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# Legal Protection for Buyer Against Buying and Selling of Land Rights Performed Under Hand

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### Abstract

Legal institutions known in customary law are generally institutions that are needed to meet the needs of people who are still simple, so that in order to fulfill an open modern society, the institution of buying and selling land rights, for example, undergoes modernization and adjustment, without changing its nature as the legal act of buying and selling land rights with the payment of the price in cash, as well as the nature and characteristics of it as a real and clear act. A change that aims to improve the quality of evidence of legal acts carried out according to the customary law of the community which is limited in its personal and territorial scope, it is enough that the deed is made by the seller himself and known by the Village/Customary Head. The purpose of this study is to analyze, describe and provide legal protection for buyers against buying and selling land rights that are carried out under the hands. The research conducted in this paper is empirical research, using a sociological juridical approach. Based on the results of the research above regarding legal protection for buyers against those carried out on illegal sale and purchase of land rights, it can be concluded (1) the buyer does not get legal protection for the land he bought; (2) the buyer does not get legal certainty over the land he bought; (3) the buyer does not get strong evidence against the rights to the land he bought. This of course will be detrimental to the buyer who purchases land rights under his own hands. This incident is expected to raise awareness to the public, especially for buyers, when buying and selling land rights must be carried out before the PPAT so that they get protection and legal certainty for the land they buy.

**Keywords:** Buying and Selling, Underhand, PPAT

## A. Introduction

The Basic Agrarian Law states that the National Land Law is based on Customary Law, indicating that there is a functional relationship between Customary Law and National Land Law. The customary law referred to here is the customary law that has been saneer, that is, if the customary law does not conflict with national law. There are those who interpret that with this statement the development of the National Land Law must be carried out in the form of pouring the norms of Customary Law into legislation into written law. As long as these regulations do not yet exist, then the relevant customary law norms remain in full force and effect.

The reality is that some of the laws and regulations that have been enacted actually make changes, even the replacement of the customary law norms that actually apply. For example, the provisions regarding the sale and purchase of land rights which were originally sufficient to be carried out before the Village Head, then by Government Regulation Number 10 of 1961 concerning Land Registration which had been replaced

by Government Regulation Number 24 of 1997, were changed to before the Land Deed Making Officer (PPAT).

Legal institutions known in customary law are generally institutions that are needed to meet the needs of people who are still simple, so that in order to fulfill an open modern society, the institution of buying and selling land rights, for example, undergoes modernization and adjustment, without changing its nature as the legal act of buying and selling land rights with the payment of the price in cash, as well as the nature and characteristics of it as a real and clear act.

A change that aims to improve the quality of evidence of legal acts carried out according to the customary law of the community which is limited in its personal and territorial scope, it is enough that the deed is made by the seller himself and known by the Village/Customary Head. Meanwhile, the sale and purchase of land rights according to Government Regulation No. 24 of 1997 must be proven by a deed made by a PPAT. This change in procedure does not negate the provisions of Customary Law which regulates the material aspects of buying and selling institutions of land rights.

The sale and purchase of land rights as a legal institution is not explicitly and in detail regulated in the Basic Agrarian Law (UUPA). Even now, there is no regulation that specifically regulates the implementation of the sale and purchase of land rights.

The term sale and purchase of land rights is only mentioned in Article 26 of the UUPA, which concerns the sale and purchase of property rights over land. The provisions contained in other articles do not contain words that mention buying and selling, but are mentioned as being transferred. The definition of transferred indicates a deliberate legal act to transfer land rights to other parties through buying and selling, grants, exchange and testamentary grants. So, even though the article only mentions being transferred, one of them is a legal act of transferring land rights due to buying and selling.

An institution for buying and selling land rights which is a legal act of a cash nature, so that the most important thing is the interest of the buyer in relation to the seller. the rights to the land in question have been transferred to the buyer when the legal act of buying and selling is completed before the Land Deed Making Officer (PPAT). The PPAT deed is evidence that the buyer has become the new right holder. The interests of third parties are not always involved in the transfer of rights, therefore the registration of the transfer of rights only serves to strengthen the position of the buyer in relation to third parties, whose interests may be involved and is not a condition for the transfer of the rights concerned to him.

Article 37 of Government Regulation Number 24 of 1997 states that the transfer of land rights through buying and selling can only be registered if it is proven by a deed made by an authorized PPAT according to the provisions of the legislation. In making the deed of sale and purchase of land rights, the seller and buyer must appear before the PPAT, or each party can be represented by a proxy based on a valid power of attorney to carry out the legal action.

The buyer must meet the requirements of the subject of the land to be purchased. Likewise, the seller must also fulfill the conditions, namely the authority to transfer the rights to the land. The making of the deed of sale and purchase of land rights must be attended by the parties who carried out the legal action concerned and witnessed by at least two witnesses who meet the requirements to act as witnesses in the legal act.

If the transfer of land rights due to a sale and purchase is carried out before the PPAT, it will have strong evidence of the transfer of rights to the land in question, because the PPAT deed is an authentic deed. Although the PPAT administration is closed, the PPAT is obliged to submit the deed concerned to the local Land Office for registration. This is intended to be known by the public, so that everyone is considered know it. Every deed made before the PPAT, must be submitted to the Land Office within 7 (seven) days from the signing of the deed by the PPAT concerned for registration.

What if the community takes a legal action in the form of buying and selling land rights which is only proven by a receipt for the sale and purchase transaction of land rights from the seller to the buyer, without a sale and purchase deed made before the PPAT. Of course, this legal action will be very detrimental to the buyer, because the buyer does not have legal certainty regarding the transfer of rights to the land he bought, which incidentally has paid a certain amount of money to the buyer. Normatively, the certificate that has been purchased has no evidence of the transfer of rights to the land in question and the certificate is still in the name of the seller, even though it has been handed over to the buyer.

Maybe with proof of purchase in the form of a receipt, in the short term it still doesn't have a legal impact on the buyer, because if the buyer wants to take legal action against his land rights, he can still contact the seller, but in the long term it will have the potential to cause disputes in the future.

The things mentioned above are still happening a lot in Indonesian society, both in cities and in villages. The incident mentioned above is based on pre research, the authors found several cases regarding the sale and purchase of land rights carried out under the hands. The sale and purchase of land rights only uses a receipt as proof of payment of the land rights in question.

## **B. Method**

This research uses descriptive analysis research using qualitative methods. Researchers also want to examine a phenomenon that Legal Protection for buyer against buying and selling of land rights performed under hand, qualitative research is aimed at a very detailed and detailed study where the results of the research are studied in depth and then interpreted clearly. There are two sources of data used in this study, where the data includes primary data and also secondary data, then the facts of the findings are described in a very easy form of discussion so that researchers can find a complex and structured understanding in a directed manner.

## **C. Result and Discussion**

### **1. Someone Who Buys and Sells Land Rights Underhand**

Based on the results of the study in order to find out the reasons put forward by both the seller and the buyer regarding the legal act of buying and selling land rights. The author can conclude the reasons why people buy and sell land rights under their hands, including:

- a) Ignorance of the person concerned about the process or procedure of buying and selling land rights;

- b) The person concerned imagines that the matter of buying and selling land rights is difficult and convoluted,
- c) Because it avoids unexpected costs that they don't know about;
- d) Economic factors of the person concerned

Lawrence M. Friedman revealed that in every legal system there are three elements:

**a. Legal Substance**

Government Regulation Number 24 of 1997 concerning Land Registration Article 37 which requires the transfer of rights due to buying and selling can only be registered if it is made by PPAT but there is no sanction to the community if the transfer of land rights is carried out under the hands as well as sanctions given to PPAT if in period of 7 days does not register the deed he made to the Land Office for registration. The obligation imposed on PPAT is intended to provide legal certainty for its clients and to be able to carry out orderly land administration as one of the purposes of land registration. open. This is different from the PPAT administration which is closed in nature, which can only be known by the parties and their heirs.

**b. Legal Structure**

Structural system that determines whether or not the law can be implemented properly. The authority of law enforcement agencies is guaranteed by law. So that in carrying out their duties and responsibilities apart from the influence of government power and other influences. There is an adage that states (even though the world is collapsing the law must be upheld). The law cannot run or be enforced if there are no credible, competent and independent law enforcement officers. How good is a statutory regulation if it is not supported by good law enforcement officers, justice is only wishful thinking.

Weak mentality of law enforcement officers resulted in law enforcement not running as it should. Many factors affect the weak mentality of law enforcement officers including weak understanding of religion, economics, non-transparent recruitment processes and so on. So law enforcement factors play an important role in carrying out legal functions. If the laws and regulations are good, but the quality of law enforcement is still low, then there will be problems, likewise, if the laws and regulations are bad, while the quality of law enforcement is good, there will still be possible problems. PPAT in order to comply with the provisions that have been set in Government Regulation No. 24 of 1997 On registration of land but the Land office does not provide any sanctions to PPAT concerned, as stipulated in article 62 of Regulation number 24 of 1997 About Land Registry.

**c. Legal Culture**

Legal culture is the atmosphere of social thought and social forces that determine how the law is used, avoided, or abused. Legal culture is closely related to public legal awareness<sup>17</sup>. Society and culture are inseparable phenomena. Between the elements of culture intertwined with each other and influence each other; A change in one element will cause a change in the other elements. So it cannot be separated from its connection with social processes that take place in society as a result of social construction.

So far, the community does not know about the transfer of land rights, it cannot be registered with the Land Office if the deed is not made by the PPAT so that people

often carry out buying and selling transactions of land rights under their hands. This is due to the lack of socialization from the Land Office to the community.

The three elements of the Legal System, namely legal substance, legal structure and legal culture are interrelated with one another and cannot be separated. In its implementation, the three must create mutually supportive relationships in order to create a safe, orderly, peaceful and peaceful lifestyle.

It can be concluded that a goal can be said to be effective if the goal is in accordance with what is desired. So the intended goal is the achievement of these goals so that they are effective. If the intended goal is the goal of the government, the process of achieving that goal is a success in carrying out programs or activities according to the authorities, duties and functions of the government.

## **2. Legal Consequences for Buyers Against Buying and Selling Land Rights Conducted Underhand In Review From Legal Certainty Theory**

Based on the results of the study in order to find out the reasons put forward by both the seller and the buyer regarding the legal act of buying and selling land rights. The author can conclude the reasons why people buy and sell land rights under their hands, including:

- a) It must be about the legal regulations governing certain abstract government issues.
- b) It must be regarding the legal position of the legal subject and object in the implementation of State Administrative Law regulations.
- c) Preventing the possibility of arbitrary acts (*eigenrechting*) from any party, not even from the government..

Legal certainty or *rechtssicherheit*, security, *rechtszekerheid*, is something new, that is, since the law was written, it is positive and it becomes public. Legal certainty concerns the issue of "law *sicherheit durch das recht*" such as ensuring that judging murder according to the law is a crime. Legal certainty is certainty about the law itself.. There are three things related to the meaning of legal certainty, namely:

- a) A law is positive, meaning that it is legislation (*gesetzliches Recht*).
- b) A law is based on facts ( *Tatsachen* ), not a formulation of judgments that will later be made by judges, such as "good will", "decency"
- c) A fact that should be formulated in a way that is clear so as to avoid errors in interpretation while also easy to administer, a positive law should not be changed often - change.

Based on the description above, it is very clear what has been said that legal certainty is only related to the existence of statutory law. It is true that in a country that adheres to a written system (civil law system, modification system), legal certainty is guaranteed by the written writing of rules and legal principles, however, this does not mean that the common law system which is dominated by law does not The written document does not have the means to guarantee legal certainty. Statements in the "common law system" of legal certainty are guaranteed by the application of the principle of "*stare decisis*" or "the binding force of precedent", namely the binding force of precedent (in Indonesia it is called *jurisprudence*) for subsequent cases of the same type.

The elements of justice are appreciation and judgment, because justice demands the same conditions for every human being. Indeed justice comes from God but a



human being is given the ability to feel the situation called justice. The law does not have to find a balance between the various elements of interests that cause conflict, to get justice, and to get a balance between the demands of justice and the demands in society.

Based on the results of the study, the legal certainty of the buyer against the sale and purchase of land rights carried out under the hands..

- a) That the legal status of the sale and purchase of land that is carried out under the hands (without a deed of the Land Deed Official) is still valid, because the legal requirements for buying and selling according to the UUPA have been fulfilled, namely the material requirements that are cash, clear and real. In addition, the sale and purchase has fulfilled the terms of sale and purchase according to Article 1320 of the legal requirements of the agreement. However, to obtain the transfer of land rights and transfer of names, one 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.
- b) 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 seller face the village head directly, because the village head is considered a person who knows the law to state his intentions. they are. Then the seller makes a stamped deed stating that it is true that he has handed over his land forever to the buyer. The deed is signed by the buyer and the Village Head and witnessed by two legally capable witnesses.

The legal consequences buyer to purchase Landrights carried out in at under hand, if arising disputes between the seller and the buyer, the deed under the hand still undeniably new and have the strength of evidence that is incomplete if recognized by both parties, or strengthened again with other evidence. Therefore, it is said that a private deed is the beginning of written evidence.

The deed of sale and purchase is a document that proves the transfer of land rights from the owner as the seller to the buyer as the new owner. In principle, the sale and purchase of land is clear and cash, which is carried out before the Land Deed Making Officer (PPAT) and the price has been paid in full.

What PPAT does before the transaction is carried out is to examine the certificate of land rights with the aim of ensuring that the land is not involved in a legal dispute, is not being pledged, or is not being confiscated by the authorities.

The emergence of legal disputes regarding land originates from a complaint from one party (person or legal entity) containing objections and claims for land rights both on land status, priority and ownership in the hope of obtaining an administrative settlement in accordance with applicable regulations. The reason that is actually the ultimate goal of the dispute is that there are parties who have more rights than others (priority) over the disputed land, therefore the legal dispute resolution of the dispute depends on the nature of the problem proposed and the process will require certain stages before obtaining an agreement. decision. Regarding the procedures and procedures for resolving legal disputes over land, it has not been regulated in a concrete manner, such as the mechanism for applying for land rights (Regulation of the State Minister of Agrarian Affairs Number 9 of 1999), therefore case settlement is not carried out with a uniform settlement pattern but from several experiences.

If a land sale and purchase transaction occurs, causing a case to reach the Court, before making a decision, the judge must take three steps in stages, namely to establish, qualify, and then make a constitution so that the decision given by the judge can give consideration to whether an event or event is true or not. determine the law.

Konstatir means seeing, acknowledging or confirming that there has been an event that has been submitted to him. In order to arrive at the constituency, the judge must have certainty so that the constellation is not merely a conjecture or recklessness about the existence of the event in question, for that the judge must prove it with the available evidence to obtain certainty about the event that was submitted to him.

After the judge has confirmed the incident, the next step is to qualify the incident. Qualifying means assessing events that have actually been deemed to have occurred, including which legal relationship. In other words, find the law for the events that have been constated. The final stage, after establishing and qualifying the event, the judge must make a constitution or provide a constitution. This means that the judge will assign the law to the person concerned and provide justice.

In the case of a land sale and purchase transaction that does not have a sale and purchase deed in the context of changing the name of the land certificate, the case will be resolved in accordance with its duties based on the provisions of the applicable law. Courts should not create laws but only seek and state the existence of legal regulations. The judge's decision in relation to making a deed of sale and purchase is to be used as a basis for applying for a land title certificate, but this depends on the content of the decision. If the contents of the decision authorize a sale and purchase, then the court's decision can be used as the basis for applying for a land certificate. The function of the court decision is to ratify a process of buying and selling land which has the same function as the deed of sale and purchase made by PPAT. Therefore, both the PPAT deed and the court's decision are both authentic evidence regarding the occurrence of a land sale and purchase transaction.

### **3. Legal Protection for Buyers Against the Sale and Purchase of Land Rights Conducted Under the Hands From the Theory of Legal Protection**

Means to make it easier for the public so that the sale and purchase of land is carried out not only with trust or through receipts, but can be through the manufacture of evidence of buying and selling land which is carried out under the hands, namely:

- a) The parties concerned, both the seller and the buyer, come to the Village or Kelurahan Office to make an agreement to measure the land to be sold and the Village Head or Lurah and village officials are also here as witnesses.
- b) After the land is measured, the data is then written in a special village book;
- c) After completion, the buyer is obliged to pay mandatory and voluntary money;
- d) After making payments to the witnesses who were present at the sale and purchase;
- e) the land signed a statement of sale and purchase of the land..

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 under their hands.

A legal protection should be obtained by all legal subjects without any difference. As stated in one of the articles in the 1945 Constitution, namely Article 27 paragraph

(1) which states "Everyone has the right to recognition, guarantees, protection and fair legal certainty and equal treatment before the law".

"Satjipto Rahardjo in his book entitled Legal Studies says that a legal protection can be interpreted to provide protection for Human Rights (HAM) who are harmed by other parties, and the purpose of legal protection is to provide the community with a sense of comfort and security to enjoy all the rights granted by the law. law"

The theory put forward by Satjipto Rahardjo can also be interpreted that legal protection is something that protects legal subjects from harmful things done by other legal subjects.

"According to Satjipto Rahardjo," a person's interests allocate a power to him to act in the context of his interests. "The allocation of this power is carried out in a measurable manner, in the sense that its breadth and depth are determined." "That kind of power is called a right. But not every power in society is commonly referred to as a right, but only certain powers are the reason for attaching that right to a person. If analyzed with the theory of legal protection put forward by Satjipto Raharjo, then even though the sale and purchase is carried out under the hands, 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 carried out under the hands has made and stated that there had indeed been a legal act between the two parties, namely between the seller and the buyer, and although it was only limited to under the hands, it was also a means of proof as regulated in the Criminal Code. Civil law, especially in article 1866, where one of the evidences is written evidence, this is further strengthened in article 1874 of the Civil Code which states that one of the written evidence also includes an underhand letter that has been signed or has been affixed with a thumbprint by the parties. interested parties in the agreement.

Sales and purchases carried out under the hands can be used as evidence, but are not strong evidence to be used as evidence of the transfer of rights to the land in question, because according to Article 37 of Government Regulation No. 24 of 1997, the transfer of land rights can only be registered if it is proven by a deed made by PPAT. Thus, the transfer of land rights carried out under the hands cannot be registered with the Land Office.

If at any time there is a dispute concerning the sale and purchase, the sale and purchase agreement under the hand can be used as evidence, even though the strength of the proof is weak.

The theory of legal protection put forward by Satjipto Rahardjo when it is associated with problems that occur in the field, the law has protected the buyer if one day a dispute arises over the sale and purchase of the land, because even though it was made under the hands, the sale and purchase agreement has fulfilled the terms of the agreement and the principle of agreement regulated in civil law, where an agreement will bind and become law for the parties who have made the agreement (pacta sun servanda principle), so that the agreement can be a piece of evidence, even though it has the power The evidence is limited to strong, not perfect.

Satjipto Rahardjo who argues that legal protection is a protection of human rights against harmful acts committed by others, so in this case the underhand agreement can



be used as a legal protection regarding the validity of the legal act of buying and selling land rights

#### **D. Conclusion**

1. People buy and sell land rights under their hands in this study, because:
  - a) Ignorance of the person concerned about the process or procedure of buying and selling land rights
  - b) The person concerned imagines that the matter of buying and selling land rights is difficult and convoluted,
  - c) Because it avoids unexpected costs that they don't know about.
  - d) Economic factors of the person concerned
2. The legal consequences for the buyer of the sale and purchase of land rights carried out under the hands, among others::
  - a) Unable to register the transfer of land rights (transfer of name) certificate to the local Land Office.
  - b) Not getting a strong evidence if later the land he bought is in dispute.
  - c) The buyer cannot guarantee his certificate to obtain the credit he submitted, without involving the seller of the land concerned
  - d) Legal protection for buyers against buying and selling land rights carried out under the hands is evidence of the agreement, even though it is carried out under the hands, but it can be used as a form of legal protection because it can be a piece of evidence with weak evidentiary strength. This can be found in article 1866 of the Civil Code, and emphasized in article 1874 of the Civil Code which states that evidence can be written under the hand. So the law has protected the buyer in case of a dispute, but if you want to change the name, the parties, both the seller and the buyer, must make a deed of sale made by PPAT as the basis for changing the name at the BPN office.

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