

The Study of Crime in the Process of Buying and Selling Land Plots

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Abstract.

The purpose of this research is to examine, criminal acts in the process of buying and selling land plots in accordance with existing laws and regulations, where the approach method used is the normative juridical method. The conclusion from the following research results, that the problem of buying and selling land in plots does not cause problems when carried out in accordance with laws and regulations, where the sale and purchase of land by plots can only be carried out after the buyer has paid in full the parcel of land that has been purchased and has transferred the land to be the name of the New Land Buyer/Developer. Then the new developer checks the status of land use, makes a Site Plan that is submitted to the BPN, then processes the sale and purchase of land by plot at PPAT. If the sale and purchase does not comply with existing regulations, it will impact to regulation or the law which ruled on it. The police should focus on the case which connected with the criminal actor or corporation on it. Keywords: House; Land; Plots; Purchase; Sale.

1. Introduction

The preparation of the Basic Agrarian Law/UUPA (Act No. 5 of 1960) underwent a difficult process and went through a long process because prior to the enactment of the UUPA, sovereignty over land was not fully controlled by the Indonesian people because there were still a lot of colonial and colonial heritage lands using the colonial system. So it is necessary to immediately make an Agrarian Law which is a National Law which is applied equally to all regions of Indonesia. The basis for the formulation of the Agrarian Law is: Article 33 paragraph (3) of the 1945 Constitution which reads: "Earth, water and natural resources contained therein are controlled by the State and used for the greatest prosperity of the people".¹ In a narrow sense, agrarian means land and it can also be interpreted only as agricultural land. Furthermore, the notion of agrarian in a broad sense can be seen in Act No. 5/ 1960 concerning Basic Regulations on Agrarian Principles (better known as the Basic Agrarian Law or abbreviated as UUPA). According to the UUPA, agrarian covers the earth, water and space, including the natural resources contained therein. The LoGA stipulates that in terms of the earth, in addition to the earth's surface, it includes the body of the earth, below it and under water (Article 1 paragraph 4). The definition of water includes inland waters and seas in the Indonesian territory (Article 1 paragraph 5), which includes space including space above the earth and water.²

¹Indah Sari, (2007), "Hak-Hak Atas Tanah dalam Sistem Hukum Pertanahan Di Indonesia Menurut Undang-Undang Pokok Agraria (UUPA)", *Jurnal Hukum*, Vol.14 No. 3, July, p. 456.

²Oloan Sitorus and H.M Zaki Sierrad, (2006), *Hukum Agraria Di Indonesia Konsep Dasar dan Implementasinya, Mitra Kebijakan Tanah Indonesia,* Yogyakarta



Land is one of the most valuable assets which is part of the people's livelihood. For a nation or a state, land plays an important role that is able to show the sovereignty of the nation concerned. The takeover of land by other nations due to colonialism and the many land conflicts that arise in the country can have a negative impact on the economic, social and political growth of the country concerned. Based on the reasons for the importance of land for a nation, then land conflicts arise that originate from the limited availability of land that is not balanced with human needs.

In the last five years, problems with land parcels have increased. On average, problems related to land will intersect with issues of land ownership. In Book II Burgerlijk Wetboek (BW)³has regulated the types of land rights that can be owned by individuals or legal entities, including regulating the contents of the rights in question and the legal relationship between the rights holders and the land they control. This shows that the land law included in the BW tends to be civil in nature. In addition, the BW also contains provisions governing administrative matters, which contain the policy of the Dutch East Indies Government regarding the granting of land rights in Indonesia. However, the provisions governing the above matters are based on the land law of the Dutch Government, namely:⁴

- *Agrarische Wet,* which is a law made by the Dutch Government which was promulgated in 1870 and is an addition to Article 62 of the *Regering Reglement* (RR), a type of the Constitution for the Dutch East Indies which was enacted in 1854 which was later changed to *Indische Staatregering* (IS) in 1925, where Article 62 RR becomes Article 51 IS.⁵
- *Agrarische Besluit,* namely the decision of the King of the Netherlands to implement *Agrarische Wet.* This regulation is a statement that forms the basis for the authority to grant rights to all parcels of land that cannot be proven as the *eigendom* of other parties, which are state domains. The *Agrarische Besluit* 1870 only applies to Java and Madura, while for other regions it is stipulated in the *besluit* issued at a later date.
- Provisions made by local control (*swapraja*) created according to the provisions of the self-government, for example land rights applicable in DI Yogyakarta and *Grant Sultan, Gront Controleur Grand Deli Maatscheppij* and concession rights in East Sumatra.

In general, land disputes that arise in Indonesia can be grouped into 4 classifications of problems, namely problems related to:⁶

- Recognition of land ownership;
- Transfer of land rights;
- Encumbrance of rights and
- The occupation of former private lands.

³Subekti, R. and Tjiptosudibio, R, *Kitab Undang-undang Hukum Perdata, Burgerlijk Wetboek, dengan Tambahan Undang-undang Pokok Agraria dan Undang-undang Perkawinan.* ⁴Ibid

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⁵Boedi Harsono, (1999). *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-undang Pokok Agraria, Isi dan Pelaksanaannya,* Jakarta: Djambatan

⁶Mudjiono, (2007), "Alternatif Penyelesaian Sengketa Pertanahan Di Indonesia Melalui Revitalisasi Fungsi Badan Peradilan", *Jurnal Hukum*, Vol.14 No. 3, July, p. 466.



Judging from the subject matter of the dispute, land disputes can be grouped into 3 types, namely:

- Land disputes between residents;
- Land disputes between local governments and local residents and
- Disputes related to natural resource management.⁷

In general, land disputes arise due to several factors, including: a) Incomplete regulations; b) Non-compliance with regulations; c) Land officials who are less responsive to the need and amount of available land; d) Inaccurate and incomplete data; e) Incorrect land data; f) Limited human resources tasked with resolving land disputes; g) erroneous land transactions; h) The act of the applicant's rights or h) There is a settlement from another agency, resulting in overlapping authorities.⁸

The purpose of this study is to examine how the mechanism of buying and selling land plots is in accordance with the legislation so as to protect the interests of the parties, not only the interests of the Land Seller, the Land Buyer who in this case acts as the Developer, but also the interests of the Land Buyer.

In its development, where the community's need for land is very high, it is inversely proportional to the amount of land that is still fixed and the longer its use is decreasing, causing the proliferation of land sales and purchases carried out by plots. What is meant by plot of land is land whose length and width have been determined by the competent authority, which is intended to grant the right to use it to the person/entity who needs it with certain conditions.⁹ Meanwhile, according to the Big Indonesian Dictionary, Plot Land is a piece of land that has been plotted with a certain size for buildings or residences.¹⁰ The definition of plot of land as one of the elements of buying and selling land (lots) in practice is intended as a plot of land in a form that has been determined by the form and extent by the first party as the coordinator of the plot (developer), so that the land is intended to be ready to build for the second party (buyers) in a certain area and environmental area.

Agrarian reform which aims to create the greatest prosperity for the people of Indonesia must be based on a concept based on the distribution of benefits. Reregulation of the use and utilization of land owned by a person or legal entity, is carried out through cooperation in the use and utilization of land. The cooperation involves several parties including land owners, central and/or regional governments, business entities, legal entities, social and religious organizations, as well as civil society organizations. The results of the cooperation in the use and utilization of this land are shared equitably to all related parties. The purpose of benefit distribution is to improve land use and utilization in order to produce optimal land use and utilization.¹¹

Buying and selling land by plot does not cause problems when carried out in accordance with existing laws and regulations, where the sale and purchase of land

⁷Universitas Gadjah Mada, (2002), Pusat Studi Kependudukan dan Kebijakan, Reformasi Tata Pemerintahan dan Otonomi Daerah, Suatu Ringkasan Eksekutif, Yogyakarta ⁸Mudjiono, Op.cit

⁹Effendi Parangin, SH, (1994), *Praktek Jual beli Tanah*, Jakarta: PT Raja Grafindo persada, p. 30

¹⁰Desy Anwar, (2003), Kamus Besar Bahasa Indonesia Terbaru, Ed. 1, Surabaya: Amelia, p. 226.

¹¹Andi Tenrisau, (2021), "Landasan Pengelolaan Pertanahan Dalam Sistem Penataan Agraria Berkelanjutan", *Jurnal Pertanahan*, Vol.II No. 2, November 2021: p. 103-112



by plot can only be carried out after the buyer has paid in full the parcel of land that has been purchased and has transferred the land to be in the name of the new land buyer/ Developers. Then the new developer checks the status of land use, makes a Site Plan that is submitted to the BPN, then processes the sale and purchase of land by plot at PPAT.

However, in fact, nowadays there are many developers who do not have capital, who pay for the land in the form of an advance with a certain nominal value that binds the Land Owner. Then the minimal capital is used to cultivate (build) the land so that it becomes a ready-to-build plot. After that, while the land is sold and bought in plots, the new payment money is used to pay off the previous land owner.

This is interesting to study because, it turns out that the Sale and Purchase Process from the Land Owner to the Developer that has not been paid off, then buying and selling from the Developer to the Buyer of Land Plots that have been paid off, provides space for Developers to act naughty and cause other problems that arise. , like:

- Material losses experienced by the Land Plot Buyer due to not getting a certificate on the land purchased
- Material losses suffered by the Land Owner due to being tied up through buying and selling which have not been paid off in an uncertain period of time

This study aims to examine how the buying and selling process of land plots should be carried out, which can minimize the losses experienced by the parties, both for land owners, developers, and buyers of land plots.

2. Research Methods

This research method was a normative juridical law research method with a statutory approach by using primary legal materials in the form of basic rules and statutory regulations governing land law. Through these legal materials, it was hoped that future legal policy formats will be found that reveal legal protection in the sale and purchase of land plots as well as secondary legal materials, namely: the results of previous research, scientific works from legal and non-legal experts relevant to the object this research, the minutes of the law-making trial; and third, tertiary legal materials that provide instructions and explanations of primary and secondary legal materials, in the form of dictionaries and encyclopedias.¹²

The approach method used was an empirical juridical approach, while the specifications of this study are, the scope of this research will be research by drawing on legal principles, which are carried out on written and unwritten positive law.¹³ This research can be used to draw on legal principles in interpreting statutory regulations. In addition, this research could also be used to find legal principles that were formulated both implicitly and explicitly.¹⁴ Data and data collection methods were carried out by means of structured interviews. The data analysis method used

¹²Soerjono Soekanto and Sri Mamudji, (1995), *Penelitian Hukum Normatif*, Jakarta: RajaGrafindo Persada, p. 29

 ¹³Soerjono Soekanto, (1986), *Pengantar Penelitian Hukum*, Jakarta: UI Press, p. 63.
¹⁴Ibid.



qualitative data processing techniques. What was meant by qualitative data processing technique.

3. Result and Discussion

That disputes regarding land are increasing day by day, there is even a mention of the Land Mafia for all problems that have to do with land. These land cases continue to adorn the news in both print and electronic media.

The high number of disputes in the land sector so far actually cannot be separated from the weak protection of the State towards the rights and access of the people to land and other natural resources as part of the economic, social and cultural rights guaranteed by the constitution. The position of the people is getting weaker because the land they control is not all certified. Even if there is a certificate, proving that the certificate was issued by an official agency (in this case BPN) does not necessarily guarantee that there will be no problems. Land policy in Indonesia has actually long been formulated in Act No. 5 of 1960 concerning Basic Agrarian Regulations or better known as UUPA (Law on Basic Agrarian Affairs) which is based on Article 33 paragraph (3) of the 1945 Constitution. This is supported by the regulations that have been issued in relation to land registration, namely Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration. In the government regulation of the Republic of Indonesia concerning Land Registration, it is stated that Land Registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding fields - parcels of land and apartment units, including the issuance of certificates of proof of rights for parcels of land that already have rights and ownership rights to apartment units as well as certain rights that encumber them.

The LoGA does not explicitly regulate the meaning of buying and selling land, but Article 19 of Government Regulation Number 10 of 1961 as the Implementing Regulation of the LoGA states that: *... The sale and purchase of land must be proven by a deed made by and before the Land Deed Official (PPAT).*

Similarly, Article 37 paragraph 1 of PP 24/1997 as a refinement of PP 10/1961, states that: ... transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grants, entry of company data and other legal acts of transfer of rights... can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

Based on this, buying and selling according to the UUPA is carried out based on customary law so that according to customary law, buying and selling must meet the elements of cash, clear, real / tangible. The sale and purchase is carried out openly, meaning that it is carried out in front of the village head, who after the enactment of the UUPA, the functions and roles are replaced by the Land Deed Making Official (PPAT). As evidence that a sale and purchase has occurred, the PPAT will make a deed of sale which results in the transfer of land rights from the seller to the buyer.



One of the issues regarding land that is increasing is the problem of buying and selling land lots. The business of buying and selling land plots became very tempting because of the high profits promised from the business. The process of buying and selling land plots should depart from the sale and purchase of land from the land seller to the developer, where the developer can only sell the plot of land by plot after the developer pays the land payment fee to the land owner. After the payment is settled, which is followed up with a Sale and Purchase Deed made before the PPAT, then the land rights are transferred to the name of the Developer/CV, then the Developer can only process the land to be backfilled into ready-to-build land. While the curing process, the developer can make a site plan for the land, then the site plan is submitted to BPN Batang for approval. After the site plan permit has been issued, the Developer can only sell the land by plot.

The transfer of land rights is strictly regulated by Article 37 (1) PP 24/1997 which states that: *The transfer of land rights from ownership rights to flats through buying and selling, exchanging, grants, company data entry and other rights transfer actions, except for the transfer of rights through auctions can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the regulations.* So that based on this article it is clear that land rights are transferred due to buying and selling after the transfer of rights before the PPAT.¹⁵The transfer of immovable property (land) to realize the letter of sale and purchase of land including land plots is carried out by a name transfer process after the deed of transfer of rights is made by the Land Deed Making Official (PPAT).

If the Developer wants to process the land certificate directly from the Land Owner to the Land Plot Buyer, then there must be a clear relationship, between the Developer and the Land Owner which is agreed upon with a Cooperation Agreement, namely the Land Owner who will process the splitting of the land, with the costs borne by Developers. Most developers do this to avoid paying taxes as land buyers, fees for transferring the name of a certificate to the developer's name, seller taxes sold from developers to land plot owners.

3.1. Barriers to buying and selling land plots

In the process of buying and selling land plots, on average what often becomes a problem is the sale and purchase of land plots where the purchaser of the land plots has paid in full to the developer, but does not get their rights in the form of land certificates that have been purchased by plots, due to the existence of several problems that arise, including:

• Selling and buying land for LP2B

Food is one of the basic needs of society. Therefore, the Government has determined the existence of land that is prepared as an Area for Sustainable Food Agricultural Land (LP2B) which is determined through the Regional Spatial Plan for each district. Land that is classified as LP2B land is often called Green Land which cannot be traded in plots because its designation is for agricultural land.

¹⁵Soedharyo Soimin, (2001), *Status Hak dan Pembebasan Tanah*, Jakarta: Sinar Grafika, p. 90.



The purpose of the LP2B area is to avoid a food crisis, so that even though the community is growing from time to time, the availability of land for community food is still there.

In this case, LP2B land cannot be traded in plots to make settlements, because the land allotment is for agricultural land. However, at this time, there are a lot of LP2B areas being traded in plots by the Developers, and this has resulted in the Land Plot Buyers having built land and houses on their plots and unable to obtain a certificate for the land.

This must also be guided by the official who is authorized to make buying and selling, both from a Notary¹⁶ who makes a Sale and Purchase in the form of a Sale and Purchase Binding because the sale and purchase has not been paid off, or from the PPAT Party who makes the Deed of Sale and Purchase. If there has been from the beginning the intention of the Developer to buy land with the intention and purpose of selling it by plot, the authorized official, both Notary and PPAT, should also help by checking the land use, whether the land to be purchased by the Developer can be used for Settlement? Can the land be processed for buying and selling land by plot? Can the land be processed for splitting? Then the authorized official must immediately inform the developer regarding the land designation.¹⁷

The binding agreement for the sale and purchase of land and property always precedes the sale and purchase agreement of land and property and is carried out before a PPAT (Official Land Deed Maker) or a Notary¹⁸ because the Sale and Purchase Binding Deed becomes an authentic deed with perfect evidentiary power with a view to providing protection to the parties who made the sale and purchase agreement. To cancel an agreement, it must go through a judge's decision through a court as stated in Article 1266 paragraph (2) of the Civil Code. A valid agreement can be canceled by looking at whether there is a clause that regulates the possibility of canceling the agreement along with the causes and consequences for the parties.¹⁹

• Buying and selling land where the developer has not paid off

This is what is often found and becomes a serious problem, where the Land Owner has been bound in a Sale and Purchase Agreement which is carried out absolutely by the Developer, without any expiration date of the Sale and Purchase Agreement, then the Developer has traded the plot of land to each plot buyer, and has received the payment for the sale and purchase, but the Developer did not

¹⁶ Deen, Thaufiq., Ong Argo Victoria & Sumain. (2018). *Public Notary Services In Malaysia. JURNAL AKTA*: Vol. 5, No. 4, 1017-1026. Retrieved from <u>http://jurnal.unissula.ac.id/index.php/akta/article/view/4135</u>

¹⁷ Ong Argo Victoria, Ade Riusma Ariyana, Devina Arifani. (2020). *Code of Ethics and Position of Notary in Indonesia*. Sultan Agung Notary Law Review 2 (4), 397-407, <u>http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/SANLaR/article/view/13536</u>

¹⁸ Yaya Kareng, Ong Argo Victoria, R. Juli Moertiyono. (2019). How Notary's Service in Thailand. Sultan Agung Notary Law Review, 1 (1), 46-56, <u>http://jurnal.unissula.ac.id/index.php/SANLaR/article/view/4435</u> ¹⁹Ibid.



pay the land payment to the Land Owner, so that the buyer of the plot of land suffered a loss because he did not get his land certificate.

In this case, the Land Owner also cannot sell his land to other people, because the land owner is bound by a sale and purchase agreement with the Developer which has not been paid off, and does not have an expiration date.

Therefore, the sale and purchase of plots of land must be clear, the developer should have paid in full the land he sold in plots, then he can trade the land in plots to other people.

• Buying and Selling Land where the Developer takes money from the Land Buyer

Lately, a lot of people are tempted by the business of buying and selling land plots, where they do not have capital, but expect high profits by running a business as a developer who seems to have capital, where the capital obtained is temporarily limited to paying a down payment of purchase land, then the developer directly sells the land in plots with the intent and purpose, the money from the payment of the plots will be used to pay the land owner, for the land splitting process, for the cost of filling the land into ready-to-build land so that it attracts interest from land buyers. Then after the land is traded in lots, the money from the sale and purchase is used partly to do backfill, and some are not given to the land owner.

3.2. Solution in Buying and Selling Land

Regarding some of the problems that arise due to the sale and purchase of land plots, there are several solutions that can be done to avoid losses that arise in the process of buying and selling land plots, including:

- The authorized official also checks the intent and purpose of the Land Buyer to buy the land, if the purpose is for the plot process, the authorized official also checks the land use, if the land is part of LP2B, then the authorized official must convey to the Land Buyer that the land is cannot be plotted.
- The sale and purchase of land must be carried out in the presence of an authorized official to make a sale and purchase of land, both sale and purchase of land from the land owner to the developer, or the sale and purchase of land from the developer to the purchaser of land plots.
- There must be a clear legal relationship between the Land Owner and the Developer, if the land is to be split from the Land Owner on behalf of the Developer, the Developer must pay the land in full. If the land will be processed from the Land Owner directly on behalf of each Land Buyer of the Plot (via the Developer), then there must be a clear legal relationship between the Developer and the Land Owner.
- The sale and purchase of land must be carried out by showing the original document of land ownership in the form of a certificate, so that if it turns out that the Land Buyer has not been able to pay off the purchase of the land, then the authorized official will help secure the certificate until the parties agree on when the land will be repaid. This is to minimize the existence of a plot of land that is repeatedly sold, or a plot of land whose position is still under collateral at the Bank but has been traded.



4. Conclusion

The process of buying and selling with the object of a plot of land must be carried out in front of the Land Deed Making Officer, not least in the process of buying and selling land plots. If the Developer intends to plot the purchased land, the Developer must check the allotment of the land, whether the land is designated for Settlement land that can be sold in plots, or is agricultural land that cannot be sold in plots. After the process of checking the land use and it turns out that the land can be made into settlements, the developer must have paid off the land from the previous owner, so that the entire land becomes the rights of the developer.

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