

## The Juridical Implications of Buying and Selling Land That Is Not In Accordance with the Procedure for Making Deeds by PPAT

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**Abstract.** *This study aims to find out about the procedure for making a land sale and purchase deed by PPAT, to find out what are the forms of making a land sale and purchase deed that are not in accordance with the procedure for making a deed by PPAT, to find out what factors cause the making of a deed Buying and selling land that is not in accordance with the procedure for making a deed by PPAT, to find out the legal consequences of buying and selling land that is not in accordance with the procedure for making a deed by PPAT. The normative juridical approach method is used and the data sources used are primary data and secondary data. The data collection was carried out by conducting library research and field research, then after the data was analyzed, conclusions were drawn using inductive thinking methods.*

*Keywords: Consequences; Procedures; Selling.*

### 1. Introduction

Land is an essential thing in human life, because it concerns human life and livelihood itself. Issues related to land from day to day show a trend of increasingly complex conflicts. This can be understood as a logical consequence of the ever-increasing number of population growth, in addition to the increasing diversity of various community interests and various sectors that require the availability of land. These conflicts of interest lead to conflicts in society, both between individuals, individuals with the government and between cross-sectoral sectors. Land conflicts that often occur today are usually related to legal certainty of land rights. Land rights have an important role in human life, the more developed society and the more densely populated,

Whereas in the case study of DECISION NUMBER 28/PDT/2019/PTMND between buyers and sellers in the process of buying and selling land agreed at a price of IDR (at the ice teller's place), the remaining selling price is IDR 60,000,000.- (sixty million Rupiah) will be paid in 3 (three) payment terms, and not made before the Land Deed Making Officer, the Buyer together with the Seller then sign the blank

form of Sale and Purchase Deed in Manado, namely at the residence Lurah (Mrs. Nontie Moninakeyl in the afternoon of July 2012. The said signing WAS NOT DONE BY AND IN THE FACE OF MAYA MARINDA MAINDE, SH as the Land Deed Making Officer (PPAT) as stated in the aquo Sale and Purchase Deed, there are deviations from the formal requirements in making the aquo Sale and Purchase Deed as described above, among others, the signing of the Sale and Purchase Deed was not carried out before the PPAT by the Seller and the buyer, moreover what was signed was a blank Sale and Purchase Deed form. Whereas the land sale and purchase agreement must fulfill 4 (four) conditions for the validity of the agreement which has been regulated in Article 1320 of the Civil Code must also meet the elements of material requirements and formal requirements. The material requirements in buying and selling land are closely related to the formal requirements. Material requirements determine the fulfillment of formal requirements. Whereas the material conditions in the sale and purchase of land relate, among other things, to the Subject having the right to make the sale and purchase (Buyer and Seller), and the Object being traded is not in dispute.

Land has an important meaning in human life because land has a dual function, namely as a social asset and as a capital asset. As a social asset, land is a means of binding social unity among Indonesian people. As a capital asset, land has grown as a very important economic object, not only as a trading material but also as an object of speculation. On the one hand, land must be used and used as much as possible for the welfare and prosperity of the people and on the other hand, its sustainability must be maintained.<sup>1</sup>

1. Due to the increasingly limited supply of land and the increasing need for land, in accordance with the law of supply and demand, this has a major impact on increasing the value or price of land. This will increase the potential for land disputes or conflicts related to or caused by land. Therefore, a legal instrument and a land administration system are needed that are orderly and well-organized to eliminate or at least reduce the possibility of land-related conflicts or disputes, so that they can provide guarantees and are able to provide protection to landowners and can regulate ownership, transfer and allotment of land in a fair and comprehensive manner. Land as a part of the elements of the State, become a very important part for the welfare of the nation. In this regard, the State has the duty and authority to outline values in an effort to organize a just and welfare-minded land structure, as follows:<sup>2</sup>all land rights have a social function;
2. ownership and control of land that exceeds the limit is not permitted;
3. the land must be worked actively by the owner and prevent extortion;
4. business in the agrarian sector may not be monopoly;

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<sup>1</sup>Achmad Rubaie, 2007, "Land Acquisition Law for Public Interest", Bayumedia, Malang, p. 1.

<sup>2</sup>JW. Muliawan, 2009, "Granting Property Rights for Residential Houses", Smart Pustaka Publisher, Jakarta, p. 84.

5. guarantee the interests of economically weak groups, and
6. for the common good.

To be able to provide protection to landowners and to be able to regulate ownership, transfer and allotment of land in a fair and comprehensive manner and to be able to realize the noble ideals of the Indonesian nation, as stated in the preamble of the 1945 Constitution and to be able to carry out the mandate of Article 33 paragraph (3) ) The 1945 Constitution which reads: "Earth, water and the natural resources contained therein are controlled by the state and used as much as possible for the prosperity of the people", it is necessary to create a National Agrarian Law or Basic Agrarian Law (UUPA).

On September 24, 1960 it was ratified by the President of the Republic of Indonesia Soekarno and promulgated in the State Gazette of the Republic of Indonesia number 104 of 1960 Act No. 5 of 1960 concerning Basic Agrarian Regulations which is better known by its official name as the Basic Agrarian Law, abbreviated UUPA . With the promulgation of the UUPA on that date, since then September 24, 1960 has been recorded as one of the dates and is a very important milestone in the history of agrarian/land law development in Indonesia in general and the renewal of Indonesian Agrarian Law/Land Law in particular.<sup>3</sup>

With the promulgation of Act No. 5 of 1960 or UUPA, in essence this law has ended the enactment of Colonial Land Law regulations and also ended the existence of dualism and pluralism of Land Law in Indonesia. The UUPA created a single structured National Agrarian Law which, as stated in the "opinion" section as well as the general explanation of the UUPA, that the UUPA is based on customary law regarding land, as the original law of the majority of the Indonesian people.<sup>4</sup>

UUPA as a basic regulation that regulates agrarian principles and is the basis of national land law, does not provide a clear understanding of both the term "land" and the term "agrarian". From the provisions of Article 1 paragraph (4), (5), and (6) in conjunction with Article 2 paragraph (1) of the UUPA it can be concluded that the notion of agrarian has a broad meaning, which includes earth, water, outer space and natural resources that contained therein.<sup>5</sup>

A PPAT deed is an authentic deed and as an authentic deed there are strict requirements in terms of the procedures for making, forms and formalities that

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<sup>3</sup>?Boedi Harsono, 2007, "Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Content and Implementation, Djbatan", Jakarta, p. 3

<sup>4</sup>?Ibid., p. 1.

<sup>5</sup>?Ida Nurlinda, 2009, "Principles of Agrarian Reform from a Legal Perspective", Rajawali Press, Jakarta, p. 37.

must be carried out so that the deed has the right to be called an authentic deed. This is confirmed by Article 1868 of the Civil Code "An authentic deed is a deed made in the form determined by law by or before a public official who is authorized to do so at the place where the deed was made". So the terms of the authenticity of a deed are:

1. In the form determined by law;
2. By or before a Public Official;
3. The official must be authorized in the place where the deed was made.

Regarding the type and form of deed, the implementation and procedure for making them, are regulated by the Regulation of the Minister of Agrarian Affairs of the Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, in Articles 95 through Article 102.

The PPAT Deed is one of the data sources for the maintenance of land registration data, so it must be made in such a way that it can be used as a strong basis for the registration of the transfer and encumbrance of the rights concerned. Therefore the PPAT is responsible for examining the requirements for the validity of the legal action in question. Among other things, matching the data contained in the certificate with the lists in the Land Office.<sup>6</sup>

The procedures and formalities for making an authentic deed are compelling legal provisions, meaning that the procedures and procedures for making an authentic deed must be followed precisely without being allowed to deviate in the slightest.

Although the procedure for carrying out the transfer (Transition of land rights can occur due to inheritance without a will and legal action of transferring rights),<sup>7</sup> or transfer of land rights (the land rights in question are deliberately transferred to another party),<sup>8</sup> For example, when buying and selling land, it is very strict, but in every transfer or transfer of land rights, there is always the possibility of claims from third parties that the land belongs to them. So even though the transfer of land rights has been carried out through a PPAT deed, it is still open to the possibility of causing land disputes. This is either caused by a third party who feels he has the right or caused by an error in the PPAT who made the deed or by a legal defect in the deed either due to irregularities or

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<sup>6</sup>?Boedi Harsono, 2007, "Indonesian Agrarian Law, History of the Formation of the Basic Agrarian Law, Content and Implementation, Djbatan", Jakarta, p. 507.

<sup>7</sup>?Ibid., p. 329

<sup>8</sup>?Ibid., p. 330

errors in the making of the deed or due to an error in the procedure for signing the deed .

From the description above, the author is interested and intends to study and understand more deeply in this matter and the author to compile this thesis will conduct research on Decision Number 28/PDT/2019/PTMND, The author gives the title of this thesis: Juridical Implications for Buying and Selling Land That Is Not In accordance with the Deed Making Procedure by PPAT.

## **2. Research Methods**

Research is a principal tool in the development of science and technology. This is because research aims to reveal the truth systematically, methodologically and consistently. Through the research process analysis and construction of the data collected and processed were carried out.<sup>9</sup> In writing this thesis, the approach method that will be used is a normative juridical approach. The normative juridical approach is an approach that is carried out based on the main legal material by examining theories, concepts, legal principles and statutory regulations related to this research, where law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as a rule or norm which is a standard of human behavior that is considered appropriate.<sup>10</sup> This normative legal research is based on primary and secondary legal materials, namely research that refers to the norms contained in laws and regulations.<sup>11</sup>

## **3. Results and Discussion**

### **3.1. The procedures and forms of making a deed that are not in accordance with the procedure for making a PPAT deed are as follows:**

a) The deed of sale and purchase has been signed but the purchase price has not been paid in full by the buyer as well as Income Tax on Income from the Transfer of Land and/or Building Rights (Government Regulation Number 71 of 2008 concerning the Third Amendment to Government Regulation Number 48 of 1994 concerning Payment of Income Tax on Income From the Transfer of Land and/or Building Rights) and taxes or Fees for Acquisition of Land and Building Rights (BPHTB) based on Act No. 20 of 2000 concerning BPHTB have also not

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<sup>9</sup>?Soerjono Soekanto and Sri Mamudji, 2007, "Normative Legal Research", Jakarta, RadjaGrafindo Persada, p.1.

<sup>10</sup> ?Amiruddin & Zainal Asikin, 2012, "Introduction to Legal Research Methods", Raja Grafindo Persada Jakarta. page 118.

<sup>11</sup>?Soeryono Soekarto, 1984, "Introduction to legal research", jakarta: UI Press, page 20.

been paid. This situation occurs in the process of buying and selling land with the construction of the buying and selling process as follows: The parties,

Payment for the price of the land will be made at the time the sale and purchase deed is executed. To carry out the deed of sale and purchase, the PPAT has requested the necessary documents to be submitted to the PPAT. All documents requested by the PPAT are submitted but payment of the sale and purchase price of the land has not been paid and Income Tax on Income from the Transfer of Land and/or Building Rights for the seller and payment of tax or Land and Building Rights Acquisition Fees (BPHTB) have not been paid by the parties. The reason for the parties not paying Income Tax on Income from the Transfer of Land and/or Building Rights and Fees for Acquisition of Land and Building Rights (BPHTB) is because the parties cannot fill out the SSP form (SSP according to KEP-169/PJ/2001 jo KEP -194/PJ/2003 jo KEP- 384/PJ/2003: Tax Payment Letter (SSP) is a letter used by taxpayers to make payments or deposit taxes owed to the state treasury through the Payee Office) for sellers and SSB (Article 1 paragraph 9 of Act No. 21 of 1997 concerning Fees for Acquisition of Land Rights and Building, Letter of Payment for Land and Building Rights Acquisition Fee, which can be abbreviated as SSB, is a letter used by a Taxpayer to make payment or deposit of tax payable to the State Treasury or other place determined by the Minister and at the same time to report data on the acquisition of rights to land and or buildings) for buyers, and do not have enough time to ask for approval, research or validation of the taxes they pay. Another reason is, Even though the time and date have been agreed for the implementation of the sale and purchase deed before the PPAT, there is still a possibility that the sale and purchase will not be carried out. Either because the buyer suddenly cancels the transaction (perhaps due to financial difficulties) or because the seller does not sell the land (perhaps because someone wants to buy it at a much higher price). If the sale and purchase is canceled while the tax has already been paid, then asking for a refund of the tax that has been paid will be difficult and take quite a long time. Regarding the settlement of the sale and purchase price, the buyer is not willing to pay in advance to the seller because the buyer is unsure or not sure that if the buyer pays the seller in advance, the seller will come to sign the deed of sale and purchase. The seller also feels doubtful, what if the seller has signed but the buyer does not make a payment or pay off the sale and purchase price. The solution to this problem is done by paying taxes by the PPAT. When the parties come to carry out the signing of the deed of sale and purchase before the PPAT, a recapitulation is first made regarding how much net revenue will be received by the buyer after deducting its obligations such as payment of income tax on income from the transfer of land and/or building rights, costs deed of sale and purchase and other costs. Then the buyer is also recapitulated against the buyer's expenses, such as the transaction price, the cost of the deed of sale and purchase, payment of land and building rights acquisition fees (BPHTB), transfer

fees and other costs. Then the obligations of the buyer and the seller's expenses are paid by the buyer first.

b. The signing of the deed of sale and purchase by the parties was carried out not in the presence of the PPAT who signed the deed of sale and purchase (entrusted deed). This occurs because the object of land rights is located outside the working area of the PPAT in question (the working area of the PPAT is one working area of the Regency/Municipal Land Office, Article 12 of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds). The PPAT is not authorized to make a deed if the object of land rights is located outside its working area. This situation occurs in the process of buying and selling land with the construction of buying and selling as follows: The parties, the seller and the buyer have agreed to buy and sell a plot of land located in an area. To continue the process of buying and selling land, the parties agreed to sign the deed of sale and purchase at the PPAT office. The PPAT chosen is a PPAT whose working area is outside where the object of land rights is located.

c. The signing of the deed of sale and purchase by the seller and the buyer is not carried out at the same time before the PPAT. Buying and selling processes like this can occur for various reasons. The main reason is because the parties are busy so that the parties cannot come to the PPAT office at the same time to sign the deed. According to Article 101 of the Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, the signing of the deed must be carried out by the parties (seller and buyer) before the PPAT.

d. The deed of sale and purchase has been signed but the certificate has not been checked for conformity with the land book at the land office. Article 97 Regulation of the State Minister for Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulations Number 24 of 1997 concerning Land Registration states that, prior to making a sale and purchase deed, the PPAT is obliged to check the conformity of the relevant certificate with the registers at the local land office.

e. The deed of sale and purchase is made outside the work area of the PPAT and without the presence of witnesses. One respondent admitted that he had signed a deed of sale and purchase abroad for his client without the presence of witnesses. For a reason and the party concerned is a friend or relative of the PPAT. To sign the deed, the PPAT came to the party and asked the party to sign the deed, which had previously been signed by the other party. So that the deed was signed before the PPAT but without the presence of witnesses.

### **3.2. What are the factors that cause the making of a Land Sale and Purchase deed that is not in accordance with the procedure for making a deed by the PPAT**

In practice, many land sale and purchase deed by PPAT are not in accordance with the procedure for making PPAT deed. This is due to the existence of situations and conditions in buying and selling which cause the discrepancy to be made so that the transaction or process of buying and selling land can take place. Situations and or conditions like these make the PPAT sometimes have no other choice but to make a land sale and purchase deed by "ignoring" the procedures for making a land sale and purchase deed as stipulated by Government Regulation Number 24 of 1997 concerning Land Registration, Government Regulation Number 37 of 1998 concerning Position Regulations for Land Deed Officials and their implementing regulations.

### **3.3. The legal consequences of buying and selling land that are not in accordance with the procedure for making a deed by the PPAT**

- a. The deed degrades its evidentiary power to become an underhanded deed because it does not meet the requirements specified by law and or other regulations.
- b. The PPAT who draws up the deed is subject to administrative sanctions and fines (Article 26 paragraph (1) of Act No. 20 of 2000 concerning Amendments to Act No. 21 of 1997 concerning Fees for Acquisition of Land Rights: Officials for Making Land Deeds/Notaries and State Auction Officials who violating the provisions referred to in Article 24 paragraph (1) and paragraph (2), is subject to administrative sanctions and a fine of IDR 7,500,000.00 (seven million five hundred thousand rupiah) for each violation).
- c. Interested parties or third parties can take advantage of this situation, for example the third party will file a lawsuit but is collided with the existence of an authentic deed that has perfect evidentiary power (only one piece of evidence is sufficient as a basis for deciding a case). In accordance with the words of Article 1870 of the Civil Code: "For interested parties and their heirs or for people who get rights from them, an authentic deed provides perfect evidence of what is contained in it." With the gap that the authentic deed can be degraded into private deed, so that the interested third party has the possibility to win the lawsuit.
- d. The PPAT can be dishonorably dismissed from his position (Article 28 paragraph (2) of Regulation of the Head of the National Land Agency Number 1 of 2006 concerning Provisions for the Implementation of Government Regulation Number 37 of 1998 concerning Regulations for the Position of Officials Making Land Deeds: PPAT is dishonorably dismissed from his position by the Head body, because:



- 1) Committing a serious violation of the prohibition or obligation as a PPAT; (4) Serious violations as referred to in paragraph (2) letter a, among others:
  - a) The PPAT does not read the deed in front of the parties or parties who have not or are not authorized to carry out the actions according to the deed made.
  - b) The deed degrades its evidentiary power to become an underhanded deed because it does not meet the requirements specified by law and or other regulations.
  - c) Interested parties or third parties can take advantage of this situation, for example the third party will file a lawsuit but is collided with the existence of an authentic deed that has perfect evidentiary power (only one piece of evidence is sufficient as a basis for deciding a case).
  - e. For the buyer, there is a risk that the certificate will be blocked or the certificate will not match the list in the land book at the Land Office.

#### 4. Conclusion

The formality of the deed is still an authentic deed and the implementation of land registration can still be processed at the Land Office. The value of the transaction price contained in the sale and purchase deed differs from the actual transaction value. The formality of the deed is still an authentic deed and the implementation of land registration can still be processed at the Land Office. If a dispute arises and the interested parties can prove that the deed has been drawn up without fulfilling one or more of the procedures for making a PPAT deed, the deed degrades its evidentiary power to become an underhand deed.

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