

As A Result Of The Laws Of Buying And Sale Of Used Land Of Eigendom State Which Is Conducted Under Hands

Aji Ilham Al Ayubi^{1*}, Lego Karjoko², Waluyo³

^{1,2,3}Faculty of Law, Universitas Sebelas Maret, Indonesia

* Corresponding Author:

Email: ajiilham0303@gmail.com

Abstract.

The purpose of this research is to analyze the legal consequences of a land sale and purchase agreement under a former eigendom right (customary law) based on customary law and Government Regulation Number 24 of 1997 concerning land registration. The study also aims to construct the procedure for land registration applications on the former eigendom right based on current applicable regulations. This research adopts a normative legal research approach with legislative and conceptual approaches. The results of the research indicate that a land sale and purchase agreement under a former eigendom right cannot be registered with the land office as the institution issuing land certificates, even though the agreement is considered legally valid under customary law because it adheres to the principles of real, cash, and clear. The land office accepts the application for registration of land under the former eigendom right based on the regulations, namely the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation Number 18 of 2021 concerning Procedures for Determining Management Rights and Rights to Land, Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation Number 3 of 2020 concerning Procedures for Determining and Registering Rights to Land Formerly Owned by Individual Citizens of the Netherlands or Legal Entities Owned by the Netherlands, Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Regulation Number 16 of 2022 concerning Delegation of Authority for Determination of Land Rights and Land Registration Activities, and Minister of Finance Regulation Number 31/PMK.06/2015 of 2015 concerning Settlement of Former Foreign/Chinese-Owned Assets.

Keywords: Land, Hak Eigendom and Government regulation number 18 year 2021.

I. INTRODUCTION

The current regulations related to national agrarian law in Indonesia are governed by Law Number 5 of 1960 concerning the Basic Agrarian Principles, which, before the enactment of this regulation, were previously regulated in the Civil Code. Since the enactment of Law Number 5 of 1960 concerning the Basic Agrarian Principles, land law in Indonesia, specifically the rights to land, has been categorized as follows:

a. Eigendom right is regulated in Article 570 of the Civil Code, where eigendom is the right to enjoy the use of a property freely and to deal with the property entirely, as long as it does not contradict the laws or general regulations set by the competent authority and does not interfere with the rights of others. The UUPA (Basic Agrarian Law) equates eigendom right to ownership, as the owner has full authority to use and transfer it to third parties.

b. Erfpacht right is regulated in Article 720 of the Civil Code, where erfpacht is the right to fully enjoy the use of someone else's land with the obligation to pay an annual amount or produce (jaarhijke pacht) to the landowner as recognition of ownership. If desired, it can be converted into a Right to Cultivate (HGU).

c. Opstal right is regulated in Article 711 of the Civil Code, defining opstal as a property right to have houses, buildings, and plants on someone else's land. Opstal can be transferred and burdened with a mortgage or servitude, but the law explicitly states that it is only possible as long as someone controls Opstal.

These three Western land rights must be converted to Indonesian law, and the original owners must convert their land in accordance with Indonesian law. Conversion, in the context of agrarian law, means changing from old rights, such as Western land rights, to the national Indonesian law, namely the Basic Agrarian Law. The conversion of former land rights is one of the instruments to fulfill the principle of legal unification through Law Number 5 of 1960. Minister of Land and Agrarian Affairs Regulation (PMPA) Number 2 of 1962 governs provisions regarding the affirmation of conversion and registration of former

Indonesian land rights in a normative manner. This conversion regulation is the implementation of the transitional provisions of Law Number 5 of 1960, stating that land rights derived from European (Western) law must be converted within 20 years after the enactment of Law Number 5 of 1960 concerning the Basic Agrarian Principles.

The purpose of registering land conversion is to provide legal certainty, legal protection to land rights holders, or produce a Certificate of Land Ownership as a strong evidence tool. However, in practice, even after 20 years since the enactment of Law Number 5 of 1960, there are still many parties who possess land rights based on European (Western) law. If the conversion of Western land rights is not carried out, those lands that cannot prove their rights, following the Domein Verklaring theory, become state land based on Article 1 of the Minister of Home Affairs Regulation Number 3 of 1979 concerning Provisions Regarding Applications and Granting of New Rights to Land As a Result of Conversion of Western Rights. One such object that has not been converted to Indonesian law is located in the village of Randupitu, Gempol sub-district, Pasuruan district, with eigendom certificate number 1253 covering an area of approximately 5 hectares. The land has been abandoned by its original owner for a long time, and it has been taken over by the local residents. To prevent horizontal conflicts due to disputes over the abandoned land, the village government took the initiative to register the land as a taxable object. The property tax then served as a guide for the residents to transfer land ownership to third parties, and this transfer was formalized through an underhand agreement witnessed by the local village head. Based on the mentioned reasons for choosing the title, the author is interested in addressing the topic: "LEGAL CONSEQUENCES OF UNDERHAND LAND SALE OF FORMER EIGENDOM RIGHTS."

II. METHODS

This research employs the normative legal research method, with data sources derived from positive law or legislation and various literature such as books. The legal materials used include primary, secondary, and tertiary legal materials. Primary legal materials consist of the 1945 Constitution, Basic Agrarian Law Number 5 of 1960, Government Regulation Number 18 of 2021 concerning Management Rights, land rights, apartment units, and land registration, Government Regulation Number 24 of 1997 concerning land registration, and Minister of Agrarian and Spatial Planning/National Land Agency Regulation Number 3 of 2020 concerning Procedures for Determining and Registering Rights to Land Formerly Owned by Individual Citizens of the Netherlands or Legal Entities Owned by the Netherlands. Meanwhile, secondary legal materials encompass books, articles, research results, and others.

The analytical technique used is deductive syllogism and interpretation using a deductive thinking pattern. The analysis is conducted on the major premise, which states that the law in a country definitely has a hierarchy or levels that must be adhered to by its citizens, and the government as the maker of regulations must be subject to and comply with the rules that have been made. This major premise is more general and is the *das sein* (being) of this research. Subsequently, the major premise will be confronted with the minor premise, which is a casuistic function and is the *das sollen* (should be) of this research. This includes the legal consequences of an underhand land sale agreement and further examines the registration of land under former eigendom rights. Through the deductive approach, this research attempts to apply existing legal rules to the specific case at hand. The analysis is expected to provide a comprehensive understanding of the legal consequences of underhand land sale agreements and the procedures for land registration on former eigendom rights based on the applicable legal regulations.

III. RESULT AND DISCUSSION

Legal consequences of a land sale and purchase agreement under hand

A sales and purchase agreement is an agreement between two parties, where one party expresses their willingness to sell a product or service, while the other party [6] expresses their willingness to buy the said product or service by providing compensation in the form of a price. In the legal context, sales and purchase agreements are governed by various legal provisions in Indonesia. The essential elements of a sales and purchase agreement are the goods and the price, where an agreement on the price and the object of the

sale must be reached between the seller and the buyer. A valid sales and purchase agreement is formed when both parties agree on the price and the goods. The consensual nature of the sales and purchase agreement is emphasized in Article 1458 of the Civil Code, which states that "a sale is considered to have occurred between the parties the moment they reach an agreement on the goods and the price, even if the price has not been paid." [7] Similarly, in the land sale and purchase agreement, both parties, the seller and the buyer, must agree on the existing terms and mutually commit to these agreements to establish a valid land sale and purchase agreement. The execution of the land sale and purchase agreement, in the case of former eigendom number 1253, involves the buyer and seller reaching an agreement on the price and the subject of the agreement.

If an agreement is reached between the buyer and seller, both parties are assisted by the village head. In the implementation of the sales and purchase agreement, the village head acts as the maker of the underhand agreement and also serves as a witness. Additionally, the village officials/village head involved in the implementation of the sales and purchase agreement request the seller to provide the Land and Building Tax Notification Letter (SPPT PBB) as evidence that the ownership of the land in question belongs to the seller. Fundamentally, a sale and purchase are an agreement, and as long as the sale and purchase agreement meets the legal requirements as regulated in Article 1320 of the Civil Code, then the sale and purchase is valid and binding for the parties involved, even if it is not conducted in the presence of a Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT). [8] After examining the requirements for a valid agreement and looking at it from a formal perspective, it is considered that the concept of sale and purchase adopted by the Basic Agrarian Law (UUPA) is based on customary law, interpreting the sale and purchase as the transfer of rights that are cash, real, and clear. However, for the purpose of registering ownership of land with the national land agency, the transfer of land rights must be documented in an authentic deed issued by a PPAT. Looking at Article 2 Paragraph (1) of Government Regulation No. 37 of 1998 regarding the Position Regulation of Land Deed Officials, it stipulates that the main task of Land Deed Officials (PPAT) is to carry out part of land registration activities by creating an authentic deed as evidence of a specific legal act regarding land rights. This deed will serve as the basis for the registration of changes in land registration data caused by the legal act (in this case, land sale and purchase).

[9] Then, based on Article 37 Paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration, the transfer of land rights through sale and purchase can only be registered if proven by a deed made by a PPAT authorized according to the provisions of applicable laws and regulations. According to the mentioned provisions, the head of the land office will refuse to register the transfer of land rights if the land sale and purchase are not proven by a deed from a Land Deed Official (PPAT). If the registration is rejected, the process of changing the name on the land certificate cannot be carried out. Therefore, the underhand land sale and purchase agreement (without an authentic deed) remains valid and binding for the parties involved as long as it meets all the elements mentioned in Article 1320 of the Civil Code. However, for the purpose of land registration and the process of changing the name on the land certificate at the land office, the land sale and purchase must be proven by a deed made by a Land Deed Official (PPAT). [6] The legal consequences of a land sale and purchase agreement conducted underhand (without a deed from a Land Deed Official) remain valid because the requirements for a valid sale and purchase, as stipulated in Article 5 of Law No. 5 of 1960, have been fulfilled, namely material requirements that are in cash, clear, and real. Additionally, the sale and purchase also meet the requirements of a valid agreement according to Article 1320 of the Civil Code. However, to obtain the transfer of land rights and change of name, it is necessary to have a deed made by a PPAT because the transfer of land rights through land sale and purchase must be proven by a deed made by a PPAT. [6]

Land registration process on former eigendom rights land is based on statutory regulations

The legal status of western land rights is no longer valid at present, and it has transformed into state land rights based on Article 95 (1) of Government Regulation (PP) Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. State land is defined as land fully controlled by the state. Furthermore, "State Land" signifies a specific legal relationship between the object (land) and its subject (the state), primarily related to ownership or possession. In this context, referring

to state land means recognizing the land as the object and the state as its subject, establishing a specific legal relationship between the subject and the relevant land object. This legal relationship can involve ownership or possession. In legal terms, the concepts of control or possession have different meanings, leading to different legal consequences. The term "being possessed" is distinct from the concept of ownership. When stating that the land is "possessed" or "under possession" in the sense of "possession," its juridical meaning is that someone physically occupies the land in a factual sense, such as cultivation or habitation. However, it does not necessarily imply that they are the legal owner of the land.

Similarly, when claiming that the land is "owned" in the juridical sense of "ownership," it signifies that the land is legally owned or possessed by someone. Therefore, the term "ownership" indicates a legal status recognizing someone as the rightful owner of the land. In the legal concept, the terms "control" or "being controlled" and "ownership" have different meanings, resulting in different legal consequences. For example, if we mention that the land is "controlled" or "under control" in the sense of "possession," its juridical meaning is that someone physically possesses the land in a factual sense, such as cultivation or habitation. However, this does not necessarily mean that they are the legal owner of the land. Similarly, when stating that the land is "owned" or "ownership" in the juridical sense, it implies that the land is legally owned or possessed by someone. However, it does not necessarily mean that the person physically controls the land, as there may be specific cooperative or contractual arrangements. The regulation has an exception, as stipulated in Article 95 paragraph (2), which states:

"The registration of land formerly under western rights as referred to in paragraph (1) is based on a statement of physical possession known to 2 (two) witnesses and is legally and criminally responsible, which outlines:

- a. The land is indeed owned by the concerned party, not owned by others, and its status is Land Directly Controlled by the State, not land formerly owned by customary law;
- b. The land is physically possessed;
- c. The possession is carried out in good faith and openly by the person entitled to the land; and
- d. The possession is not contested by others."

This means that land formerly under western land rights can be registered as long as it meets the four conditions mentioned above. Additionally, Indonesian citizens can register land under eigendom rights based on the regulations of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 18 of 2021 concerning Procedures for Determining Management Rights and Land Rights, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2020 concerning Procedures for Determining and Registering Land Rights Formerly Controlled by Permanent Objects Owned by Individual Citizens of the Netherlands or Legal Entities Owned by the Netherlands, Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 16 of 2022 concerning Delegation of Authority for Determination of Land Rights and Land Registration Activities, and Regulation of the Minister of Finance Number 31/PMK.06/2015 Year 2015 concerning Settlement of Former Foreign/Chinese-Owned Assets.

The land office, in processing applications for rights to land formerly under eigendom, first traces the owner, as the registration of eigendom land in Indonesia is governed by different regulations depending on whether the previous owner (eigenaar) was an individual or a legal entity from the Netherlands. For eigendom owned by an individual or legal entity from the Netherlands, the procedures are regulated by the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2020 concerning Procedures for Determining and Registering Land Rights Formerly Controlled by Permanent Objects Owned by Individual Citizens of the Netherlands or Legal Entities Owned by the Netherlands. Meanwhile, for eigendom owned by individuals or legal entities of Chinese descent, the procedures are regulated by the Minister of Finance Regulation Number 31/PMK.06/2015 Year 2015 concerning the Settlement of Former Foreign/Chinese-Owned Assets.

The application for registration of land formerly under eigendom rights is submitted to the land office where the property is located. The applicant then submits a purchase request for the eigendom right to the head of the local land office. The requirements for the purchase of eigendom rights are stipulated in Article 5 paragraph (2) of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2020 concerning Procedures for Determining and Registering Land Rights Formerly Controlled by Permanent Objects Owned by Individual Citizens of the Netherlands or Legal Entities Owned by the Netherlands, with the following condition

The requirements for the application as mentioned in paragraph (1) include:

- a. Sufficiently stamped application through the Chair of the P3MB/Prk.5 Committee
- b. Power of attorney, if delegated
- c. Photocopy of the applicant's or authorized person's identification (ID card or family card), verified with the original by the counter officer
- d. Land Registration Certificate
- e. Basis of land acquisition/possession
- f. Photocopy of the current year's Land and Building Tax (SPPT-PBB), verified with the original by the counter officer
- g. Sufficiently stamped Declaration Letter containing:
 - 1) Physical possession and absence of disputes or court cases, as well as no mortgage
 - 2) Ability to pay the value of land and buildings
 - 3) Not government/Regional Government/SOEs/Regional SOEs assets
 - 4) Approval of other occupants, if the applicant is not the sole occupant

If the former owner of the eigendom right was of Chinese descent, the applicant must compensate the Ministry of Finance first as the state institution managing the asset. After completing the compensation, the Ministry of Finance will issue a decree confirming the legal status. Additionally, the property must be possessed/occupied by the applicant for five consecutive years.

IV. CONCLUSION

The under-the-table land sale agreement for the former eigendom right, witnessed by the local village officials, will have legal consequences in the future. From the perspective of customary law, the under-the-table agreement is considered valid as it fulfills the principles of real, clear, and tangible elements. However, from the national legal perspective, especially based on Regulation of the Minister (PP) Number 24 of 1997 concerning land registration, the land sale agreement cannot be registered with the land office because it was not made in the presence of a Land Deed Official (PPAT). Registration of the land in the former eigendom right can be carried out by a third party, as regulated in the Regulation of the Minister of Agrarian and Spatial Planning/Head of the National Land Agency of the Republic of Indonesia Number 3 of 2020 concerning Procedures for Determining and Registering Rights over Land Formerly Controlled by Fixed Property Owned by Individuals Who Are Dutch Citizens or Legal Entities Owned by the Netherlands. Meanwhile, for the former owner (eigenaar) who is a citizen or a legal entity of Chinese descent, it is regulated in the Regulation of the Minister of Finance Number 31/PMK.06/2015 of 2015 concerning the Settlement of Former Assets of Foreign/Chinese Ownership.

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