

Legal Consequences Of Default In Land Sale And Purchase Agreements Under The Hand

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Abstract

The transfer of land rights can occur in accordance with the provisions of Article 20 paragraph (2) of the UUPA which contains provisions that property rights can be transferred and transferred, for example the death of the land owner. This legally makes the ownership rights to the land transfer to the heirs as long as they meet the requirements as the subject of property rights. The formulation of the problem: (1) Is buying and selling land under the law legal? (2) What are the factors that cause the sale and purchase of underhand land to still occur? (3) What are the legal consequences of both parties with the sale and purchase under the hand?. The research method used is normative juridical. The data source is primary data, secondary data. Data were collected by interview and literature study, data were analyzed using qualitative analysis. The results of this study (1) Although customary law confirms the legality of buying and selling land rights that are not carried out before the Land Deed Maker Official, in this case the buyer has difficulty proving his rights to the land he has purchased. (2) Factors that cause the sale buying land with ownership rights through private deeds for village communities: the community avoids quite expensive costs, second: community knowledge regarding the procedures for buying and selling land, third: community motivation related to the high level of mutual trust between each other in buying and selling land. (3) Village communities do a lot of buying and selling under their hands, namely buying and selling carried out in front of the village head, but if there are people who want to get a land certificate in his name, then resale is carried out in accordance with the applicable legal rules.

Keywords: *Aggremen; Buying and Selling Land under the Hand, Default, The legal consequences*

I. INTRODUCTION

One of the rights owned by all Indonesian citizens is property rights. Article 20 paragraph (1) of the UUPA contains legal provisions regarding the definition of property rights, namely as a hereditary right, meaning that property rights to land can continue as long as the owner is alive and if the owner dies, then the property right can be continued by the heirs as long as they qualify as a subject of property rights, the strongest means that the right to property over land is stronger than other land rights, does not have a certain time limit, is easy to defend against the interference of the other party, and it is not easy to escape. Meanwhile, the fullest meaning is that the right of property to land gives the authority to the owner the most widely when compared to other land rights, can be the parent of other land rights, and the use of land is wider when compared to other land rights, considering that article 6 of the UUPA explains that all land rights have a social function, meaning that the right to any land that exists in a person, it is unjustified, that his land will be used or not used solely for his personal interests, let alone it is detrimental to the community. The use of land must be adapted to the state and nature of its rights, so as to benefit both the welfare and happiness of the people and the State. But this does not mean that individual interests will be pressed at all by the public interest. Transfer of land rights in legal acts takes several forms, including: buying and selling, exchanging, grants, giving according to custom, income in the company and grants of wills.

The transfer of rights to land is regulated in Government Regulation No. 34 of 2016 concerning Income Tax on Income From the Transfer of Rights to Land / Buildings, and the Binding Agreement for Sale and Purchase of Land / Buildings and Their Amendments, must be proven by a deed made by a Land Deed Making Officer (PPAT), and after the deed is signed by the parties, it must be registered. Transfer of land rights in legal acts takes several forms, including: buying and selling, exchanging, grants, giving according to custom, income in the company and grants of wills. The transfer of rights to land is regulated in Government Regulation No. 34 of 2016 concerning Income Tax on Income From the Transfer of Rights to Land / Buildings, and the Binding Agreement for Sale and Purchase of Land / Buildings and Their Amendments, must be proven by a deed made by a Land Deed Making Officer (PPAT), and after the deed is signed by the parties, it must be registered. Transfer of land rights in legal acts takes several forms, including: buying and

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II. LITERATURE REVIEW

Default is the failure to fulfill or neglect to carry out obligations as specified in the agreement made between the creditor and the debtor. Default or non-fulfillment of promises can occur either intentionally or unintentionally. Another word default can also be interpreted as an act of breaking a promise committed by one of the parties who did not carry out the content of the agreement, content or carried out but was late or did what it really should not do.¹² The designation of the name of the land right in the UUPA is the name of the new institutions, which is not a continuation of the institutions of land rights from the old tools of land law. Old land rights institutions since the enactment of the UUPA dated September 24, 1960 and the unification of land law, sudah tidak ada lagi. Sedangkan hak-hak atas tanah the old as a concrete legal relationship since September 24, 1960 was converted by the UUPA or changed into one of the new rights of the national land law. Land rights in national land law give authority to the holder of his rights to use the land in favor.

This is a general authority, which means that it is the content of each land right and this authority also has its limits. Knowing the meaning of buying and selling, it is good for us to see Article 1457 of the Civil Code which says that, buying and selling is something binding agreement, the seller promises to hand over something / object and the other party who acts as the buyer binds himself to promise to pay the price. The provisions of Article 1457 of the Civil Code above, buying and selling at the same time impose two obligations, namely: The obligation of the seller to hand over the goods sold to the buyer. The obligation on the part of the buyer to pay the purchased price to the seller. The principle of legal protection of society rests on the concept of recognition and protection of dignity, and dignity as a human being, so that the recognition and protection of the rights of suspects as part of human rights without discriminating. Legal protection is any effort to fulfill rights and provide assistance to provide a sense of security to witnesses and or victims, which can be realized in forms such as through restitution, compensation, medical services, and legal assistance.³

1. Problem Formulation

Based on the background of the problem, the problem can be formulated as follows:

- a. Is the sale and purchase of land under the hand legal?
- b. What factors cause the sale and purchase of underhand land to still occur?
- c. What are the legal consequences of both parties with the existence of underhand buying and selling?

2. Research Objectives

The objectives of this study are:

- a. To find out and analyze buying and selling under the hands of law or not according to the law.
- b. To find out and analyze the factors that cause underhand buying and selling to still occur.
- c. To find out and analyze the legal consequences of both parties with the existence of underhand buying and selling.

III. METHODS

1. Research Methods

This research is used normative juridical research method, juridical means emphasizing legal science, while normative is to examine the legal rules that apply in society. Thus normative juridical is an approach to the study of legal problems from the aspects of applicable regulations.

2. Research Specifications

The specifics of this study are research that is descriptive analytical. Descriptive is a study that describes validly, factually and systematically the object being studied, while analytical erarto connects data with one data with another data so that there is a correlation of data in the study. Analytical descriptive means to describe validly and systematically based on the correlation of research data, namely research on the legal consequences of default in the agreement of sale and purchase of land under the hands.

3. Data Sources

The data sources used in this study are secondary data sources as the main data and pimer data as supporting data. Secondary data were obtained by conducting *liberary research*. This data collection is carried out by studying or researching literature (*liberary research*), namely by studying regulations, documents and books that are related to the problem under study and the doctrines or opinions of scholars. This secondary data collection is carried out with the aim of obtaining a theoretical basis and legal basis to stand on analyzing the data from the research later. The data collected are primary legal materials, secondary legal materials and tertiary legal materials. The secondary data sources consist of:⁴

- 1) Primary Legal Materials include:
 - a. Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA)
 - b. Government Regulation Number 24 of 1997 concerning Land Registration
 - c. Government Regulation Number 37 of 1997 concerning Regulations for the Position of Land Deed Making Officers
 - d. Other relevant laws and regulations.
- 2) Secondary Legal Materials include:

Legal materials that are closely related to primary legal materials and can help and understand primary legal materials in the form of all publications about laws that are not official documents, which consist of:

 - a. Legal books/literature
 - b. Law journals.
- 3) Tertiary law materials :
 - a. KBBI
 - b. English-Indonesian Dictionary
 - c. Indonesian-English Dictionary
 - d. Dutch-Indonesian Dictionary
 - e. Legal dictionary
 - f. Encyclopedia

4. Data Collection Methods

The data collection method is carried out by:

- a. Literature study, is a method of collecting data to obtain data by collecting and studying theories, as well as the opinions of legal experts on all issues related to the problems discussed in this theory, both from literature and regulations related to buying and selling under the hand, such as:
 1. Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles (UUPA)
 2. Government Regulation Number 24 of 1997 concerning Land Registration
 3. Government Regulation Number 37 of 1997 concerning the Position of Land Deed Making Officer
 4. Other relevant laws and regulations.
- b. Field research
- c. Field research was conducted through interviews with notaries and parties (sellers and buyers) who had made binding agreements for the sale and purchase of rights to.

5. Data Presentation Methods

The data obtained from both field studies and literature studies, are then presented qualitatively in the form of descriptive descriptions and are compiled in the form of research reports in the form of theses.

6. Data Analysis Methods

The data that has been obtained through data collection, both primary data and secondary data, the author classifies based on existing problems, then the data is analyzed so that it is expected to be able to answer existing problems.

IV. RESULTS AND DISCUSSION

1. Whether or Not to Buy and Sell Land Under The Hand According to Law

The court's decision can be used as a basis for use as one of the requirements for registration of the transfer of land rights in the Land Office.

- a) The validity of the Sale and Purchase of land rights under the Hand is reviewed from the Village Secretary.

There are still people who carry out the process of buying and selling land rights under their hands. So far, the community has carried out the process safely and there has been no dispute until now. Because in general the buying and selling process that occurs in the village community when an agreement occurs between the seller and the buyer, then the buying and selling process is witnessed by the Village Head. So this is done to strengthen that there has been a transfer of land sold. In the covenant, it does not look at the covenant alone but also sees the previous deed or that preceded it, that is, by it is divided into three stages, namely:

1. The stage of the existence of offers and receipts.
2. The stage of conformity of the statement of will between the parties.
3. The stage of execution of the agreement.

A sale and purchase agreement is an agreement in which one party agrees to give up property rights to an item, while the other party agrees to pay a certain amount of money as the price. For the occurrence of this agreement, it is enough if both parties have reached an agreement on the goods and their prices. The seller has two (2) basic obligations, namely firstly handing over the goods and guaranteeing that the buyer owns the goods without any interference from other parties and secondly responsible for hidden defects. Meanwhile, the buyer is obliged to pay the price at a predetermined time and place.

- b) Validity of The Sale and Purchase of land rights Reviewed From the National Land Agency

According to the National Land Agency, it is not yet/invalid, because according to land law regulations, the sale and purchase of land rights under the hands does not constitute a legal act. The validity of the trade is determined by the fulfillment of the material conditions for the trade:

1. General conditions for the validity of a legal act (Article 1320 of the Civil Code);
2. The buyer is eligible for the holder of his land rights;
3. Not violated landreform provisions;
4. Done in cash, bright, and real. (Kpts MA 123/K/1970)

The sale and purchase carried out before the Village Head is legal according to law, if the material conditions mentioned above are met. The buying and selling carried out in front of the Village Head meets the requirements of light, which means that it is not carried out in secret. But the Chief of Defense Office will refuse to sign him up. Based on the results of research in the field, and interviews with notaries, he said, that the validity of buying and selling land rights without involving a Land Deed Making Officer (PPAT), is valid, but the legal act cannot be registered, at the Land office to change ownership data or reverse the name Although customary law confirms the validity of the sale and purchase of land rights that are not carried out before the Land Deed Making Officer, in this case the buyer has difficulty proving his rights to the land he has purchased. In the absence of a deed from the Land Deed Making Officer it is difficult for the purchaser to register his land in the competent land office. The deed of sale and purchase of land rights made before the Land Deed Making Officer serves as a means of proving the transfer of land for the purpose of registration of the land of the buyer as the last right holder. However, in this case, the Land Deed Making Officer cannot

make a deed of sale and purchase of land rights in front of him because the administrative requirements are incomplete.⁵

2. Factors That Cause Buying and Selling Underhand Land Still Occurs

The factors causing the sale and purchase of title land through the deed under the hand are as follows:

1. Internal factors, as for the parts that include from internal factors are as follows:
 - a. The issue of costs, the process of buying and selling land involving officials requires a lot of costs, where not all communities have the same economic situation so that people whose economic conditions are weak certainly choose not to involve PPAT which leads to the non-registration of the land in BPN. People whose economic level is weak in terms of realizing the legal certainty of ownership of their land rights can be given convenience in terms of costs. This has been regulated in Article 19 paragraph 4 of the UUPA which states that: In a Government Regulation, the costs concerned with registration referred to in paragraph 1 above are regulated, provided that the people who cannot afford it are exempt from paying these costs. As an implementation of the article, it has been stipulated in Article 14 of the Regulation of the Minister of Home Affairs (PMDN) Number 2 of 1978: On the application in question, the Governor of KDH may exempt the applicant from the payment of part or all of the costs stipulated in this regulation, if it can prove that he is unable to pay them. Costs, which are one of the factors for the community to buy and sell land through deeds under the hand when viewed from the sociology of law in accordance with the opinion of the Village Head that the most basic obedience so that a person obeys or does not obey the law, is due to interest. This opinion is the influence of the school of economic law, which views various economic factors as greatly affecting a person's obedience, including the decisions of a person related to cost or sacrifice factors, as well as the benefits if he obeys the law.
 - b. The public does not understand or even the ignorance of the perpetrator of the transaction, both the seller and the buyer of the land regarding the applicable legal provisions
 - c. The first started on the basis of only mutual trust between the seller and the buyer and ignorance of the rights and obligations as the seller and buyer of the land
 - d. The land that is the object of the transfer of land rights has not been converted
 - e. The type of soil is still a type of agricultural land (paddy / moor), while only part of it is purchased, so it must be requested to change the status of the land first to housing land / yard
 - f. The type of land is still agricultural, while the buyer resides outside the sub-district area where the land is the object of sale and purchase or even outside the district or province, so it is still waiting for the process of population movement for the buyer so as not to violate the provisions regarding absente, or in this case, the road is taken to request / process the application for changing the type of land to residential land first.
 - g. In order to facilitate the process of transferring rights because the landowner has passed away, while the heirs are quite a lot. Most of them are elderly and residing far from the location of the land for sale
2. External factors as for the parts that belong to external factors are as follows:

People's motivation, Another factor that causes people to prefer to buy and sell with deeds under their hands is because of people's motivation. The community considers that involving authorized officials until the existence of a certificate of land rights does not have any effect on the sale and purchase they make. The influence in question is that with the high level of mutual trust between the people who buy and sell land, they believe that one day there will be no conflict with the land as an object of sale.

 - a) The community basically knows the procedures for land sale and purchase transactions and land registration. But in reality, people still choose not to follow these provisions as a whole

due to various factors. The community has sold and sold land in front of the PPAT as an authorized official, either in the PPAT or the temporary PPAT, namely the Sub-District, but after the sale and purchase deed process made by the PPAT then did not register with bpn to reverse the name

- b) In fact, what happened in the community, some of them in terms of submitting a sale and purchase deed to BPN for name reversal took more time, even one of the respondents stated that he had just submitted his sale and purchase deed for name reversal after 3 years since signing the deed. However, BPN still accepts people who will only certify their land even though the signing of the sale and purchase deed has passed 7 days. BPN employees stated that land registration 7 days after the signing of the deed is a must. But if it is more of a negligence of the people themselves. The community has been advised, however, when the community comes after the lapse of 7 days it is still accepted to register its land.

3. Legal Consequences of Both Parties With Underhand Buying and Selling

Legal certainty of buyers Against The Sale and Purchase of Land Rights Carried Out Under The Hand

1. That the legal status of the Sale and Purchase of Land carried out under the hands (without the deed of the Land Deed Making Officer) remains valid, because the legal conditions for the sale and purchase according to the UUPA have been fulfilled, namely material requirements that are cash, bright and real. In addition, the sale and purchase has met the conditions for buying and selling according to article 1320 of the conditions for the validity of the agreement. But to obtain the transfer of rights to land and return the name must have a deed made by the PPAT because the transfer of land rights through the sale and purchase of land must be proven by a deed made by the PPAT,
2. Settlement efforts that can be made by the buyer so that the sale and purchase of land carried out without a PPAT deed can have definite legal force by facing the village head, the buyer and the seller facing the village head directly, because the village head is considered a person who knows the law to state their intentions. Then by the seller a stamped deed is drawn up stating that it is true that he has handed over his estate for eternity to the buyer. The deed was signed by the buyer and the Village Head and witnessed by two witnesses who were capable according to the law.
3. The legal effect of the buyer on the sale and purchase of Land Rights carried out under the hand, if a dispute arises between the seller and the buyer, the deed under the hand can still be refuted and only has perfect evidentiary power if recognized by both parties, or corroborated again with other evidence. Therefore, it is said that the deed under the hand is the beginning of written evidence

V. CONCLUSION AND SUGGESTION

1. Conclusion

a. Customary law confirms the validity of the sale and purchase of land rights that are not carried out before the Land Deed Making Officer, but in this case the buyer has difficulty proving the right to the land he has purchased. In the absence of a deed from the Land Deed Making Officer it is difficult for the purchaser to register his land in the land office. The deed of sale and purchase of land rights made before the Land Deed Making Officer serves as a means of proving the transfer of land for the purposes of registration of land. The buyer as the last right holder, but in this case the Land Deed Making Officer cannot make a deed of sale and purchase of land rights in front of him due to incomplete administrative requirements

b. The factors that cause the sale and purchase of land through deeds under the hands of the Procot of Pangkah District, Tegal Regency, are the community avoiding quite expensive costs, the lack of public knowledge related to land buying and selling procedures, community motivation related to the high level of mutual trust between each other in buying and selling land. The right of the buyer is to demand the delivery of the goods he has purchased from the seller. There is a lawsuit for compensation of all costs along with interest from the party who feels aggrieved for the cancellation of the binding of the sale and purchase of the land.

c. The people of Procot Village, Pangkah District, Tegal Regency, do a lot of buying and selling under their hands, namely buying and selling which is carried out in front of the village head, but if there are people who want to get a certificate in their name or by changing the name of the certificate in the name of the seller to in the name of the buyer, then the re-sale is carried out in accordance with applicable legal rules.

2. Suggestion

a. The Village Head should increase socialization to the community related to land registration and procedures, both to people residing in remote areas and to people who are aware of the procedures but do not have the motivation to register their land.

b. It is hoped that the active role of the Sub-District and Village Head as the most accessible leader of the community to continue to urge the community, especially the community, to no longer carry out the practice of buying and selling land through deeds under the hands by involving authorized officials, namely PPAT in terms of buying and selling their land.

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