

Settlement of Sale and Purchase Underhand Where the Seller's Whereabouts Are Unknown

Andy Rahmayanti¹⁾ & Nanang Sri Darmadi²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail: landyrahmayanti25@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia

Abstract. *The purpose of this study is to find out and analyze the anticipation of underhand buying and selling problems where the seller's whereabouts are unknown. To find out and analyze the resolution of underhand buying and selling where the seller's whereabouts are unknown. The approach method used by researchers is case approach and statutory approach. This type of research is normative law. The sources and types of data in this study are secondary data obtained from literature studies. Based on the results of the study, anticipating the problem of underhand buying and selling where the seller's whereabouts are unknown is deep in making a sale and purchase agreement must adhere to the principle of good faith. The buyer must also meet the requirements needed in making a land sale and purchase up to the name change process. Thus, if all these requirements are met, the land sale and purchase process up to the certificate name change process can run smoothly without any obstacles. Settlement of Underhand Sale and Purchase of Unknown Whereabouts The seller is to initiate and resolve a civil dispute that occurs between the Plaintiff and the Defendant, one of the disputing parties must submit a request for examination (file a lawsuit) to the court. The parties whose rights are violated in a civil case are called plaintiffs who file a lawsuit with the court and are addressed to the violating party (Defendant) by stating the facts of the case (posita) and accompanied by what is the plaintiff's claim (petitum).*

Keywords: *Buying; Selling; Settlement; Underhand.*

1. Introduction

Indonesia is a unitary state based on law, Article 1 paragraph (3) of the 1945 Constitution, Amendment IV, Indonesia is a state of law, this means that the Republic of Indonesia upholds legal certainty. This is further strengthened by the existence of norms that live and grow in society.

In essence, one of the important things in land regulation by the state is the existence of a Guarantee of Legal Certainty for land rights owners. To guarantee legal certainty of land rights, Basic Agrarian Principles Regulations (UUPA) as a legal basis for land regulations in Indonesia, ordering the Government to carry out land registration.¹

Yes Well, it is an object that is traded, a certain object or can be determined, either in form (shape), type, quantity, or price and the object is indeed an object that may be traded. Thus, the object that is traded has a clear and legal status according to law, is clearly known by prospective buyers, is sold in an open place (public), and does not raise suspicions for honest prospective buyers.

Land registration is a series of activities carried out by the government continuously, sustainably and regularly, including the collection, processing, bookkeeping, and presentation as well as maintenance of physical data and legal data, in the form of maps and lists regarding land plots and apartment units, including the issuance of certificates as proof of rights for land plots for which rights already exist and Ownership Rights for Apartment Units and certain rights that burden them.²

Acquisition of land rights in society can be through legal events and legal acts. Legal events for acquiring land rights through inheritance. While legal acts are more often carried out by transferring rights, namely through buying and selling, exchanging, granting, giving according to customary law, income in a company or inbreng, will grants or legaat.

Buying and selling is an agreement that binds the seller by promising to deliver an item/object, and another party acting as a buyer binds himself by promising to pay the price. According to the provisions of Article 1457 of the Civil Code, buying and selling is defined as an agreement in which one party binds himself to hand over an object, and the other party to pay the price that has been promised. If an agreement has been reached, then the sale and purchase agreement is valid or the sale and purchase agreement is binding.

The sale and purchase of land rights should have been made before the Land Deed Making Officer (PPAT). The PPAT then makes the deed of sale and purchase, then carries out the registration process at the local Land Office according to the location of the land. At present, there are still many land rights sales and purchases carried out between sellers and buyers not before the Land Deed Making Officer. They carry out the sale and purchase underhand which is only

¹Muhammad Muthohar, Amin Purnawan, 2017, Duties and Authorities of Sub-district Heads as Temporary PPATs in Making Deeds Concerning Land (Study in Boyolali Regency) in *Jurnal Akta* Volume 4 (4), Published Master of Notarial Law, Faculty of Law Unissula

²Ratih Mega Puspa Sari, Gunarto, 2018, The Role of PPAT in Land Certification Due to Sale and Purchase, in the *Deed Journal* Volume 5 (1), Published Master of Notarial Law, Faculty of Law Unissula

proven by a receipt as proof that the sale and purchase has taken place by relying on the element of trust.

There are still many people who only have proof of ownership of land that is still in the name of the previous owner (seller) because they have the understanding that making a deed of sale and purchase of land before a PPAT and registering the land at the Land Office is considered to be very costly and does not take into account the legal consequences that will occur if the land is not registered in the name of the new owner.

The deed in question regarding the sale and purchase of land is a sale and purchase deed made by the Land Deed Official. According to Richard Eddy, the Deed of Sale and Purchase is an authentic deed made by a Notary and/or Land Deed Official and is a condition for buying and selling land. By making a Deed of Sale and Purchase by a Notary and/or Land Deed Official, the land as the object of sale and purchase can be transferred or change the name from the seller to the buyer.³

Dadan Darmawan, explained that the function of the Deed of Sale and Purchase is authentic legal evidence that someone has purchased land or buildings from the seller in full. But not only that, the Deed of Sale and Purchase functions to take care of transfer documents from the old owner to the new owner. Because in issuing a certificate for a new owner, the Deed of Sale and Purchase must also be included. The Land Office as the party issuing the certificate will ask for the Deed of Sale and Purchase required for registration.⁴

The purpose of this study is as follows: To find out and analyze the anticipation of underhand buying and selling problems where the seller's whereabouts are unknown. To find out and analyze the resolution of underhand buying and selling where the seller's whereabouts are unknown.

2. Research methods

The approach method used by researchers is case approach and legal approach. This type of research is normative law. The sources and types of data in this study are secondary data obtained from literature studies.

3. Results and Discussion

3.1. Anticipating the Problem of Underhand Buying and Selling Where the Seller's Whereabouts Are Unknown

Jual private purchase or transfer of ownership rights to land not through PPAT is a legal act of transferring rights through buying and selling which is only carried out based on the agreement of each seller and buyer and is only attended by the Village Head/customary Head and without being based on an authentic deed made in before the Land Deed Drafting Officer (PPAT).

³ Richard Eddy, 2017, *Legal Aspects of Property*, Andi Offset, Yogyakarta, p. 63

⁴ Dadan Darmawan, 2016, *Questions and Answers on Buying and Selling Property*, Visimedia, Jakarta, pp. 18-19

For the occurrence of a land sale and purchase agreement, in its implementation where both parties, namely the seller and the buyer, have made an agreement and agreed on the object and price. The Seller guarantees to the Buyer that the land to be sold will not experience a dispute with the Buyer, while the Buyer agrees to pay an amount of the agreed price.

According to the provisions of Article 1457 of the Civil Code, a sale and purchase is an agreement by which one party binds himself to hand over the rights to an item and the other party to pay the promised price, while according to Article 1320 of the Civil Code, the validity of an agreement must meet four conditions, namely: 1) The existence of those who bind themselves; 2) The capacity to make a contract; 3) A certain thing; 4) A lawful cause.

From what is described in Article 1457, a conclusion can be drawn, namely that a sale and purchase is a consensual agreement, meaning that it has been born as a valid agreement (binding or has legal force) at the moment when an agreement is reached between the seller and the buyer regarding the main elements, namely goods and price, even though the sale and purchase concerns immovable goods.⁵ Different from buying and selling according to national land law which is based on customary law, where what is meant by buying and selling is not a legal act which is an obligatory agreement. Buying and selling (land) in customary law is a legal act of transferring rights which must fulfill three characteristics, namely:⁶

1. Must be in cash, that is, the mutually agreed price is paid in full at the time the sale and purchase in question is made;
2. It must be transparent, meaning that the transfer of rights is carried out before the Land Deed Making Officer who has authority over the object of the legal act;
3. It is real or tangible, meaning that by signing the deed of transfer of rights, the deed shows real and tangible evidence that the legal act has been carried out.

The deed of sale and purchase is made before the PPAT which means that there has been a transfer of land rights from the rights holder as the seller to another party as the buyer. Furthermore, it is registered with the local Regency/City Land Office to make changes to the data on the certificate and land book.⁷ The procedure for buying and selling land that has been registered (certified) begins with the parties, both seller and buyer, coming before the Land Deed Official and stating their intention to hold a land sale and purchase. A person who owns land, because of certain needs, sometimes the land in question is transferred to

⁵Effendi Perangin, 1987, *Land Buying and Selling Practices*, Rajawali Press, Jakarta, p.10

⁶Boedi Harsono, 2008, *Indonesian Agrarian Law: History of the Formation of the Basic Agrarian Law, Contents and Implementation*, Rev. ed., 12th printing, Djambatan, Jakarta, p. 317

⁷Urip Santoso, 2015, *Registration and Transfer of Land Rights*, Prenadamedia Group, Jakarta, pp. 367-370

another person. The transfer of land rights can take the form of sale and purchase, grant, exchange and auction.

The legal basis for implementing the registration of transfer of land ownership rights by means of sale and purchase is regulated in the Basic Agrarian Law Number 5 of 1960, namely "every transfer of land ownership rights must be registered at the local Land Office."

Basically, the implementation of the name change process is carried out at the local Land Office where the land is located. If the process is complete, the land certificate in question will contain the name of the new owner of the land, namely the name of the buyer, while the name of the old owner is crossed out.

However, if the whereabouts of the land seller are no longer known or have disappeared, legal action can be taken by filing a lawsuit to validate the sale and purchase with the District Court where the land is located.

By making the land seller a defendant and requesting the court to validate the sale and purchase of land with the receipt as legally valid, and usually the court will decide the lawsuit with a *Verstek* decision (Without the Defendant's Presence).

The acquisition of rights to land and/or buildings is through the process of transferring rights to land and/or buildings by carrying out legal acts, namely by making a Deed of transfer of rights to land and/or buildings before a PPAT, as a Public Official.⁸ So that the role of the Land Deed Making Officer (PPAT) in addition to making deeds also validates the making of certain laws, however, PPAT is also not free from obstacles in carrying out its role in the implementation of land registration related to the making of deeds.

Legal certainty of land ownership is proven by a certificate. Where the land certificate becomes a valid proof of rights as a strong evidence of 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 measurement letter and the land book concerned. This can be interpreted that as long as it cannot be proven otherwise, the physical data and legal data listed therein must be accepted as correct data, both in carrying out daily legal acts and in litigation in court. The data contained in the certificate is a copy of the data contained in the measurement letter and land book which are open to the public (*openbaarheid*), so that interested parties can match the data in the certificate with that in the measurement letter and land book presented at the Land Office.⁹ The existence

⁸ Eko Puji Hartono and Akhmad Khisni, 2018, *The Role of PPAT in Making Deeds of Transfer of Rights to Land and/or Buildings Formerly Customary Ownership Rights Related to Payment of Land and/or Building Acquisition Fees*, in the *Journal of Notarial Law* Volume 5 (1), Published Master of Notarial Law, Faculty of Law Unissula

⁹ Irawan Soerodjo, 2003, *Legal Certainty of Land Rights in Indonesia*, 1st ed., Arkola, Surabaya, pp. 110-111

of this certificate will provide evidentiary power for the person whose name is listed on the certificate if a civil dispute occurs in court at the District Court.

Anticipating the Problem of Underhand Buying and Selling Where the Seller's Whereabouts Are Unknown in making a sale and purchase agreement must adhere to the principle of good faith. The buyer must also meet the requirements needed in making a land sale and purchase up to the name change process. Thus, if all these requirements are met, the land sale and purchase process up to the certificate name change process can run smoothly without any obstacles.

3.2. Settlement of Underhand Sale and Purchase Where the Seller's Whereabouts Are Unknown

Land sale and purchase has special characteristics and patterns that are different from the sale and purchase regulated in the Civil Code. Before the enactment of the Agrarian Regulation Law (UUPA), there was a dualism of agrarian law so that there were two regulations regarding land sale and purchase, namely western law land sale and customary law land sale and purchase.¹⁰ However, since September 24, 1960, the government issued a new legal product, namely Law Number 5 of 1960 concerning Basic Agrarian Principles which was later known as the Agrarian Regulation Law (UUPA). After the enactment of the Agrarian Regulation Law (UUPA), there was a unification of agrarian law which also means land law, so that land sale and purchase regulations also use the Agrarian Regulation Law (UUPA).

In the Agrarian Regulation Law (UUPA), the term sale and purchase is only mentioned in Article 26, namely concerning the sale and purchase of land ownership rights, there is no other article that mentions sale and purchase, but it is mentioned as transferred. The definition of transferred indicates a legal act that is intended to transfer land rights to another party through sale and purchase, grant, exchange, and testamentary grant.¹¹ However, because Article 5 of the Agrarian Regulation Law (UUPA) states that our national land law is customary law, the sale and purchase of land under the Agrarian Regulation Law (UUPA) is in accordance with customary law.

The transfer of a plot of land can occur in various ways, one of which is through the process of buying and selling. Hayati states that buying and selling is the act of transferring goods sold into the power and ownership of the buyer. For example, the sale of a house or land, the seller hands over to the buyer either in real terms or legally by making a deed of sale and purchase for the process of changing the name (*overschrijving*) from the seller's name to the buyer's name is

¹⁰Sulisrudatin, N, 2014, "The Existence of Customary Land Law in the Implementation of Agrarian Law", Scientific Journal of Law, Dirgantara, Volume 4, No. 2,

¹¹Zulhadji, A, 2016, "Transfer of Land Rights Through Land Sale and Purchase According to Law Number 5 of 1960", Lex Crimen, Volume 5, No. 4,

generally found in the transfer of immovable objects.¹² The transfer can be intentional due to legal acts such as buying and selling, either according to custom or based on applicable laws and regulations.

The meaning of underhand is a land sale and purchase agreement in customary law where the legal act carried out is in the form of a transfer of rights with cash or partial payment made by agreement of each party (seller and buyer) attended by the Customary Head/Village Head. The tendency to carry out land sales and purchases underhand is because the costs are not too much and the process is very easy, namely it is sufficient to be attended by the Customary Head/Village Head and witnesses, then the land sale and purchase process that occurs is valid.

Beras literature shows that for indigenous peoples if they have to go to the National Land Agency (BPN) in terms of costs that are said to be uncertain. Because in practice, the price listed at the National Land Agency (BPN) turns out not to be in accordance with the amount that must be paid. That is, there are unexpected costs that exceed the amount of costs listed. This is what causes people to be less interested in buying and selling land in accordance with applicable regulations, namely Government Regulation Number: 24 of 1997 concerning Land Registration.

The factor that causes people to still carry out land sales and purchases with private deeds is because it does not require a lot of costs or is cheaper compared to sales and purchases carried out in front of a PPAT, the process is relatively easy, quickly completed and practical, namely it is sufficient to be carried out in front of the Village Head and witnesses, then the land sale and purchase process that occurs is valid.

In the view of customary law and the Civil Code, the elements of a valid sale and purchase act have been fulfilled, however, the status of the validity of the sale and purchase of transmigration land without an authentic deed made by a PPAT results in the process of transferring the land being unable to be carried out.

Settlement of Underhand Sale and Purchase of Unknown Whereabouts The seller is to initiate and resolve a civil dispute that occurs between the Plaintiff and the Defendant, one of the disputing parties must submit a request for examination (file a lawsuit) to the court. The parties whose rights are violated in a civil case are called plaintiffs who file a lawsuit with the court and are addressed to the violating party (Defendant) by stating the facts of the case (*posita*) and accompanied by what is the plaintiff's claim (*petitum*).

4. Conclusion

Based on the description in the previous chapter, the author concludes that: anticipating the problem of underhand buying and selling where the seller's

¹²Nur Hayati, 2016, Transfer of Rights in the Sale and Purchase of Land Rights: A Review of the Sale and Purchase Agreement in the Concept of Western Law and Customary Law in the Framework of National Land Law, *Lex Jurnalica*, Volume 13, Number 3. Pp. 283-287.

whereabouts are unknown in making a sale and purchase agreement must adhere to the principle of good faith. The buyer must also meet the requirements needed in making a land sale and purchase up to the name change process. Thus, if all these requirements are met, the land sale and purchase process up to the certificate name change process can run smoothly without any obstacles.

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The seller is to initiate and resolve a civil dispute that occurs between the Plaintiff and the Defendant, one of the disputing parties must submit a request for examination (file a lawsuit) to the court. The parties whose rights are violated in a civil case are called plaintiffs who file a lawsuit with the court and are addressed to the violating party (Defendant) by stating the facts of the case (*posita*) and accompanied by what is the plaintiff's claim (*petitum*). It is expected that the Government should provide information to the public regarding the sale and purchase of land as required by law, namely before the PPAT as an official who is authorized to make a deed of sale and purchase and notify the public to carry out the process of changing the name on the certificate so that they get legal certainty regarding the rights to the land they own, because there are still many people who do not know and also prefer to do it underhand because it is considered easier.

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