

Legal Protection for Land Owners Whose Land is Illegally Certified Through Land Registration

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Abstract. *This paper analyzes the validity of land registration based on underhand land sales and how legal protection is provided to landowners whose land is illegally certified. This paper is compiled using a normative legal research method. Underhand land sales are sales of a plot of land carried out without involving an authorized official according to the law, underhand land sales are sales between the seller and the buyer which are evidenced by a deed not made by a PPAT whose evidentiary power lies in the recognition and evidence made by the parties. Land registration from underhand sales is invalid because it does not fulfill the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, and does not fulfill the principles of clear and cash, valid agreement requirements, material and formal requirements for land sales. Landowners who are harmed by the issuance of a certificate illegally can sue for unlawful acts based on Article 1365 of the Civil Code, file a lawsuit for cancellation of rights due to administrative defects with the Minister or Head of the Land Office, and file a lawsuit for cancellation of rights through the PTUN.*

Keywords: *Buying; Land; Protection; Registration; Selling.*

1. INTRODUCTION

Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (UUD 1945), states that "the land and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people". This can be interpreted that all natural resources in Indonesia, including land, water, and the natural resources contained therein are under the control of the state which has the aim of ensuring that the use of these resources is carried out for the benefit and welfare of the people. Land has an important meaning in social, economic, and cultural aspects. In the social aspect, land has a function that land rights may not only be used for personal interests, especially if it is detrimental to society. The use of land must be adjusted to the circumstances and nature of the rights so that it is beneficial to the owner, society, and the state.¹In addition, the economic aspects of land come from the benefits and

¹King Faisal Sulaiman, (2021), "Polemik Fungsi Sosial Tanah dan Hak Menguasai Negara Pasca UU Nomor 12 Tahun 2012 dan Putusan Mahkamah Konstitusi Nomor 50/PUU-X/2012", *Jurnal Konstitusi*, Vol. 18 No. 1 p. 93.

uses of land for economic activities, including agrarian and investment.²In terms of culture, land is considered very valuable for families who value land not only from an economic perspective, but also from the perspective of honor in maintaining the inheritance, trust, and legacy of parents whose existence should be maintained.³

Therefore, land has an important role in fulfilling the needs of life in terms of social, economic, and cultural, so that it becomes one of the vital aspects in the life of society that often encourages individuals or groups to maintain and fight for it for the sake of their survival and welfare. The need for land is often a source of conflict in the land sector. The conflict that occurs is caused by disputes that arise in the management, control, utilization, and transfer of rights to the land among the community.⁴The land rights can be obtained through legal events and legal acts. Legal events relate to the acquisition of land rights through inheritance, while legal acts are more often carried out by transferring rights, namely buying and selling, exchanging, granting, giving according to customary law, entering into a company or *inbreng*, granting a will or *legaat*.

Land sale and purchase transactions are not regulated in detail in Law No. 5 of 1960 concerning Basic Agrarian Principles (UUPA). In UUPA, the concept of land sale and purchase is only based on customary law based on Article 5 of UUPA. In customary law, land sale and purchase is carried out on the condition that the principles of clear and cash are met.⁵Meanwhile, further regulations regarding land sales and purchases are contained in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. In this regulation, it is explained that land sales and purchases can only be registered if proven by a deed made by a Land Deed Making Officer (PPAT).⁶

In order to obtain legal certainty, land registration is carried out in order to obtain a certificate as proof of ownership of land rights while also providing legal protection to the owner of the certificate.⁷One of the requirements for land registration is regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997, which stipulates that land rights originating from a sale and purchase must be proven by a deed made by a PPAT. However, in practice, there are still many land sales and purchases underhand that are not carried out in the presence of a PPAT and are not accompanied by a PPAT deed, especially for land that is not yet certified. This situation raises the problem of weak evidentiary power for land sales and purchases carried out underhand. Government Regulation Number 24 of 1997 concerning Land Registration has accommodated land registration based on land sales and purchases underhand, namely

²Embun Sari, et.al, (2022), "Politik Hukum Pengadaan Tanah Terhadap Tanah Abrasi Pasca Diberlakukan Undang-Undang Cipta Kerja", *Jurnal Ius Constituendum*, Vol. 7 No. 1 p. 51.

³Suhartono dan Mutmainnah, (2019), "Perubahan Makna Tanah Warisan Pada Masyarakat Desa Bunder Kecamatan Pademawu Kabupaten Pamekasan", *Jurnal Pamator*, Vol. 12 No. 2 p. 122.

⁴Firmanto Laksana, (2024), *Akselerasi Pencegahan Konflik Agraria Untuk Mendukung Pembangunan Ibu Kota Negara*, Kertas Karya Ilmiah Perseorangan (TASKAP) Program Pendidikan Reguler Angkatan (PPRA) LXVI Lemhanas RI, p. 4.

⁵Boedi Harsono, (2013), *Hukum Agraria: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya, Jilid I Hukum Tanah Nasional*, Jakarta: Universitas Trisakti, p. 179.

⁶Government Regulation on Land Registration, PP Number 24 of 1997, LN No. 59 of 1997 TLN. No. 3696, Article 37 paragraph (1).

⁷Hinda Warda Sakinah, Istijab, dan Ronny Winarno, (2022), "Kekuatan Hukum Jual Beli Tanah Di Bawah Tangan Dalam Perspektif Hak Milik Terkait Pendaftaran Tanah," *Yurijaya Jurnal Ilmiah Fakultas Hukum*, Vol. 4 No. 1 p. 35.

in the provisions of Article 37 paragraph (2) of Government Regulation Number 24 of 1997. Where this provision states that in the case of a land sale and purchase not being proven by a PPAT deed, the Head of the Land Office can register the transfer of land ownership rights, which are carried out between individuals who are Indonesian citizens but which according to the Head of the Land Office are considered to be of sufficient truth to register the transfer of the rights concerned.⁸

From the regulations mentioned above, basically land registration can be carried out on ownership rights originating from legal events of sale and purchase as evidenced by a PPAT deed. However, land registration can also be carried out on ownership rights originating from underhanded land sales. This underhanded land sale and purchase legal event has the potential to cause disputes in the future due to the weak strength of evidence that can be used by one party to deny the existence of the sale and purchase. As in the example of the case in decision Number 127 / PDT.G / 2019 / PN.Arm, where in this case the dispute occurred because of land registration which was carried out to record the transfer of rights and issuance of certificates for a plot of land based on underhanded sales. The object of the dispute is a plot of land owned by the plaintiff which was then requested for registration of its rights by the Defendant, then on the basis of the land registration application a certificate was issued in the name of the Defendant. This disputed object was then resolved by the Defendant to another party.⁹

2. RESEARCH METHODS

This research used a normative method or library research, namely legal research conducted by examining library materials or secondary data.¹⁰ The object in compiling scientific papers is something that provides data or information in research. In this case, the object of compilation in conducting research is land registration based on land sales underhand.

3. RESULT AND DISCUSSION

3.1. Validity of Land Registration Based on Land Sale and Purchase Underhand

In terms of land registration, it is stated in Article 3 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, where the purpose of land registration is to provide legal certainty and protection to rights holders, provide information required by related parties, and realize orderly land administration.¹¹ Land registration is not only carried out for land that has been certified, but also for land that has not been certified. To carry out the land registration process as stipulated in Government Regulation Number 24 of 1997 concerning Land Registration, proof of the transfer of rights to the land must be proven by a deed made by the PPAT.

In the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it is stated that the transfer of land rights and

⁸Government Regulation on Land Registration, PP Number 24 of 1997, LN No. 59 of 1997 TLN. No. 3696, Article 37 paragraph (2).

⁹Airmadidi District Court, Decision Number 127/Pdt.G/2019/PN.Arm., Djemmy Kalengkongan vs. Ferdinand Warokka, Ingke Kalengkongan, and Irawan Handoko (2019), pp. 1-6.

¹⁰Soerjono Soekanto dan Sri Mamuji, (2013), *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*, Jakarta: Raja Grafindo Persada, p. 13.

¹¹Government Regulation on Land Registration, PP Number 24 of 1997, LN No. 59 of 1997 TLN. No. 3696, Article 3.

ownership rights to apartment units through sale and purchase, exchange, gift, income in a company can only be registered if proven by a deed made by a PPAT. Therefore, for the sale and purchase of land rights that are not proven by an authentic deed made by a PPAT, the land registration application will be rejected by the Head of the National Land Agency.¹²This raises a problem where Indonesian society, especially those living in rural areas, still often experiences land sales that are made underhand or not made with a deed made by PPAT. The underhand land sales are only signed by the parties with the knowledge of the village head. In fact, it is not uncommon for the sale and purchase transaction to only be stated in the form of a payment receipt without a deed of sale and purchase agreement being made. This is considered sufficient and valid by some rural communities.¹³

In the case that occurred based on Decision Number 127/PDT.G/2019/PN.Arm, it can be seen that the land registration requested by the Defendant was carried out based on the Defendant's admission that there had been a private sale and purchase by the Plaintiff to the Defendant. This private sale and purchase of land was carried out without evidence of a PPAT Deed. Land registration and issuance of this certificate are only proven by evidence of receipts and a statement from the village head.

The sale and purchase of land underhand can basically still be used for land registration purposes, where land registration can also be carried out for land ownership rights carried out based on a sale and purchase underhand or a sale and purchase of land that is not carried out with a deed made by a PPAT. This is based on the provisions of Article 37 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. Where the Head of the Land Office can register the transfer of rights, which is carried out and proven by a PPAT deed but which according to the Head of the Land Office the level of truth is considered sufficient to register the transfer of the rights concerned.¹⁴

The provisions regarding the sale and purchase of land are subject to the UUPA. Although the UUPA does not specifically regulate the sale and purchase of land, it can be interpreted that the sale and purchase of land according to the UUPA is based on customary law. According to customary law, the sale and purchase of land is an act of transferring land rights that is transparent and in cash. Transparent means that the act of transferring rights must be carried out before the customary chief, who acts as an official who guarantees the validity of the transfer of rights so that the act is known to the public. Cash means that the act of transferring rights and payment of the price are carried out simultaneously. Therefore, cash means that the price of the land is paid in cash or has only been paid in part. If the buyer does not pay the rest, the seller cannot sue on the basis of the sale and purchase of land, but on the basis of debts.¹⁵

¹²Andy Hartono, (2015), *Panduan Lengkap Hukum Praktis: Kepemilikan Tanah*, Surabaya: Laksbang Justitia, p. 175.

¹³Putri Gracia Lempoy, (2017), "Kajian Hukum Hak Atas Tanah Tanpa Sertifikat Yang Diduduki Seseorang Menurut Pasal 1963 KUHPerdara," *Jurnal Lex Crimen*, Vol. 6, No. 2, p. 101.

¹⁴Andy Hartono, (2015), *Panduan Lengkap Hukum Praktis: Kepemilikan Tanah*, Surabaya: Laksbang Justitia, p. 180.

¹⁵Adrian Sutedi, (2008), *Peralihan Hak atas Tanah dan Pendaftarannya*, Jakarta: Sinar Grafika, p. 76.

Land sales underhand must fulfill the elements that are the requirements for the validity of the agreement as regulated in Article 1320 of the Civil Code. This article stipulates that there are subjective and objective requirements that must be met, namely:¹⁶

- a. Agree those who bind themselves
- b. Ability to make a contract
- c. A certain thing
- d. A lawful cause.

The four conditions are classified into two types, the first two conditions are subjective conditions, and the last two conditions are objective conditions. Subjective conditions include a free agreement between the parties who promise and the legal capacity of the parties who make the agreement. Meanwhile, objective conditions include the existence of the subject matter as the object of the agreement, and the cause of the object in the form of an agreed performance to be carried out must not be contrary to the law or permitted according to statutory regulations.¹⁷

Land Sale and Purchase according to UUPA is based on two conditions, namely material conditions and formal conditions. The material conditions for land sale and purchase are:

- a. The buyer has the right to buy the land in question, which means that the buyer as the recipient of the rights must meet the requirements to own the land that will be purchased. To determine whether the buyer has the right to obtain rights to his land depends on what rights exist on the land, whether ownership rights, building use rights or use rights.
- b. The seller who has the right to sell the land in question is the person who has the right to sell a plot of land, of course the legal holder of the rights to the land.
- c. The land rights in question may be bought and sold and are not in dispute.

In addition, the formal requirement for buying and selling land is that a deed of sale and purchase for the land be made by and in the presence of a PPAT.¹⁸ However, the provisions in Article 37 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, set aside the formal requirements for the sale and purchase of land, whereby land sales and purchases under hand can still be registered, but according to the Head of the Land Office the level of truth is deemed sufficient to be registered.¹⁹

Therefore, it can be concluded that land registration based on the sale and purchase of land under hand carried out by the Plaintiff and the Defendant is not legally valid, this is because the sale and purchase of the land was not carried out and was not proven by a deed made by the PPAT. This is based on Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which requires that every

¹⁶Civil Code [Burgerlijke Wetboek], translated by R. Soebekti and R. Tjitrosudibjo, Article 1320.

¹⁷J. Satrio, (1992), *Hukum Perjanjian (Perjanjian Pada Umumnya)*, cet.1, Bandung: Citra Aditya Bakti, p. 23.

¹⁸Bachtiar Effendi, (1993), *Kumpulan Tulisan tentang Hukum Tanah*, Bandung: Alumni, p. 23.

¹⁹Government Regulation on Land Registration, PP Number 24 of 1997, LN No. 59 of 1997 TLN. No. 3696, Article 37 paragraph (2).

application for Land Registration must be proven by a deed made by the PPAT. In addition, there is no agreement between the parties that is proven, where an agreement is one of the conditions of the agreement stated in Article 1320 of the Civil Code. Moreover, there is no evidence that shows that there has been a sale and purchase of land by the Plaintiff and the Defendant.

3.2. Legal Protection for Land Owners Whose Land is Unlawfully Certificated

Land registration has an important meaning in the land system in Indonesia, in land registration activities, land rights holders are given land rights certificates as stated in the provisions of Article 4 of Government Regulation Number 24 of 1997 concerning Land Registration. The certificate is a valid proof of rights as a strong means of proof regarding the physical data and legal data contained therein, as long as the physical data and legal data are in accordance with the data in the relevant measurement letter and land book.

There is a loophole created by the enactment of Article 37 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration. Where in this article it is possible for land registration to be carried out for the transfer of land rights carried out underhand. This has the potential to be exploited by parties who want to control ownership of land rights unlawfully. The weakness of proof in underhand land sales and purchases is something that gives rise to the potential for disputes in the future.

Because the sale and purchase of land underhand is not carried out before the PPAT. So the evidentiary power of the sale and purchase lies in the confession and evidence made by the parties themselves. One example of a case that occurred is the case in Decision Number 127 / PDT.G / 2019 / PN.Arm, namely when the sale and purchase was carried out without the knowledge of the owner of the land rights, where the seller carried out the sale and purchase transaction against the rights. This can also be associated with the validity of Article 37 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, because there is no further explanation or benchmark mechanism on how the Head of the Land Office assesses how the sale and purchase of land underhand is considered to be sufficient by applicable law.

In the case of decision Number 127/PDT/2019/PN.Arm, it can be seen that there was land registration and issuance of land certificates based on underhand sales. This was not recognized by the Plaintiff as the land owner so that the actions taken by the Defendant who submitted a Land Registration application to the local Regency/City Land Office were against the law. This was then accepted by the Land Office and the Land Office issued a certificate in the name of the Defendant. The District Court decision stated that the land sale and purchase carried out by the Defendant with the Plaintiff was invalid, and the Defendant's application for land registration to the Land Office was an unlawful act.

It can be concluded that the issuance of a certificate by the Land Office with an invalid sale and purchase is procedurally flawed. In this case, the plaintiff can basically file an objection to the issuance of the certificate based on Article 32 paragraph (2) of Government Regulation Number 24 of 1997 concerning Land Registration, but this provision is considered insufficient to protect the rights of the actual land owner, especially since there is a lawsuit period limited by the provision for 5 years after the issuance of the certificate.

Basically, landowners who feel that their land has been certified without their knowledge or against their rights can file a lawsuit on the basis of an unlawful act as stipulated in Article 1365 of the Civil Code. In filing a lawsuit for an Unlawful Act, the act must fulfill the elements of an unlawful act, which include:²⁰

- a. The unlawful act itself
- b. Loss
- c. Error
- d. Causal relationship between the unlawful act and the loss

In addition to the lawsuit for unlawful acts, if the issuance of the certificate is carried out with procedural errors made by the authorized agency, then an attempt can be made to cancel the land rights to the Minister or appointed official or through the Head of the Land Office based on Article 106 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights. The cancellation of land rights is carried out due to administrative legal defects in the form of:²¹

- a. Procedural Error;
- b. Misapplication of laws and regulations;
- c. Subject of rights error;
- d. Object rights error;
- e. Rights type error;
- f. Area calculation error;
- g. There are overlapping land rights;
- h. Legal data or physical data is incorrect; or
- i. Other errors of an administrative legal nature.

In addition to making efforts to cancel land rights through the Minister or Head of the Land Office. A lawsuit can also be filed with the State Administrative Court. The certificate is a legal product of a TUN official, the TUN official in question is the National Land Agency, therefore the BPN has responsibility for problems or disputes that occur related to the land ownership certificate issued by the BPN.²²Based on Article 1 number (7) of

²⁰Ahmad Zainul Anam, "Unsur-Unsur Perbuatan Melawan Hukum", Kepaniteraan Mahkamah Agung, 15 October 2021, available at <https://kepaniteraan.mahkamahagung.go.id/glosarium-Hukum/1876-elemen-elemen-perbuatan-melawan- Hukum>, accessed December 2, 2024.

²¹Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Concerning Procedures for Granting and Cancelling Rights to State Land and Management Rights, PMNA Number 9 of 1999, Article 107.

²²Michelle Lien dan Gunanegara, (2024), "Perlindungan Hukum Pemegang Sertipikat Hak Milik Yang Tanahnya Diterbitkan Kembali Sertipikat Hak Milik Atas Nama Pihak Ketiga", *Notary Journal*, Vol.4, No.1, p. 68.

Law No. 30 of 2014 concerning State Administration, it states that State Administrative Decisions or State Administrative Decisions are written decisions issued by Government Agencies and/or Officials in the implementation of government.²³Therefore, it can be concluded that a land title certificate is a legal product issued by a government agency and/or official, in this case the National Land Agency, and if there is a procedural flaw in its formation, a lawsuit can be filed with the Administrative Court based on Article 54 paragraph (1) of Law No. 5 of 1986 concerning State Administrative Courts in conjunction with Article 64 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

4. CONCLUSION

The validity of land registration based on underhand land sale and purchase in Decision Number 127/PDT.G/2019/PN.Arm is not legally valid. Because it does not fulfill the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which requires that land registration can be carried out by being proven by a deed made by a PPAT. In addition, the underhand sale and purchase does not fulfill the principles in the UUPA which are based on Customary Law, namely the principle of clear and cash, and the failure to fulfill the requirements for the validity of the agreement based on Article 1320 of the Civil Code, and is carried out without fulfilling the material and formal requirements for land sale and purchase based on the UUPA. Legal protection for landowners whose land is illegally certified in the case of Decision Number 127/PDT.G/2019/PN.Arm is that they can file a lawsuit for unlawful acts based on Article 1365 of the Civil Code, in addition, the objecting party can also make efforts to cancel land ownership rights if there are administrative defects in its formation to the Minister or Head of the Land Office based on Article 106 of the Regulation of the Minister of State for Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of State Land Rights and Management Rights, and can also file a lawsuit for cancellation of Land Ownership Rights to the State Administrative Court based on Article 64 of Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration.

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²³Law on Government Administration, Law No. 30 of 2014, LN 2014 No. 292 TLN No. 5601, hereinafter referred to as the Law on Government Administration, Article 1 number (7).

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