


Legal Protection for Land Buyers in Sale and Purchase Agreement Under Hand

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Abstract

Introduction: Land rights acquisition can be obtained in various ways such as buying and selling, exchanging, granting or bequests, but the acquisition of land rights that often occurs in society is through buying and selling.

Purposes of the Research: The purpose of this study is to examine the legal force of the transfer of land rights through underhand sales and legal protection for the purchaser of land rights through underhand sales.

Methods of the Research: The research method used in this writing is normative legal research by using analytical descriptive research on legal regulations and expert opinions through primary, secondary and tertiary legal materials through the process of collecting legal materials and analyzing them to obtain conclusions and suggestions.

Findings of the Research: In the process of buying and selling land, it is very important to pay attention to the legal force in the buying and selling process, where if the buying and selling process is only carried out underhand, it can have an impact on the legal force of the buying and selling that is carried out because underhand buying and selling often does not have an authentic deed so that it is vulnerable to proof if a dispute occurs in the future and if there has been a sale and purchase underhand, the buyer must pay attention to several aspects in order to get legal protection in the buying and selling process, including the buying and selling process must be carried out at the village/district office in order to get supervision from the authorities and several witnesses must be present in the buying and selling process and this buying and selling process must be recorded.

Keywords: *Buying Selling; Land Registrasion; Legal Protection.*

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INTRODUCTION

People more often acquire land by transferring land rights through buying and selling. The word buying and selling in a everyday sense can be interpreted, where a person spends money to get the desired goods voluntarily. The UUPA states that the National Land Law is sourced from Customary Law, this shows that there is a functional relationship between Customary Law and also the National Land Law. The Customary Law referred to here is the Customary Law that has been sanitized, that is, if the Customary Law does not conflict with the Land Law of the National Law. With this statement, the norms in the Customary Law must also be stated in the formulation of the National Land Law and in the laws and regulations to become laws written thus, as long as there is no such regulation, then the relevant customary law norms remain fully valid.¹ The provisions of Article 19 Paragraph (1) of the Basic Agrarian Law stipulate that: "To ensure legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia in accordance with the provisions regulated by Government Regulations". Based on the provisions in

¹Benhard Limbong, *Konflik Pertanahan*, Cetakan Pertama, (Jakarta: Margaretha Pustaka, 2012). p. 27.

question, the government's efforts to ensure legal certainty for everyone to register their land through the authorized agency in accordance with the applicable laws and regulations. Land Registration aims to provide a guarantee of legal certainty known as *Rechts Cadaster*. The guarantee of legal certainty that is to be realized in this land registration includes the certainty of the status of the registered rights, the certainty of the subject of rights, and the certainty of the object of rights. This registration produces a certificate as proof of ownership of the rights.

In order to realize land registration in accordance with the objectives of the Basic Agrarian Law, the government issued Government Regulation of the Republic of Indonesia Number 10 of 1961 concerning Land Registration, as amended by Government Regulation Number 24 of 1997 concerning Land Registration and subsequently issued Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulations, jo Regulation of the Head of the National Land Agency Number 8 of 2012 concerning Amendments to the Regulation of the Minister of State of Agrarian / 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 jo Regulation of the Minister of Agrarian and Spatial Planning / Head of the National Land Agency of the Republic of Indonesia Number 7 of 2019 concerning the Second Amendment to the Regulation of the Minister of State Agrarian / Head of the National Land Agency Number 3 of 2019 1997 concerning the Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration.

The transfer of land rights through buying and selling, is based on the provisions of Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration (abbreviated as PP Number 24 of 1997) states that: "The transfer of land rights and property rights to flats through sale and purchase, exchange, grants, income in the company and other legal acts of transfer of rights, except for the transfer of rights through auction, it can only be registered, if it is evidenced by a deed made by the Land Deed Making Officer (hereinafter abbreviated as PPAT) who is authorized in accordance with the provisions of the applicable laws and regulations". Referring to the provisions of the Article, the legal act of transfer of land rights in relation to land registration can only be registered if the transfer of land rights is evidenced by a deed made by PPAT, in this case if the transfer of land rights is not proven by the PPAT deed, then the land cannot be registered by the people who buy and sell land rights in a manner under the hands of the government as long as It is not possible to believe the truth of the acquisition of land rights. However, the acquisition of land rights that often occurs until now in the community is not in accordance with what is mandated in the applicable laws and regulations.

Communities both in rural and urban areas in buying and selling land usually use customary law provisions that are cash and clear. Cash means that when the buyer pays the price of the land that has been used to the seller, it means that there has been a transfer of land rights. Bright means that when carrying out the transaction of buying and selling the land is carried out in front of a person who has authority, for example to the village, which means that the sale and purchase is considered clear because it is carried out in front of the community so that its validity is recognized and no violation occurs in the sale and purchase of the land and for the community the sale and purchase has legal force and needs to receive legal protection. to the buying and selling process. However, in reality, there are still legal

problems in the community that arise regarding the acquisition of ownership rights to land through the sale and purchase, because sometimes people who want to buy land do not pay attention to the provisions listed in the Laws and Regulations, so that a legal problem arises related to the sale and purchase of this land. In practice, buying and selling land that occurs in the community is still done under the hand, namely buying and selling land between the seller and the buyer without going through PPAT but using receipts as evidence that the land has been bought and sold. This kind of practice is often found in rural and urban communities where land is bought and sold with proof of purchase in the form of a piece of receipt, or based on a certificate which is generally based on literature obtained by the author from the community in Central Maluku Regency and also in Ambon City, this is because on the basis of mutual trust and kinship between buyers and sellers at the time of the purchase process and not thinking about the consequences in the future will have the potential to cause problems in the future. to the buyer related to the buying and selling procedure that they carry out so that the buyer feels disadvantaged if the problem leads to a dispute to the court.

This kind of sale and purchase procedure is called the transfer of land rights through sale and purchase under the hand, in other words it is done orally and as a sign of repayment of the purchase of the land, the buyer submits a receipt from the seller containing the value of the price of the land purchased in accordance with what they have agreed upon without the presence of a sale and purchase deed made in front of the Land Deed Making Officer (hereinafter written PPAT). and not thinking about the consequences, this will have the potential to cause problems that lead to disputes until the court in the future. Of course, this kind of legal act will be very detrimental to several parties, especially the buyer in the relationship in the registration of the land to get a certificate of the land that has been purchased, thus raising questions about the legal force and legal protection to the buyer of the land that has been purchased.

METHODS OF THE RESEARCH

The research method used in this writing is using a normative research method, namely legal research conducted by examining literature materials or secondary data.² According to Peter Mahmud Marzuki, normative legal research is a process to find a rule of law, legal principles, and legal doctrines to answer the legal issues faced,³ Thus, this research collects data using literature studies, namely in the form of scientific materials such as legislation, books, official documents, publications and research results.

RESULTS AND DISCUSSION

A. The Legal Strength of Buying and Selling Land Under Hand

The transfer of land rights is a legal act carried out by the land owner to another party which results in the transfer of rights and obligations to the land. The transfer of land rights can be done by carrying out a customary sale and purchase agreement that is carried out under the hand. The transfer of rights by doing it under this hand is carried out in front of the village head by parties who have an interest in carrying out the sale and purchase which is carried out in front of witnesses, relatives and neighbors.

² Soerjono Soekanto and Sri Mamuji. *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. (Jakarta: Raja Grafindo Persada, 2013), p. 13.

³ Peter Mahmud Marzuki. *Penelitian Hukum*. (Jakarta: Kencana Prenada Group, 2007), p. 35.

Buying and selling land through the hand is a land purchase and sale agreement in Customary Law where the legal act carried out is the transfer of rights by cash payment, meaning that the agreed price is paid in full at the time of the sale. A land sale and purchase letter that is carried out under the hand can be used as one of the evidence. In accordance with the intention of Article 3 of the Regulation of the Minister of Agriculture and Agrarian Affairs Number 2 of 1962, namely: The application for the affirmation in Article 1 regarding rights that are not described in a land right as intended in Article 2, is submitted to the Head of the relevant Land Registration Office.

Buying and selling carried out under the hand as intended by Government Regulation Number 24 of 1997, is a legal dispute carried out by buyers and sellers with the intention of transferring land rights by making an agreement with adequate stamps and has been recognized by the head of the Customs/Village or Village Head. Meanwhile, the object of buying and selling is land that was formerly owned by indigenous peoples, namely lands that were previously owned by indigenous people before the enactment of Law Number 5 of 1960, so it is regulated in Customary Law. Even though the land used as an object of sale and purchase does not have any other evidence other than the issuance of Government Regulation Number 24 of 1997 concerning Land Registration, the land can still be registered.

The transfer of land rights is a legal act carried out by the landowner to another person which results in the transfer of these rights and obligations. The transfer of land rights can be carried out by a customary sale and purchase agreement carried out under the hand. The transfer of land rights under the hand is carried out in front of the village head by interested parties to carry out the sale and purchase which is carried out in front of witnesses, relatives and neighbors. The transfer of land rights under this hand is carried out by an Agreement made on the receipt which is also added by using a stamp or seal paper in which is poured an agreement that binds both parties which must be signed by both parties and also witnesses. The transfer of land rights by buying and selling is carried out by hand, but it is corroborated by witnesses who can be declared valid according to Customary Law.

B. Legal Protection to the Buyer Through the Sale and Purchase of Land Under Hand.

Based on Government Regulation Number 24 of 1997 concerning land registration, "the buyer of land who is only based on the receipt of payment of the relevant land price, even those made in front of the village head cannot be registered for re-registration, because proof of the transfer of land rights must be made a PPAT deed first. It is recommended that the buyer ask the seller of the sale and purchase of the property to come together to face the PPAT to make the sale and purchase deed concerned. To make it easier for the community through receipts or letters with letters made in front of the village head only, but it can be through the way of making evidence of land buying and selling which is carried out under the hand, namely: a) The party concerned, both the seller and the buyer, come to the Village Office or Village Office to make an agreement to measure the land to be sold and the Village Head or Lurah and other village officials are also witnesses; b) After the land is measured, then the data is written in a special village book; c) After completion, the buyer is obliged to pay the mandatory amount and voluntary money; d) After making the payment, the witness present in the sale and purchase of the land signs the statement of sale and purchase of the land. Buying and selling land according to customary law is cash or cash.

The payment of the price and the assignment of the rights are made at the same time.⁴ Buying and selling land is done in front of the Head of the Customary Village (Village), by being carried out in front of the Customary Head, the buying and selling becomes "clear", the buyer gets recognition from the people of the money concerned as the new owner will get legal protection through the literature that the author found, then almost all of the Territory of the Republic of Indonesia, both villages and urban areas, are still found, Both the seller and the buyer regarding the legal act of transferring land rights through the sale and purchase of land that is carried out under the hand is currently happening, the author finds various reasons related to the sale and purchase of the land under the hand, because the procedure is faster and there are no various requests and there are no various costs that must be incurred. "It is different from the statement expressed by the buyer who said: "the buyer does not know that the purchase of the land must be done in front of the Land Deed Making Officer and the buyer only finds out that the sale and purchase of land rights must pay tax on the transaction."⁵ Based on this data, the author can conclude the reasons why people still buy and sell land words under their hands, including: 1) Ignorance of the person concerned about the process and procedure of buying and selling land rights; 2) The person concerned imagines that the matter of buying and selling land rights is difficult and convoluted; 3) Because it avoids unexpected costs that they don't know about; 4) The economic factors of the person concerned. The theory of legal protection is used to analyze the problems that have been formulated in the second problem, namely against buyers who buy and sell land rights that are carried out underhand. Legal protection should be obtained by all subjects of law without any distinction. As stated in one of the articles in the 1945 Constitution, namely Article 27 paragraph (1) which states: "Everyone has the right to fair legal recognition, guarantee, protection and certainty as well as fair legal treatment and equal treatment before the law".

According to Satjipto Rahardjo who was instructed in his book entitled Legal Science, he said that legal protection can be interpreted as providing protection to Human Rights (HAM) that are harmed by other parties, and the purpose of legal protection is to provide people with a sense of comfort and security to enjoy all their rights given by the law". Satjipto Rahardjo's opinion can be interpreted as that legal protection is something that protects a legal entity from harmful things done by other legal subjects. He then said that the law protects the interests of a person by allocating a power to him to act in the context of his interests." The allocation of power is carried out in a formal manner, in the sense that the breadth and duration are determined." "Such power is called a right. But not every power in society is usually referred to as a right, but only a certain power is the reason for imposing that right on a person".⁶

According to Satjipto Rahardjo, in relation to legal protection related to this writing problem, even though the sale and purchase is carried out underhand, it cannot be a cause or a problem for the buyer, especially in the ownership of land rights obtained from the sale and purchase. The sale and purchase of land rights that have been carried out under the hand makes and states that there has been a legal act between the two parties, namely between the seller or the buyer, and even though it is only limited to the hand, it is also a tool of enforcement regulated in the Civil Code, especially in Article 1866, where one of the

⁴ Effendi Perangin. *Hukum Agraria Di Indonesia Suatu Telaah Dari Sudut Pandang Praktisi Hukum*, (Jakarta: Rajawali), p. 16

⁵ Fajar Adhitya Nugroho 1 and Kawan-Kawan. *Perlindungan Hukum Bagi Pembeli Terhadap Jual Beli Hak Atas Tanah Yang Dilakukan Secara Di Bawah Tangan*, Malang: Fakultas Hukum Universitas Brawijaya, 2015 p. 7.

⁶ Satjipto Rahardjo, *Ilmu Hukum*, (Bandung: Citra Aditya Bakti, 2000), p. 53.

evidence is written evidence (writing), This is further strengthened in Article 1847 of the Civil Code which states that, one of the written evidence also includes a letter under the hand that has been signed or has been stamped by the parties interested in the agreement.

Buying and selling that has been carried out under hand can be used as evidence, but it is not a strong evidence to be used as a means of proof of the transfer of land rights in question, because according to Article 37 of Government Regulation Number 24 of 1997, the transfer of land rights can only be registered if it is proven by a deed made by PPAT, then the transfer of land rights carried out under the hand cannot be registered with the Land Office. If at any time there is a dispute that concerns the sale and purchase, then the sale and purchase agreement under the hand can be used as evidence, Sajipto Rahardjo said that if it is related to the problems that occur in the field, in conjunction with the problems that the author studies in this writing, then the law protects the buyer in case one day there is a dispute arising from the sale and purchase of the land. Because even though it is made under the hand, the agreement of sale and purchase of the land, because even though it is made under the hand, the sale and purchase agreement has fulfilled the terms of the agreement and the principle of the agreement regulated in the civil law, where such an agreement will be binding and become law for the parties who have made the agreement (the principle of *pacta sunt servanda*), so that the agreement can be a piece of evidence, even though it has a strong evidentiary force, it is not perfect, besides that he also said that legal protection is a protection of human rights against adverse acts committed by others. The agreement under the hand can be used as a legal protection about the validity of the legal act of buying and selling land rights, thus on the basis of expert opinions and literature that the author pours in this writing, then saving writing as a buyer who makes an agreement to buy and sell land rights under the hand must be obliged to receive legal protection. related to the registration of the land in question. Based on the results of the writing in this writing, the author says: people who make land purchase and sale agreements even if they are carried out under their hands are considered legitimate and buyers are obliged to get legal protection related to the registration process of land for sale and purchase even if it is for certified land.

CONCLUSION

The process of transferring land rights based on the applicable laws and regulations, then through the sale and purchase of land under hand does not have legal force to the buyer, this is related to the registration of the land in question to obtain a certificate of ownership of the land, to obtain legal protection, both preventive legal protection and repressive legal protection to the buyer in the exchange of land rights through the sale and purchase of the land hand, then the sale and purchase process must be applied to the court to obtain a determination of the sale and purchase of the land by the buyer.

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