

Legal Position of Land Sale and Purchase Agreement with Fully Certified Land Under Hand Against the Interests of the Heirs

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Abstract. *This study aims to analyze: 1) The legal standing of a private sale and purchase agreement. 2) Legal protection of heirs who use a private sale and purchase agreement. This type of research is included in the scope of normative legal research. The approach methods used in this study are the case study approach and the statute approach. The type of data uses secondary data obtained from literature studies. The data analysis method used in this study is prescriptive. The results of the study concluded: 1). The legal standing of a private sale and purchase agreement is that it has the power of proof in a case and its truth cannot be denied, so that the private letter must be legalized. The Civil Code regulates private deeds as explained in Articles 1874, 1874a, and Article 1880. These articles require that every private deed must be accompanied by a dated statement, given by a notary or other official recognized by law. 2) Legal protection for heirs who use a private sale and purchase agreement has several forms, although in this context, legal protection may be more limited compared to the use of an authentic sale and purchase agreement made before a Notary/PPAT. However, some forms of protection that can be obtained are Written Evidence, Signature Recognition: If the signature of the seller's heir is recognized as authentic and valid, this can provide evidence that the agreement was indeed signed by the relevant party, Witness Approval, and Transaction Integrity. However, it should be noted that a private sale and purchase agreement usually does not have the same legal force as an official deed registered with an authorized government agency.*

Keywords: Agreement; Heirs; Sale and Purchase.

1. Introduction

Land and humans are inseparable, humans live and develop and carry out daily activities on land. Most of human life depends on land, because land is a source

of life and livelihood for humans.¹Land plays a central role in the life and economy of Indonesia. The rapid development in various areas of life has caused land to become a commodity that has a very high economic value and is difficult to control.²

The legal act in transferring control of land and/or building rights that is most often carried out by the community is through buying and selling. Based on Article 1457 of the Civil Code (hereinafter referred to as the Civil Code), buying and selling is defined as an agreement in which one party binds himself to hand over the object and the other party to pay the promised price. Based on this understanding, it can be seen that buying and selling creates a legal relationship between the seller and the buyer reciprocally.³Based on these provisions, the transfer of land rights through sale and purchase requires a PPAT deed for registration purposes.

PPAT Deed is a deed made by PPAT as evidence of the implementation of certain legal acts regarding land rights or ownership rights to apartment units as explained in Article 1 number 4 of Government Regulation Number 24 of 2016 concerning PPAT Position Regulations (hereinafter referred to as PPAT Position Regulations). The function of the PPAT deed is a requirement for registering the transfer of rights.⁴The legal act of buying and selling land is evidenced by the AJB registered with the local Land Office with the aim of fulfilling the principle of publicity in land registration. Recording the transfer of rights in the land books, not only the person transferring the rights and the owner of the land, but also third parties are deemed to know that the recipient of the rights is the new holder of the rights.⁵

The sale and purchase agreement contains promises that must be fulfilled first by one of the parties or parties before the main agreement is made which is the final goal of the parties. The definition of a sale and purchase agreement can be seen by separating the words of the sale and purchase agreement into an agreement and a sale and purchase agreement. According to R. Subekti, a sale and purchase agreement is "an agreement between the seller and the buyer before the sale and purchase is carried out because there are elements that must be fulfilled first in order for the sale and purchase to be carried out, including the

¹Dyara Radhite Oryza Fea. (2018). Guide to Managing Land. Houses and Permits. Yogyakarta: Legality. p.1

²Adrian Sutedi. (2018). Transfer of Land Rights and Its Registration. Jakarta: Sinar Grafika. p.22

³Nasya Agustiana. (2022). Agreement of Sale and Purchase Agreement and Power of Attorney to Sell Land as a Form of Legal Protection for Buyers. Journal of Law and Humanities. Vol. 9 No. 6 . p. 3187

⁴Boedi Harsono. (2016). Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law. Contents. and Its Implementation. Jakarta: Trisakti University. p. 515

⁵Ibid.. p.331

certificate not yet available because it is still in the process of not having paid off the price".⁶

PJB is an agreement between the seller to sell his land to the buyer made by a notarial deed. PJB can be made for certain reasons such as the unpaid payment of the sale and purchase price and the unpaid taxes arising from the sale and purchase. There are two types of PJB, namely paid PJB and unpaid PJB. A paid PJB is made if the sale and purchase price has been paid in full by the buyer to the seller but the AJB cannot be executed, because among other things the sale and purchase taxes have not been paid, the certificate is still being processed and others.⁷ So, even though the sale and purchase price has been paid in full by the buyer to the seller, the validity of land ownership may still depend on the process of making and registering the AJB, because the AJB is legal and official evidence of the transfer of land ownership from the seller to the buyer. In the process of implementing the sale and purchase, even though the prospective buyer already has a PPJB basis, problems can still occur when one of the parties is in default of the agreement or even commits an act that clearly violates the agreement, causing losses to the parties and heirs.

The recognition of legal protection for the property rights of the heirs in its development has not gone smoothly. This is because the inheritance law in force in Indonesia in its implementation has not been able to effectively provide protection for the heirs. The ineffectiveness legal protection for heirs can be seen in disputes over the sale and purchase of inherited land.⁸

2. Research Methods

This type of research is included in the scope of normative legal research. The approach method used in this study is the case study approach and the statute approach. The type of data uses secondary data obtained from literature studies. The data analysis method used in this study is prescriptive.

3. Results and Discussion

3.1. Legal Position of a Private Sale and Purchase Agreement

A private sale and purchase agreement is an interesting legal entity to analyze because it illustrates the tension between the flexibility of informal

⁶Subekti. (1998). *Contract Law*. Jakarta: Intermasa. p. 75

⁷Dewi Kurnia. Amin Purnawan. (2017). Differences between a Paid Sale and Purchase Agreement and an Unpaid Sale and Purchase Agreement. *Jurnal Akta*. Volume 4 Number 4. p. 625

⁸Syarief Husien and Akhmad Khisni. (2018). *Islamic Inheritance Law in Indonesia (Study of the Development of Inheritance Law in the Compilation of Islamic Law and Practice in Religious Courts)*. *Jurnal Akta*. Vol. 5 No. 1 March pp. 76-77

communication and the need for legal certainty in transactions. Analysis of the legal standing of this type of letter reveals a number of important and complex implications in the civil context. The main factor influencing the legal standing of a private sale and purchase agreement is the evidentiary force. The evidentiary force is the focus of attention because this letter does not involve an independent third party (Notary/PPAT) in the ratification. Therefore, as evidence in court, this letter may have lower weight and require more effort to prove its validity. The uncertainty associated with this evidentiary force can create risks. For example, in land sale and purchase transactions, because legal certainty is very important for all parties involved.

Land sale and purchase agreements require a deed, either made by a PPAT or made by each party without a PPAT intermediary or often called a private letter. As stated by Simanjutak, every letter or deed that is not made by or through the intermediary of a public official is a private letter or deed, for example, a sale and purchase or lease agreement made by both parties themselves who entered into the agreement.⁹In a civil case trial, a private letter can be a perfect evidence or have the same legal force as an authentic letter, but on the condition that the parties who signed the agreement do not deny the truth of their signature.¹⁰Because what needs to be proven by the parties to the case is not the law, but the event or legal relationship or the facts of the case.¹¹

The Civil Code regulates private deeds as explained in Articles 1874, 1874a, and 1880. These articles require that every private deed must be accompanied by a dated statement, given by a notary or other official recognized by law. Book IV of the Civil Code discusses evidence, and in Articles 1874, 1874a, and 1880, it is explained that legalization and special recording in a book maintained by a notary are required for private deeds.

The position of a private letter in order to have the power of proof in a case and its truth cannot be denied, then the private letter must be legalized. Legalization is done by reading the contents of the agreement by a notary to the parties concerned, then the parties sign the letter before the notary. So that the date of the document or letter in question is the same as the date of legalization by the notary. Thus, the notary guarantees the validity of the signatures of the parties

⁹Simanjutak. (2015). Indonesian Civil Law. Jakarta: Kencana. p. 325.

¹⁰Alvina Risma Dewi. (2015). Legal Power of a Private Deed. Journal of Law. Udayana University. Bali.. p. 1

¹¹I Made Udiana. (2015). Position and Authority of the Industrial Relations Court. Udayana University Press. p. 185

and automatically makes the private letter have almost the same legal force as an authentic letter.¹²

Article 1313 of the Civil Code states that an agreement is an act by which one or more persons bind themselves to one or more persons. In this article there is no provision that an agreement must be in the form of a written agreement or an unwritten agreement (verbally), so that it can be seen that the agreement in question is a reciprocal agreement where the parties concerned have their respective rights and obligations that must be fulfilled. This article shows that the essence of an agreement is the existence of two or more parties who bind themselves to do something or an achievement. So in this case between Mr. A and Mr. B there has been a private agreement, where one party is obliged to carry out the achievement.

Another important characteristic of a sale and purchase according to the Civil Code system is that the sale and purchase agreement is only obligatory, meaning that the sale and purchase has not transferred ownership rights, it only provides rights and obligations to both parties, namely giving the buyer the right to demand the transfer of ownership rights to the goods sold. This characteristic is clearly seen from Article 1459 of the Civil Code, which explains that ownership rights to goods sold do not transfer to the buyer as long as the transfer has not been carried out (according to the relevant provisions).¹³

Based on the explanation above, the private land sale and purchase agreement only has formal evidentiary power, namely if the signature on the deed is acknowledged (and this is actually already evidence of acknowledgement) which means that the statement contained in the deed is acknowledged and justified. Based on this, the contents of the deed that are acknowledged are truly statements of the parties concerned, what can still be denied is that the statement was given on the date written in the deed, because the date is not included in the contents of the statements of the parties concerned.

According to the theory of legal certainty, law without certainty value will lose its identity and meaning, because it can no longer be used as a guideline for everyone's behavior. Legal certainty requires efforts to regulate law in legislation made by authorized and authoritative parties, so that these rules have a legal aspect that can guarantee the certainty that the law functions as a regulation that must be obeyed. To ensure legal certainty regarding the sale and purchase of land, which still requires action other laws, then generally the sale and purchase

¹²Sabrina.(2022). Validity of Land Rights Sale and Purchase Agreements Conducted Underhand. Legal Memorandum. Faculty of Law, Islamic University of Indonesia. Yogyakarta. p.68

¹³R. Subekti. (1998). Contract Law. Jakarta: PT. Intermas. p.1

is carried out in a deed. This is so that each party gets legal protection for buying and selling land done.¹⁴

3.2. Legal Protection for Heirs Who Use a Sale and Purchase Agreement in Full Under Hand

The sale and purchase of land rights must be carried out before the Land Deed Making Officer (PPAT), this is done as evidence that a land rights sale and purchase transaction has occurred. The deed that has been made by the PPAT can be used as evidence that a legal event has occurred, especially the sale and purchase of land rights and to avoid disputes in the future. So the current practice of buying and selling land rights is expected to have legal certainty to guarantee the activity by registering the land before the implementation of the land sale and purchase. With the land registration, the land owned will later have strong evidence in the form of a land certificate.

In making a sale and purchase agreement, there are 2 things, namely an agreement and underhand. Land whose sale and purchase is carried out before a PPAT is called an agreement, while the transfer of rights which is usually with a receipt is called underhand. The transfer of rights to the land cannot be registered, as stated in Article 19 and Article 23 of Law Number 5 of 1960 concerning the Principles of Agrarian Principles explains Article 19 (1) by guaranteeing legal certainty regulated by government regulations. Article 23 states that the transfer of land that will be terminated and its provisions by guaranteeing legal certainty for the legitimate rights to the burden of the rights. In order to obtain legal certainty for the sale and purchase of land, the community in carrying out acts of land rights violations must register the transfer of said rights. Land registration is the most important thing as strong evidence of rights to prove the legal owner of land rights. Land registration has the purpose of providing legal certainty for the land rights of all Indonesian people to provide legal certainty and provide a guarantee of legal certainty for land registration which is Rechtskadaster or Legalcadaster. Rechtskadaster or Legalcadaster is a land registration that aims to provide a guarantee of legal certainty that produces a letter or proof of rights in the form of a certificate. Article 19 paragraph (1) letter c. Article 23 paragraph (2), Article 32 paragraph (2) and Article 38 paragraph (2) of the Basic Agrarian Law (UUPA), explains that a certificate is a strong proof, not even absolute proof.¹⁵

Legal protection for heirs who use a private sale and purchase agreement has several forms, although in this context, legal protection may be more limited

¹⁴Rifki Anggatiartara. Deed of Land Sale and Purchase Agreement Before the Deed of Land Deed Making Official. Notary Journal. Volume 13 Number 2. p.892

¹⁵Ibid.. p.6

compared to the use of an official and registered sale and purchase agreement. However, some forms of protection that can be obtained are as follows:

1. **Written Evidence:** Although a private sale and purchase agreement does not have the same legality as an official deed, it remains written evidence of the agreement reached between the heirs of the seller and the buyer. If a dispute arises later, the agreement can be used as evidence of the transaction.
2. **Signature Acknowledgement:** If the signature of the seller's heir is recognized as authentic and valid, this can provide evidence that the agreement was indeed signed by the relevant party.
3. **Witness Attestation:** Having witnesses present at the signing of the agreement can provide attestation that the agreement was made and signed by the parties concerned. However, the evidentiary value of these witnesses can vary across jurisdictions.
4. **Transaction Integrity:** A private sale and purchase agreement may have legal protection in terms of ensuring the integrity of the transaction and the commitment of the parties to fulfill the agreed obligations.

However, it should be noted that a private sale and purchase agreement usually does not have the same legal force as an official deed registered with an authorized government agency. In this situation, the possibility of legal protection may be more limited, and if there is a dispute or other problem, proving the validity and contents of the agreement may be more complicated.

Legal protection is an action or effort to protect society from arbitrary actions by the authorities that are not in accordance with the rule of law, to realize order and peace so that humans can enjoy their dignity as human beings. The importance of the role of Notaries in helping to create legal certainty and protection for the community, is more preventive, or in the nature of preventing legal problems from occurring, by issuing authentic deeds made before them related to the legal status, rights and obligations of a person in law, and so on, which function as the most perfect evidence in Court, in the event of a dispute over related rights and obligations.¹⁶

Legal protection in Indonesia is still weak, such as in the case of inheritance, because there are still sales and purchases of inherited land that do not involve

¹⁶Aulia Gumilang. (2020). Notary's Responsibility in Disputes Between Parties Regarding the Deed of Sale and Purchase Agreement (PPJB) He Made. *Cendekia Hukum Journal*. Volume 5 Number 2. p. 246

all heirs. According to Article 1 Paragraph (1) of the Republic of Indonesia Government Regulation Number 111 of 2000 concerning the Imposition of Land and Building Acquisition Taxes Due to Inheritance and Testamentary Grants, it explains that the Acquisition of rights due to inheritance is the acquisition of rights to land and/or buildings for heirs from the testator, valid after the testator dies. When the testator has died, it means that the land rights have been transferred to his heirs.¹⁷Heirs who have several plots of land (immovable property) as inheritance from the testator, in settling the division of their inheritance often experience obstacles/problems, especially in the process of changing the name to the heirs, before finally being divided evenly into the name of each heir.¹⁸To sell land from inheritance, all heirs are required to agree to sell the land. If one of the heirs does not agree with the plan to sell the land, then the legal act of sale and purchase cannot be carried out, because the certificate contains all the names of the heirs who hold the legal rights to the land, and the PPAT/Notary is also required to refuse to make the deed of sale and purchase.¹⁹

The act of breach of promise (default) in a sale and purchase agreement which of course brings losses to the parties themselves. Therefore, there needs to be legal protection for the parties to be able to provide legal certainty and maintain the fulfillment of the interests and rights of each party. Legal protection for the fulfillment of the rights of the parties if one party commits a breach of promise or defaults in a sale and purchase agreement is very dependent on the strength of the sale and purchase agreement made, namely if it is made with a private deed, the protection is in accordance with the protection of a private deed. Whereas if it is made by or before a Notary, the deed automatically becomes a Notarial deed so that the strength of its protection is in accordance with the protection of an Authentic Deed..

4. Conclusion

The legal position of a private sale and purchase agreement is that it has the power of proof in a case and its truth cannot be denied, so that the private letter must be legalized. The Civil Code regulates private deeds as explained in Articles 1874, 1874a, and 1880. These articles require that every private deed must be accompanied by a dated statement letter, given by a notary or other official

¹⁷Puspita Farahdillah. (2022). Devi Siti Hamzah Marpaung. Efforts to Resolve Disputes over the Sale and Purchase of Inherited Land Without the Consent of All Heirs Through Mediation. *JUSTITIA: Journal of Law and Humanities*. Vol. 9 No. 1. p. 382

¹⁸Umi Setywati. (2018). Deed of Confirmation of Inheritance Information as a Substitute for Inheritance Certificate in the Process of Transferring the Name of the Inheritance at the Semarang City Land Office. *Jurnal Akta*. Volume 5 Number 1. p. 3

¹⁹Musta'in. Sukarmi. (2017). Implementation of Land Ownership Certificate Registration in Inheritance Distribution and Its Problems at the Semarang City Land Office. *Jurnal Akta*. Vol. 4 No. 2 June p. 138

recognized by law. In a civil case trial, a private letter can be perfect evidence or have legal force that is in line with an authentic letter, but on condition that the parties who signed the agreement do not deny the truth of their signatures. Legal protection for heirs who use a private sale and purchase agreement includes a number of aspects that aim to ensure the validity, justice, and legal certainty in the transaction. The protection that can be done to the seller is to ask the buyer to make payment for the price of the object of the agreement within a certain period of time accompanied by a cancellation condition, if the buyer does not fulfill the payment as requested and agreed, then the agreement for the sale and purchase of land rights that has been made and agreed upon becomes void and the seller is not obliged to return the payment that has been paid unless the buyer requests an exception, while the protection that can be done by the buyer in implementing the sale and purchase agreement is to first check the existence of proof of ownership of land/building rights that are the object of the agreement, and the sale and purchase must be carried out transparently.

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