

Legal Protection for Buyers in Underhand Land Sale Agreements Where The Seller Comes in Default During the Certificate Name Change Process

Taufik Abdullah¹⁾ & Nanang Sri Darmad²⁾

¹⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:

taufikabdullah2237@gmail.com

²⁾Faculty of Law, Sultan Agung Islamic University, Semarang, Indonesia, E-mail:

NanangSriDarmad.std@unissula.ac.id

Abstract. *The purpose of this study is to determine and analyze legal protection for buyers in a private land sale and purchase agreement whose seller is in default during the certificate name change process. To determine and analyze obstacles for buyers in a private land sale and purchase agreement whose seller is in default during the certificate name change process and its solutions. The approach method used by the researcher is the case approach and the statutory regulatory approach. The type of research used is normative law. The data sources in this study are secondary data obtained from literature studies. Based on the results of the study, Legal Protection for Buyers in Land Sale and Purchase Agreements Under Hand Where the Seller is in Default During the Certificate Name Change Process. Repressively, namely with evidence of the agreement. This is regulated in Article 1866 of the Civil Code, and emphasized in Article 1874 of the Civil Code which states that evidence can be a writing made under hand. Regarding the problem of land sale and purchase under hand, a settlement can be reached through litigation or non-litigation. Preventively, protection for buyers in implementing land sale and purchase agreements is carried out with requirements and requests for irrevocable power of attorney. The obstacle is because when the buyer wants to carry out the name change process and look for the seller, it turns out that he is not found at his residence. The solution, because the seller's whereabouts are not found, as the buyer decides to file a lawsuit in the District Court.*

Keywords: Agreements; Default; Legal.

1. Introduction

Regulations or rules and norms are a unity called law. In life, law is a necessity required by society, to regulate community activities and provide limits on good and bad behavior between people. Law can also be interpreted simply as a rule

or regulation that has sanctions and is coercive. Indonesia itself is a form of a state of law that is contained in the nation's guidelines, namely the 1945 Constitution, Article 1 paragraph (3) "all forms of being a nation, society and state are based on law.¹ So it can be said that humans are social creatures where all aspects of life in society cannot be separated from social interaction with other social creatures, whether in terms of neighbors, education, work, use of services, to the buying and selling process between individuals and other individuals based on applicable laws.

An agreement is a process or event that occurs between one individual and another individual or several other individuals, promising to comply with and carry out an agreement that has been made, the agreement is also translated into Dutch from the word *overeenkomst* and agreement is a translation of *toestemming*, interpreted as *wilsovereenstemming* (according to desire/agreement). So the term agreement or an agreement is familiar to the ears of many people, In social life, humans have the goal of fulfilling their own needs, so that social members need to establish a series of relationships or relationships to achieve goals and protect their own interests.²

Land has an important meaning in human life, both as a place or space with all its activities and as a source of life. In an effort to maintain their lives, humans are very dependent on the friendliness of nature in the areas they inhabit. In ancient times, humans tried to cultivate the existing land by farming. Over time, their lives depended on the land they managed. Then the land became a valuable and highly valued asset.³

In the agrarian scope, based on the right to control from the state, various rights to the surface of the earth are determined, called land. Land rights can be given to and owned by people, either alone or together with other people or legal entities. The land referred to here does not regulate land in all its aspects, but only regulates it in a legal sense, called rights. What is meant by land rights is the right that authorizes the holder of the rights to use and/or take advantage of the land that is claimed.⁴

Basically, all land rights can be transferred and assigned. Transfer is the transfer of land rights by law, by itself, there is no deliberate legal act to transfer the rights to another party. The transfer of land rights occurs due to inheritance. While being transferred means that the transfer of land rights to another party is due to a deliberate legal act so that the land rights are transferred to another party, such as buying and selling, grants, exchanges, and others. As explained above, one of the methods used to transfer land ownership rights to another

¹Article 1 paragraph 3 of the 1945 Constitution

²Soeroso, 2015, Introduction to Legal Science, Sinar Grafika, Jakarta, p. 215

³Nurhadi, et.al, Control Pattern, 1985, Ownership, and Traditional Use of Land in the Special Capital Region of Jakarta Province, Department of Education and Culture. Cultural Inventory and Documentation Project, DKI Jakarta, page 38

⁴Urip Santoso, 2012, Agrarian Law: A Comprehensive Study, Kencana, Surabaya, pp. 9-10

party is by buying and selling. Based on the problems that have been stated above, the objectives to be achieved in this study are to determine and analyze legal protection for buyers in private land sale and purchase agreements where the seller is in default during the certificate name change process. To determine and analyze the obstacles for buyers in private land sale and purchase agreements where the seller is in default during the certificate name change process and their solutions.

2. Research methods

The approach method used by the researcher is the case approach and the statutory regulatory approach. The type of research used is normative law. The data sources in this study are secondary data obtained from literature studies.

3. Results and Discussion

3.1. Legal Protection for Buyers in Land Sale and Purchase Agreements Under Hand Where the Seller is in Default During the Certificate Name Change Process

Basic Agrarian Law Number 5 of 1960 concerning Basic Agrarian Principles, known as UUPA, shows that National Land Law is an element in the law that regulates the development of National Land Law by integrating aspects of Customary Law into statutory regulations so that it becomes written law.⁵As long as there are no applicable legal regulations related to land, the principles of Customary Law will remain fully applicable. This shows the existence of a functional relationship between Customary Law and National Land Law.

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.⁶

Even today, there are no regulations that specifically regulate how the process of buying and selling land rights is carried out. The term "sale of land rights" is only mentioned in Article 26 of the Basic Agrarian Law, which refers to the sale of land ownership rights. Other articles do not use the phrase "sale and purchase," but instead refer to the transfer of rights.⁷

A sale and purchase agreement is an agreement made by parties who bind one party to another in an agreement that causes each party to have a responsibility for its performance which is given in the form of an undertaking and transfer of ownership rights to an item and an undertaking to pay a sum of money as the

⁵Arba, M. 2021. Indonesian Agrarian Law. Sinar Grafika. Burhan, Jakarta, p. 25

⁶Muhammad Muthohar, Amin Purnawan, 2017, Duties and Authorities of Sub-district Heads as Temporary PPAT in Making Deeds Regarding Land (Study in Boyolali Regency) in Jurnal Akta Volume 4 (4), Published Master of Notarial Law, Faculty of Law Unissula, p. 528

⁷Baharudin. 2014. Authority of Land Deed Making Officials (PPAT) in the Land Sale and Purchase Process. Progressive Justice Journal, 5 (1), pp. 89-101

price of an item for which a sale and purchase activity is carried out.⁸The activity of buying and selling land rights is legally valid because there is proof or expansion of proof by making a deed of sale and purchase which is known to the general public and to the interested parties.

The sale and purchase of land rights in customary law communities is said to be a legal act carried out in the form of a transfer of land carried out forever with the seller where a payment of a sum of money is received which is called the purchase price. Customary law communities carry out the act of buying and selling land rights openly and in cash. The act of buying and selling land rights is carried out openly, meaning that the legal act in the form of buying and selling land rights is indeed carried out before the Customary Chief or Village Head who has the authority to do so. The act of buying and selling land rights is also carried out in cash, namely there are two acts carried out simultaneously, namely the act of transferring land rights to become the object of sale and purchase from the seller to the buyer and at the same time the payment of the price from the buyer to the seller is also carried out simultaneously.⁹

The activity of buying and selling land rights in addition to being carried out through a deed of sale before a PPAT is also still very often carried out underhand. The activity of buying and selling land rights carried out underhand as a transfer of land rights carried out by implementing a sale and purchase carried out according to custom which is carried out underhand.¹⁰The transfer of land rights carried out underhand is carried out in the presence of the Village Head and interested parties and witnesses for the process of buying and selling the land rights. The process of transferring land rights underhand is carried out based on an agreement made by both parties and payment is made using a receipt affixed with a stamp or sealed paper which contains the implementation of an agreement arising from an agreement that binds both parties signed by both parties carrying out the sale and purchase and also signed by witnesses in the sale and purchase activity.¹¹

Default is basically an act of breaking a promise or an act of not carrying out obligations made by one party to another party. Default is also said to be an implementation of an agreement that is not carried out on time or is carried out inappropriately or not carried out at all. The act of not fulfilling various obligations from the seller to the buyer is carried out based on several reasons.

⁸Rajagukguk, JP, Zulia, A., & Dewi, AT 2021. Legal Consequences of Land Sale and Purchase with a Certificate of Ownership in a Private Deed. *Warta Dharmawangsa*, 15(2), pp. 200- 208.

⁹Hayati, N. 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 within the framework of national land law). *Lex Jurnalica*, 13(3), p. 147934.

¹⁰Pulungan, MT, & Muazzul, M. 2017. Legal Review of Transfer of Land Rights through Private Mortgage Agreements. *Scientific Journal of Law Enforcement*, 4(2), pp. 60-71.

¹¹Ginting, S. 2020. Legal analysis of the legal position of a certified land rights sale and purchase agreement made under hand (Study of Decision No. 130/PDT. G/2012/PN. MLG). *Prima Legal Science (IHP)*, 3(1).

The act of default committed by the seller to the buyer in a land sale and purchase transaction can be determined based on the Legal protection efforts that can be provided in a land sale and purchase transaction carried out underhand can be divided into preventive legal protection and repressive legal protection. Preventive legal protection as an effort to provide protection that aims to prevent a dispute from occurring which is carried out by directing government actions that have a cautious attitude in making a decision based on discretion. Preventive legal protection can be said to be a form of protection provided by the government before a violation occurs as stated in a statutory regulation which is carried out by providing a limitation in carrying out legal acts.

Based on the discussion above, it can be concluded that the legal protection of the buyer against a seller in default who does not take care of changing the name of the land certificate or apartment unit according to the Civil Code is: (1) receiving compensation (Article 1239 of the Civil Code) and (2) receiving the right to carry out real execution (Article 1241 of the Civil Code). In practice, this protection is implemented in various ways by judges.

Legal protection can be divided into preventive legal protection and repressive legal protection. Preventive legal protection is provided by the government before a violation occurs which is stated in a law by providing guidelines or limitations in carrying out a legal act.

Please The protection of the buyer in addition to being carried out with the requirements must be followed by a request for the granting of irrevocable power of attorney. This means that if the seller does not fulfill it, the buyer can sue and ask for compensation in accordance with the agreement set out in the sale and purchase agreement.¹²

With the existence of a breach of promise or default in a sale and purchase agreement where it 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 of the rights of each party.

Legal Protection for Buyers in Land Sale and Purchase Agreements Under Hand Where the Seller is in Default During the Certificate Name Change Process. Repressively, namely with evidence of the agreement. This is regulated in Article 1866 of the Civil Code, and is emphasized in Article 1874 of the Civil Code which states that evidence can be a writing made under hand. Regarding the problem of land sale and purchase under hand, a settlement can be reached through litigation or non-litigation. Preventively, protection for buyers in implementing land sale and purchase agreements is carried out with requirements and requests for the granting of power of attorney that cannot be withdrawn.

¹²Dyah Ayu Silviana, Endang Sri Santi, Triyono, 2013, Legal Protection for the Parties in the Land Sale and Purchase Agreement Made Privately by PT. Cisadane Perdana, Depok City, Diponegoro Law Review Journal, Volume 1, Number 2,

3.2. Obstacles for Buyers in Land Sale and Purchase Agreements Under Hand Where the Seller is in Default During the Certificate Name Change Process in Decision Number 154/Pdt.G/2022/PN Smg and its Solution

Realizing the importance and significance of the function of land for the people of Indonesia, the government is trying to improve the management, regulation and administration in the land sector through an agency called the National Land Agency (BPN). The Semarang City Land Office is one of the vertical agencies of the National Land Agency, this was formed as one form of governance in the region.¹³

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.¹⁴

In society, the most common way to acquire land is through the sale and purchase of land rights. In its common use, the word "sale and purchase" refers to someone who intentionally pays a certain amount of money to receive the desired goods. Then, based on Article 1457 of the Civil Code, a sale and purchase is when the seller promises to give the rights to the disputed land to the buyer, and the buyer promises to give the seller the agreed amount in cash.¹⁵

The making of a deed of transfer of rights to land and/or buildings that were formerly customary property before a PPAT is in accordance with Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Government Regulation Number 24 of 2016 concerning Regulations on Land Deed Making Officials, namely: That a PPAT is a public official who is authorized to make land deeds.¹⁶

Chapter 1313 of the Civil Code as the basis for understanding an agreement states that an agreement is an act by which one or more persons bind themselves to one or more other persons. Arthur S. Hartkamp and Marianne MM Tillema, in Ridwan Khairandy, explain that a contract is a legal act created

¹³Ilham, Djauhari, (2017), Application for Ownership Rights Originating from State Land at the Semarang City Land Office, in *Jurnal Akta* Vol. 4 No. 3, Unissula, p. 335

¹⁴Ratih Mega Puspa Sari, Gunarto, 2018, The Role of PPAT in Land Certification Due to Sale and Purchase, in *Jurnal Akta* Volume 5 (1), Published Master of Notarial Law, Faculty of Law Unissula, p. 242

¹⁵Nindy Budiartie Permani Putri, 2024, Default in the Sale and Purchase of Land Underhand Resulting in the Name Change Process (Study of Decision Number 347/Pdt.G/2022/PN SBY), *Wahana Pendidikan Scientific Journal*, p. 593

¹⁶Hartono Eko Puji 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 Deeds* Volume 5 (1), Published Master of Notarial Law, Faculty of Law Unissula, p. 161

by fulfilling the requirements determined by law by a mutual agreement of wills stating the mutual intention that is interdependent of two or more parties to create legal consequences for the benefit of one party, both parties, and also for the other party.¹⁷

The application of the principle of freedom of contract to an agreement results in the legal consequence that the agreement has binding legal force for the parties like a law (*Pacta Sunt Servanda*). Article 1320 of the Civil Code determines the requirements for the validity of an agreement including 4 (four) things, namely: 1) the existence of an agreement of will (consensuality); 2) Legal capacity (Capacity); 3) Certain objects; and 4) Lawful causes. The first and second conditions and the third and fourth conditions in the *quo Article* are each subjective and objective conditions of an agreement.¹⁸

An agreement that contains deviations from subjective conditions cannot automatically render the agreement void (*nietig*) but only provides an opportunity or possibility for the parties to file for cancellation (*vernietigbaar*) with the court.¹⁹ See especially if there are deviations from objectively, then the agreement is null and void by law and is deemed to have never existed (*void and ab initio*).²⁰

R. Subekti in his book states that 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 for the sale and purchase, including the land title certificate not being available because it is still in process, or the price has not been paid in full or the taxes imposed on the sale and purchase of land rights have not been paid by either the seller or the buyer.²¹

So what is meant here is only regulating the rights, namely the rights to the land in accordance with the Basic Agrarian Law Article 4 paragraph (1). Where the rights to land/rights to the surface of the earth consist of several types, owned and controlled by one or more persons and legal entities.

The main responsibility of the seller (landowner) is to submit the deed of sale and purchase of land and take care of the land certificate in the name of the buyer when the buyer has paid in full. The seller should not complicate the sale and purchase process because it will cause injustice in the buyer's position, so the seller has provided all settlements for all risks arising in the sale and purchase agreement. This situation makes the seller have no responsibility

¹⁷Ridwan Khairandy, 2014, *Indonesian Contract Law in Comparative Perspective (Part One)*, FH UII Press, Yogyakarta, p. 60

¹⁸Abdulkadir Muhammad, 2000, *Indonesian Civil Law, Third Edition*, Citra Aditya Bakti, Bandung, p. 228

¹⁹J. Satrio, 2001, *Contract Law: Contracts Born from Agreements*, Citra Adita Bakti, Bandung, p. 167

²⁰*Ibid.*, p. 164

²¹R. Subekti, 1987, *Contract Law*, Bina Cipta, Bandung, p.75

because responsibility is the realization of the obligations of another party. The seller must carry out his obligations to the buyer as soon as possible, namely resolving the ownership status and following up on the sale and purchase process.

MeAccording to the explanation above, a 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 confirmed. Based on this, the contents of the deed that are acknowledged are truly the 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.

The Obstacle for Buyers in Land Sale and Purchase Agreements Under Hand Where the Seller is in Default During the Certificate Name Change Process is because when the buyer wants to carry out the name change process and look for the seller, it turns out that he is not found at his residence. The plaintiff tried directly to the Land Agency office to submit the Certificate Name Change Process from the original name of the Seller to the name of the Buyer, but encountered an obstacle because the Buyer could not present the Sellers as Rights Holders as stated on the certificate.

Efforts to resolve the above obstacles, because the seller's whereabouts were not found, then as the buyer decided to file a lawsuit in the District Court. The Panel of Judges will consider the fifth petitem of the Plaintiff's lawsuit, namely to punish the National Land Agency to accept and process the change of name of the Certificate from all in the name of the Seller to the name of the Buyer. Accepting and processing the change of name of the Certificate of Ownership is regulated in the Law and there are conditions that must be met by the applicant.

4. Conclusion

Based on the results of the research and discussion in this study, it can be concluded that the following are legal protection for buyers in a land sale and purchase agreement under the hand where the seller is in default during the certificate name change process. Repressively, namely with evidence of the agreement. This is regulated in Article 1866 of the Civil Code, and emphasized in Article 1874 of the Civil Code which states that evidence can be a writing made under hand. Regarding the problem of land sale and purchase under the hand, a settlement can be made through litigation or non-litigation. Preventively, protection for buyers in implementing a land sale and purchase agreement is carried out with requirements and requests for the granting of power of attorney that cannot be withdrawn. The obstacle is because when the buyer wants to carry out the name change process and look for the seller, it turns out that he is not found at his residence. The solution, because the seller's

whereabouts are not found, as the buyer decides to file a lawsuit in the District Court. The results of this study can be given the following suggestions: to the community to be more careful and thorough in conducting land and building sales and purchases, whether they are certified or not. In land and building sales and purchases, it is better not to do it based on receipts or agreements underhand, because its position before the law is still weak. To the Government and the National Land Agency to conduct socialization to the community with all village officials and involve the Land Deed Making Officer so that the community no longer conducts land sales and purchases underground because it will harm the buyer himself.

5. References

Journals:

- Ayu Dyah Silviana, Endang Sri Santi, Triyono, 2013, Legal Protection for the Parties in the Land Sale and Purchase Agreement Made Privately by PT. Cisadane Perdana, Depok City, Diponegoro Law Review Journal, Volume 1, Number 2,
- Baharudin. 2014. The Authority of Land Deed Making Officials (PPAT) in the Land Sale and Purchase Process. *Progressive Justice Journal*, 5 (1),
- Budiartie Nindy Permani Putri, 2024, Default in the Sale and Purchase of Land Underhand Resulting in the Name Change Process (Study of Decision Number 347/Pdt.G/2022/PN SBY), *Wahana Pendidikan Scientific Journal*,
- Eko Hartono Puji 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,
- Ginting, S. 2020. Legal analysis of the legal position of a certified land rights sale and purchase agreement made under hand (Study of Decision No. 130/PDT. G/2012/PN. MLG). *Prima Legal Science (IHP)*, 3(1).
- Hayati, N. 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 within the framework of national land law). *Lex Jurnalica*, 13(3), p. 147934.
- Ilham, Djauhari, (2017), Application for Ownership Rights Originating from State Land at the Semarang City Land Office, in *Jurnal Akta* Vol. 4 No. 3, Unissula,
- J. P Rajagukguk,., Zuliah, A., & Dewi, AT 2021. Legal Consequences of Land Sale and Purchase with a Certificate of Ownership in a Private Deed. *Warta Dharmawangsa*, 15(2),

Mega Ratih 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,

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

Pulungan, MT, & Muazzul, M. 2017. Legal Review of Transfer of Land Rights through Private Mortgage Agreements. Scientific Journal of Law Enforcement, 4(2), pp. 60-71.

Books:

Arba, M. 2021. Indonesian Agrarian Law. Sinar Grafika. Burhan, Jakarta,

Khairandy Ridwan, 2014, Indonesian Contract Law in Comparative Perspective (Part One), FH UII Press, Yogyakarta

Muhammad Abdulkadir, 2000, Indonesian Civil Law, 3rd Edition, Citra Aditya Bakti, Bandung

Nurhadi, et.al, Control Pattern, 1985, Ownership, and Traditional Use of Land in the Special Capital Region of Jakarta Province, Department of Education and Culture. Cultural Inventory and Documentation Project, DKI Jakarta

Santoso Urip, 2012, Agrarian Law: A Comprehensive Study, Kencana, Surabaya

SaTrio J., 2001, Contract Law: Contracts Born from Agreements, Citra Adita Bakti, Bandung

Soeroso, 2015, Introduction to Legal Science, Sinar Grafika, Jakarta

Subekti R., 1987, Contract Law, Bina Cipta, Bandung