flawed. Njono, who was the previous owner of the land, did not just own it; he obtained the land by making a swap or ruislag with land located on Jalan Dukuh Kupang. Currently, the building is the Dukuh Pakis Police Station.[36]

[35]Adrian Sutedi, Peralihan Hak Atas Tanah Dan Pendaftarannya (Jakarta: Sinar Grafika, 2016).
[36]Hasti Edi Sudrajat, "SK Graha Wismilak Tidak Teregistrasi, Tapi Muncul HGB," Jawa Pos, 2023.

The legal act of exchanging land rights is recognized in the UUPA. Exchanging land rights can cause a problem. This problem can arise if the land rights being exchanged cannot be exchanged, in the sense that the parties must verify whether these rights can be exchanged or not. Additionally, it is essential that the land rights to be exchanged are not in dispute.[37] Article 26 of the UUPA stipulates that exchange is one of the acts intended to transfer Rights of Ownership, and the Government Regulation shall regulate its supervision." Provisions regarding the exchange of land rights have been briefly discussed in the UUPA. This is further regulated in Article 37 of PP 24/1997, which states that in principle, the transfer of land rights and ownership rights over apartment units, which in this case is an exchange, can only be registered if it is proven by a deed made by an authorized PPAT according to the provisions of the prevailing laws and regulations.

In addition, the provision of exchange of land rights is also further regulated in Article 2 of PP 37/1998 which stipulates that PPAT has the main task of carrying out part of the land registration activities, namely by making a deed as proof that specific legal actions have been carried out regarding land rights or ownership rights over apartment units. This deed will serve as the basis for registering changes in land registration data resulting from the legal action. Then, in Article 2 paragraph (2) of PP 37/1998, it is stipulated that the legal actions as referred to in paragraph (1), one of which is an exchange.

The exchange agreement must ensure that it fulfills the requirements of the agreement's validity as stipulated in Article 1320 of the BW. If the agreement is valid and meets the material and formal requirements for the transfer of land rights, the PPAT, as an authorized official, can execute a deed of exchange of land rights. Then, based on Article 37, paragraph 1, of PP 24/1997, the PPAT deed serves as proof that the exchange has been carried out by the parties concerned.[38]

[37]Ratu Rafles, Friend H. Anis, and Vicky F. Taroreh, "Aspek Hukum Perjanjian Tukar Menukar (Barter) Tanah Hak Milik," Lex Crimen XI, no. 2 (2022): 84.
[38]Wongso, "Keabsahan Tukar Menukar Dengan Objek Hak Atas Tanah Secara Lisan (Studi Putusan Pengadilan Negeri Depok Nomor 211/Pdt. G/2018/PN. Dpk)."

In addition to fulfilling the validity requirements for a contract as specified in Article 1320 of the Civil Code, the transfer of land rights through an exchange must also meet the substantive and formal requirements as outlined above. The substantive requirements relate to the authority of the parties to enter into a legal act of exchanging land rights, the legal status of the exchanged property not being subject to dispute, and the legal entity receiving the land rights must meet the requirements to be the subject of the exchanged land rights. In this case, the exchange between PT Wismilak Inti Makmur Tbk and the Polda Jatim does not meet the substantive requirements. Based on Article 42 of UUPA, which governs the subjects of a HGB, the Polda Jatim is not a legal subject eligible for an HGB that is, an Indonesian citizen or a legal entity established under Indonesian law and domiciled in Indonesia. Therefore, the transfer of rights through the exchange between PT Wismilak Inti Makmur Tbk and the Polda Jatim does not meet the material requirements.

Based on Article 49 of the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency No. 9/1999, it is stipulated that the right of use can be granted to (a) Indonesian citizens; (b) foreigners domiciled in Indonesia; (c) legal government agencies established under Indonesian law and domiciled in Indonesia; (d) foreign legal entities that have representatives in Indonesia.[39] If it is related to the case, Polda East Java as a government agency, should have the right to land use rights, but in the case of land exchanged is HGB, then based on the material requirements it is not fulfilled, because Polda as a state agency cannot have HGB which is the object of the exchange with PT Wismilak Inti Makmur Tbk., as well as the formal requirements, because the basis of the exchange is a deed of sale and purchase and not a deed of exchange.

In addition to substantive requirements, the transfer of land rights must also meet formal administrative requirements as stipulated by law. Compliance with these formal requirements is achieved through the

[39]Urip Santoso, "Kewenangan Pemerintah Daerah Terhadap Hak Penguasaan Atas Tanah," Jurnal Dinamika Hukum 12, no. 1 (2012): 186–96, https://doi.org/10.20884/1.jdh.2012.12.1.115.

preparation of a deed by an authorized PPAT and the registration of the transfer of rights with the Land Office as a means of updating both the legal and physical records of the land. These requirements are an integral part of the national land registration system, which aims to provide legal certainty for every transfer of land rights.

In the context of the case between PT Wismilak Inti Makmur Tbk and the Polda Jatim, neither the substantive nor the formal requirements have been fully met. From a substantive perspective, the Polda Jatim, as a government agency, can in principle only be granted a Right of Use over the land in accordance with the provisions of laws and regulations; thus, the existence of a HGB as the subject of the exchange raises issues regarding the compatibility of the legal entity with the type of right being transferred. Meanwhile, from a procedural standpoint, the transfer process is not supported by a decision from the BPN that serves as the basis for the issuance of land rights. This situation indicates that the administrative requirements, which are essential for the land registration process have not been fully met.

From the perspective of agrarian law, the validity of the transfer of land rights is not solely determined by the existence of an agreement between the parties. Rather, it must also satisfy both the substantive and formal requirements as stipulated under the applicable laws and regulations. In the dispute between PT Wismilak Inti Makmur Tbk and Polda Jatim, if it is true that the SK issued by the BPN, which should have served as the legal basis for the issuance of the Building Rights, was never registered, this could potentially constitute an administrative defect and undermine legal certainty regarding the ownership of the land rights. This condition is consistent with the legal theory proposed by Gustav Radbruch. According to Gustav Radbruch, the law must embody three fundamental values:[40]

1. Legal Certainty: The law must ensure fair treatment, prevent unjust harm to individuals, and provide equal treatment to all parties in accordance with their respective rights.

[40]Heryanti et al., "Perlindungan Hukum Terhadap Sertipikat Hak Milik Atas Tanah Akibat Cacat Administrasi," HaluOleo Legal Research 6, no. 2 (2024): 267.

2. Expediency (Utility): The law should provide benefits to all individuals who require legal protection, regardless of whether they have suffered a loss. Consequently, every legal decision should produce practical benefits that can be experienced by all parties involved.
3. Justice: Legal provisions and judicial decisions must be based on clear, consistent, and coherent legal rules, while remaining impartial and free from improper external influence. In this way, the law can achieve substantive justice for all parties.

In the dispute between PT Wismilak Inti Makmur Tbk and Polda Jatim, the SK issued by the BPN was allegedly never recorded in the BPN land administration records. The decree constitutes a State Administrative Decision (KTUN) issued by a governmental agency and/or official in the exercise of governmental authority. Therefore, every State Administrative Decision issued by a governmental agency and/or official must comply with the applicable laws and regulations as well as the General Principles of Good Governance (AUPB), as stipulated in Article 8 of Law Number 30 of 2014 on Government Administration (hereinafter referred to as UU 30/2014). However, the police investigation revealed that the SK issued by BPN, which served as the legal basis for the registration of the land rights, had never been recorded in BPN's administration records. In fact, Article 23 letter (a) point (1) of PP 24/1997 concerning Land Registration provides that newly granted land rights originating from state land or management rights land shall be evidenced by a decree granting such rights issued by the competent authority. Consequently, when the juridical data relating to the issuance of the land title certificate were examined and the relevant SK BPN could not be found in the land administration records, the land registration process undertaken by PT Wismilak Inti Makmur Tbk was procedurally defective due to an administrative defect. Accordingly, the HGB certificate should not have been issued. Nevertheless, the HGB certificate was ultimately issued in the name of PT Wismilak Inti Makmur Tbk.

Based on the foregoing analysis, the land registration procedure was not conducted in accordance with the applicable laws and

regulations. Therefore, pursuant to Article 66 paragraph (1) of UU 30/2014, the HGB certificate should be revoked because it was issued through a procedurally defective administrative process. This conclusion is further supported by Article 35 letter (a) of the Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency Number 21 of 2020 concerning the Handling and Settlement of Land Cases (hereinafter referred to as Permen ATR/BPN No. 21/2020), which recognizes procedural defects as grounds for the cancellation of land rights. Furthermore, when examined in light of the AUPB, particularly the principles of legal certainty, prudence, and the prohibition against abuse of authority as stipulated in Article 10 of UU 30/2014, the issuance of the HGB certificate in this case should have been carried out with due diligence by ensuring that all substantive and administrative requirements had been fulfilled. The absence of any record of the SK BPN within the land administration system, despite its function as the legal basis for the issuance of the HGB certificate, demonstrates a failure to comply with the principle of prudence in land administration. As a consequence, the land rights that have been granted may lose their legal validity and become subject to cancellation. Such administrative deficiencies not only prejudice the parties involved in the dispute but also undermine public confidence in Indonesia's land administration system.

In addition to being inconsistent with AUPB, the issuance of the HGB in this case should also be examined from the perspective of the principle of legality in administrative law. The principle of legality requires that every action and decision taken by government officials be based on valid legal authority and implemented in accordance with the applicable laws and regulations. According to Philipus M. Hadjon, the principle of legality functions as a means of limiting governmental power to prevent the exercise of arbitrary authority.[41] Therefore, in order to prevent government authorities from acting arbitrarily, all

[41]Andhyca Moza Mahesa Antony, "Fungsi Hukum Administrasi Negara Dalam Mewujudkan Pemerintahan Yang Baik," Jurnal Hak: Kajian Hukum Administrasi Dan Komunikasi 2, no. 2 (2025): 74.

governmental actions must comply with the applicable laws and regulations.

In relation to this case, the SK granting the land right constitutes the legal basis that provides legitimacy for the issuance of a land rights certificate. Therefore, if the existence of such SK cannot be substantiated within the land administration records, the legal basis for the authority to issue the certificate becomes questionable, and the resulting administrative action may potentially contravene the principle of legality. The application of the principle of legality in this case is particularly important because a land rights certificate constitutes an administrative product issued by the state that produces legal consequences for the parties concerned and the public. Accordingly, every stage of its issuance must be legally and administratively accountable. If any procedural irregularities are identified in the issuance process, the state is required to take corrective measures through the mechanism for the cancellation of the relevant administrative decision in order to restore legal certainty and maintain proper land administration.

Based on the foregoing analysis, the party suffering loss is entitled to legal protection. According to Satjipto Rahardjo, legal protection refers to the protection of human rights against violations or harm caused by others, which is provided by law to every individual so that they may exercise and enjoy their rights.[42] Philipus M. Hadjon categorizes legal protection into two forms, namely:[43]

1. Preventive legal protection, which provides an opportunity for every legal subject to submit objections before a decision is issued. The purpose of preventive legal protection is therefore to prevent disputes or legal problems from arising.
2. Repressive legal protection, which refers to the resolution of problems or disputes that have already arisen. Repressive legal

[42]Andina Elok Puri Maharani Daffa Arya Prayoga, Jadmiko Anom Husodo, "'Perlindungan Hukum Terhadap Hak Warga Negara Dengan Berlakunya Undang-Undang Nomor 23 Tahun 2019 Tentang Pengelolaan Sumber Daya Nasional," Souvereignty: Jurnal Demokrasi Dan Ketahanan Nasional 2, no. 2 (2023): 191.
[43]Daffa Arya Prayoga, Jadmiko Anom Husodo.

protection is therefore provided after a decision has been issued and subsequently gives rise to a dispute.

Referring to the concept proposed by Philipus M. Hadjon, preventive legal protection in the dispute between PT Wismilak Inti Makmur Tbk and the Polda Jatim may be realized through careful verification of administrative documents before the transfer of land rights through an exchange is carried out. In particular, the SK BPN serving as the legal basis for the transfer of rights should first be verified within the BPN administrative system to determine whether it has been properly recorded. If the SK has been duly recorded, the transfer of land rights may proceed. Conversely, if the SK is not recorded, potential disputes that may arise in the future can be prevented at an early stage.

Meanwhile, repressive legal protection in the dispute between PT Wismilak Inti Makmur Tbk and the Polda Jatim may be realized through dispute resolution mechanisms before the courts. The party suffering loss, in this case the Polda Jatim, may seek the cancellation of the transfer of land rights before the Administrative Court (Pengadilan Tata Usaha Negara/PTUN). Such proceedings should be brought before the Administrative Court because the object of the dispute constitutes a written administrative decision issued by a state administrative authority, in this case the BPN. Therefore, in the dispute between PT Wismilak Inti Makmur Tbk and the Polda Jatim, both forms of legal protection articulated by Philipus M. Hadjon are crucial to ensuring that the resolution of the dispute not only provides legal certainty but also guarantees the realization of justice and utility for all parties concerned.

E. Conclusion

Land rights regulated in the UUPA can be transferred, but the transfer must be by the provisions of the legislation. The transfer of land rights can be accomplished through sale and purchase, exchange, grant, inclusion in a company (inbreng), and other legal acts of transferring rights. Regarding the transfer of land rights through exchange, it must be carried out by fulfilling the material and formal requirements. One of the problems that often arises about the transfer

of land rights through exchange is when the land rights that become the object of exchange do not meet the requirements for such an exchange. Therefore, it is essential for both parties to ensure in advance that the land can be used as a means of exchange. Additionally, it is crucial to ensure that the land is free from disputes. In this case, Polda Jatim, as a government agency, should only have land rights with the Right of Use. However, the land being exchanged is land with the status of HGB. This is contrary to the material requirements, as a state agency, Polda Jatim, is not permitted to hold rights to HGB land, which is the subject of the exchange with PT Wismilak Inti Makmur Tbk. In addition, the formal requirements are also not fulfilled, as the basis for implementing the exchange is a deed of sale and purchase, rather than a deed of exchange as it should be. Thus, legal subjects involved in the exchange must ensure that both formal and material requirements are met, so that the exchange process is valid and legally enforceable, thereby preventing future disputes.

Secondly, dispute resolution must also take into account legal protection for parties affected by the issuance or revocation of an HGB. Preventive legal protection needs to be strengthened through careful verification of the legal status of the land, the eligibility of the parties as holders of rights to the land in question, the existence and validity of the BPN decree, and compliance with the requirements for the preparation and registration of the deed of exchange before the transfer of rights is carried out. Meanwhile, repressive legal protection may be sought through administrative or judicial mechanisms if administrative defects have given rise to disputes or legal losses. Thus, the dispute between PT Wismilak Inti Makmur Tbk and the Polda Jatim demonstrates that the transfer of land rights through an exchange involving private and public legal entities not only requires compliance with the provisions regarding the validity of agreements as stipulated in Article 1320 of the Civil Code, but must also strictly meet the substantive, formal, and administrative requirements under national agrarian law. Compliance with all these requirements is essential to ensure legal certainty, justice, and public benefit, while also preventing the emergence of similar disputes in the future.

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Acknowledgment

None.

Funding Information

None.

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Author 1: Conceptualization, Methodology, Resources, Supervision

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Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

Publishing Ethical and Originality Statement

All authors declared that this work is original and has never been published in any form and in any media, nor is it under consideration for publication in any journal, and all sources cited in this work refer to the basic standards of scientific citation.

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