

Legal Protection of Buyers in the Sale and Purchase Agreement of Uncertified Pangkalan Mansyur Land

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ABSTRACT

This article discusses legal protection in land sale and purchase agreements in Pangkalan Mansyur conducted informally (underhand) and without certificates. Legal protection is provided through agreement clauses and statutory provisions such as the Civil Code and the Basic Agrarian Law (UUPA). This article highlights the importance of land certificates as legal evidence of legal ownership and the legal risks that arise in transactions without certificates, including land disputes. A normative juridical approach evaluates how legal regulations protect parties in such transactions. In conclusion, land without certificates presents legal challenges, and legal protection must ensure fairness and legal certainty for all parties involved. Educational efforts and ease of land titling are also proposed to reduce the potential for future disputes.

Keywords: Legal Protection, Land Sale and Purchase, Certificate.

I. Introduction

According to the 1945 Constitution, Indonesia guarantees and protects the rights of its citizens, including the right to acquire, own, and enjoy property (Adrian, 2009). Right of ownership concept is crucial in buying and selling land, requiring proof of legal ownership. Meanwhile, "Transfer of land rights" refers to transferring land rights from the previous owner to the new owner. However, in practice, buying and selling land often faces various problems, such as unofficial (underhand) transactions, which rely only on trust between the seller and the buyer. The increasing human need for land for housing and advances in the economic, socio-cultural, and technological fields demand the availability of large tracts of land. The land is needed for various purposes, such as plantations, farms, factories, offices, entertainment venues, and road infrastructure. One way to obtain land is through buying and selling. Since the Basic Agrarian Law (Law No. 5 of 1960) came into force on September 24, 1960, this law and its implementing regulations have governed all land-related matters. Provisions regarding the sale and purchase of land are regulated in Article 26 of this law, which is reinforced by Article 19 of Government Regulation No. 10/1961 and Article 37 of Government Regulation No. 24/1997 on Land Registration.

One typical example is the transfer of property rights over land through legal actions, such as land sales. This buying and selling process generally occurs directly in the community, for example, in traditional markets, shops, or shopping centers, with various transaction options available. Due to the importance of

buying and selling in daily life, it is necessary to have regulations governing these transactions (Sinaga, 2008). If the Head of the Pangkalan Mansyur neighborhood is absent from the uncertified land sale and purchase transaction, then the PPAT cannot make the land deed. This is according to the provisions of Article 19 of the Basic Agrarian Law (UUPA), which requires the government to carry out land registration throughout Indonesia according to applicable regulations. Every landowner must also register their land rights (Sukanti, 1999). Problems that often arise in the land sector, primarily related to the sale and purchase of uncertified land, often lead to disputes in the community. Many sale and purchase transactions are based solely on verbal agreements between sellers and buyers. In addition, some parties deliberately sell land that has been sold to someone else before. In today's life, problems related to the acquisition of land rights often arise through the process of buying and selling. With this system, land rights are automatically transferred to the buyer. Since the enactment of UUPA No. 5/1960, the transfer of land ownership rights through sale and purchase is legally recognized. This means that the land rights of the previous owner will be transferred to the buyer.

Gaps in society often cause conflicts and the ineffectiveness of regulations. This gap can occur due to officials not carrying out their duties properly or a lack of public awareness of the applicable laws. According to Abdulrahman (1979), the transfer of land rights is a legal action carried out with full awareness by individuals or groups to give land rights to the party receiving the transfer. A Right of ownership whose status is transparent can be transferred or changed, as stipulated in the second paragraph of Article 20 of the UUPA. Based on the explanation in the UUPA, "transferred" technically means that this transfer of rights does not occur due to a violation of the law or intentionally but because of a legal event or unplanned action by the individual or group. Along with the times, the transfer of land rights often occurs through sale and purchase transactions, which allow the rights to be transferred automatically. Since the enactment of the Basic Agrarian Law (UUPA) No. 5 of 1960, the transfer of property rights to land can be done through a sale and purchase process. Thus, the land buyer will automatically acquire the right to the land. One of the issues that often triggers conflict in the community is the sale and purchase of land without a certificate as proof of legal ownership. In some situations, transactions are based solely on verbal agreements between sellers and buyers without official documents to corroborate land ownership. Some parties are desperate to sell land they have sold before, often called "selling on top of selling." As a result, problems can arise regarding the ownership of land bought or sold. Some problems are resolved within the family, but others go to legal channels or develop into more serious conflicts, leading to physical altercations.

Land certificates are the most important thing when buying and selling land. If the land already has a certificate, the buyer can check with the local BPN office to ensure it matches the land book data. However, if the land to be purchased is not yet certified, the buyer needs to confirm the status of the land through the local Village Head Office or Kelurahan Office. The buyer can request a certificate from the Village Head or Kelurahan, where the land is registered, to ensure that the seller owns the land. This step is based on the provisions of Article 39 point 2 of Government Regulation No. 24 of 1997 on Land Registration, which states that a PPAT can refuse an application to administer an unregistered land transaction if there is no certificate proving ownership of the land. Land certificates act as legal evidence that shows a person's ownership of the land. According to Article 4, paragraph (1) of the Basic Agrarian Law (UUPA), every individual with land rights can obtain a certificate. Land certificates have the primary function as valid evidence and have legal force related to land ownership status. The sale process has lower legal risks because the legal subject of registered or certified land ownership is more precise. In contrast, selling unregistered or uncertified land is a higher legal risk. If uncertified land is sold, it is essential to confidently ensure that the person owns the land, even if there is no valid proof of ownership according to applicable regulations. The formal requirements associated with the title deeds can help prove this. The rights possessed by a landowner indicate that a person has legal rights over the land, which forms the basis for the transfer of land rights. This ownership carries legal consequences, which means that if a person is recognized as a legitimate owner and the transaction is carried out by the procedures established by law, the sale and purchase transaction is considered valid. Based on the above background, the problem discussed in this research is the first. What is the legal position regarding the sale

and purchase of land that has not been certified? Second, is there any legal protection for selling and purchasing land rights that have not been certified?

II. Research Method

The normative juridical method is used in this research. This type of legal research refers to laws and regulations and other literature, also known as secondary materials. The normative juridical approach aims to identify methods, norms, or ideals (*das sollen*) and behavior in the context of facts. Field research is also conducted to obtain primary data supporting and complementing existing data. The author uses this approach to understand how legal regulations can protect uncertified land rights in the sale process. Researchers use the juridical-normative approach to address this issue, often referred to by many scientists as the legal approach.

III. Result and Discussion

The law has a position. The sale and purchase of uncertified land is a standard social action carried out by a person to obtain ownership rights to an item. However, the person who delivers the goods to the other party, i.e., the seller, also acquires title to the goods. Article 20 of the Basic Agrarian Law (UUPA) states that land rights can be transferred or transferred. This transfer process occurs due to a legal event, which causes land ownership to shift from one party to another. For example, when a landowner dies, the title to the land can be transferred to another person through various legal actions, such as grants, sale and purchase, or exchange. Land certificates are the legal and most substantial evidence of ownership of land rights. This certificate records who is entitled to certain land (Luthfi & Khisni, 2018). Before obtaining a certificate of ownership, a person must carry out land registration. The land registration process is critical because it provides legal certainty and protection for the community and the government. Applicable laws and regulations must carry out the transfer of land ownership. Land sale and purchase transactions can only be carried out on land with legal ownership status. Land that is recognized as someone's property must be registered and issued a certificate by the National Land Agency (BPN), which is the institution that has the authority in this matter...

According to customary law, land sales can only be conducted if specific requirements are met. One of them, as described by Ambrowati (2020), is that the buyer is required to pay a sum of money that corresponds to the value of the land being purchased, as well as include information regarding land ownership rights and valid proof of ownership. This requirement is often referred to as "cash." There is also a formal requirement whereby both the seller and buyer must meet the village or adat head to formalize the sale and purchase transaction. The village or adat head must be domiciled in the area of the land in question. Openness and clarity of information are essential in this process. As a result of land that has not been registered as state property and does not yet have a certificate, some communities in rural areas can be isolated. Land transactions may take place without the knowledge of the wider community. This usually happens because landowners do not register their property. Nonetheless, landowners still have the right to transfer or sell their land, even without proof of ownership in the form of a certificate.

According to the Civil Code, there are differences in the regulation of sale and purchase between customary law and civil law. In customary law, the transfer of newly discovered land rights is considered a sale and purchase transaction (Pulungan & Muazzul, 2017), and payment by the buyer to the seller marks the transaction's validity (Ambrowati, 2020). Meanwhile, based on Article 1457 of the Civil Code, a sale and purchase transaction is still considered valid even though the ownership rights to the land have not been transferred or registered under the buyer's name. This also applies even though the buyer has not made payment for the purchased land. Transferring unregistered land rights can cause losses to right holders because there is no guarantee of legal certainty. Land registration serves to ensure legal certainty and

certainty of land rights so that owners can physically control and have proof of legal ownership. This is Article 19 of the UUPA and Government Regulation No. 24/1997 on Land Registration.

Based on information obtained from the Land Deed Official in Pangkalan Mansyur, it is advisable always to ensure that the land to be purchased has a valid and official title certificate. This is important because, according to research from the Land Deed Official, land transactions without a title certificate tend to be riskier and do not have the same legal force as transactions involving a title certificate. Therefore, sellers and buyers of land without a title certificate should be more careful in their decision-making to avoid potential legal problems in the future. Government Regulation No. 24/1997 on Land Registration stipulates that land that does not have an ownership certificate must go through a repurchase process if it is only purchased by one party or based on an underhand deed. According to Article 37 of the Government Regulation, land rights transfers can be registered by a Land Deed Official to ensure the validity and recording of ownership rights.

3.1. Legal Consequences of a Deed of Sale and Purchase of Land that Does Not Have a Certificate of Title Issued by a Land Deed Official

3.1.1. Legal Consequences for Land Buyers

The legal consequences for a buyer who signs a deed of sale and purchase of land without proof of ownership can be very detrimental. Firstly, the purchaser cannot claim title to the purchased land as the title deed is still registered in the name of the original owner or legal title holder. Secondly, the buyer may be charged with fraud for engaging in an unauthorized land transaction or without proper authorization. In addition, parties who feel aggrieved by land transactions without title deeds are entitled to compensation. Land buyers can also potentially obtain compensation from the owner of the land they have sold as a form of responsibility for the invalidity of the transaction. Therefore, the results show that it is essential for land buyers first to ensure that the certificate of ownership of the land to be purchased has been issued and is valid before proceeding with the sale and purchase transaction. Buyers should verify to ensure the purchased land is not involved in disputes or other legal issues. The buyer can acquire the land safely and lawfully by taking this step.

3.1.2. Legal Consequences for the Seller

Land sellers who sign sale and purchase contracts without title deeds risk facing severe legal sanctions. They may be accused of fraud for selling land that does not have a valid title. In addition, the seller may also be subject to prosecution for a transaction that is deemed unauthorized or lacks legal validity. The seller of land may be required to compensate the aggrieved party if the sale and purchase transaction is conducted without a valid certificate of title. An aggrieved buyer has the right to file a claim in court to seek compensation for losses incurred due to the sale of land without a valid title. Considering the potential legal risks of selling land without a title deed, the seller must ensure that the land is sold as a valid and registered title. In addition, the seller also needs to check first whether the land is free from disputes or other legal issues. With these steps, the seller can carry out the land sale and purchase transaction more safely and by applicable regulations.

3.2. Community Understanding of Land Sale and Purchase Transactions without a Certificate of Ownership

According to a survey conducted among 30 community members in Poncajene and Kepulauan Regency, 70% (or 21 people) claimed to have been involved in land sale and purchase transactions, with most being buyers. Meanwhile, nine other people had never been involved in a land sale and purchase transaction. All respondents involved in such transactions used certificates of ownership as proof of legal ownership. Of

the 21 community members involved in land transactions, 15 stated that they chose to buy land with certificates to avoid future problems. Meanwhile, six others revealed that they understood the existing regulations, so they ensured the land purchased was equipped with valid legal evidence, such as a certificate of ownership. Based on the data, only 20%, or six percent of the total respondents, realized the importance of having a certificate of ownership before buying or selling land. This shows that people's understanding of the importance of a certificate of title before buying or selling land is still reasonably low. The book *Legal Practice of Land Sale and Purchase and Transfer of Land Rights in Indonesia*, written by H.R. Reksodiputro, discusses in depth the various legal aspects of land sale and purchase transactions and procedures for transferring land rights in Indonesia. In this book, the author explains in detail the legal steps that must be followed in land sale and purchase transactions, including the legal requirements and administrative procedures needed to ensure the validity of the transfer of land rights.

3.3. Land Ownership without Certificate

According to Sajiputra Rahajo, power has two main elements, namely, a factual element and a mental attitude element. The factual element refers to the actual relationship between a person and the object in his possession (such as land), where, at that time, the person does not need any other evidence or legitimization other than the fact that the object is in his hands. Meanwhile, the mental attitude relates to the intention or desire to utilize the object. Controlling objects is an essential form of capital in human life and society. According to the Basic Agrarian Law (UUPA), the control of land rights related to adat or ulayat, both individually and communally, is still not regulated in detail, so it often causes conflicts in the transfer process. Some of the factors that trigger these conflicts include economic problems and imbalances in the legal system prevailing in the community. The resolution of such conflicts can be pursued through litigation (judicial) or non-litigation (out of court) channels, each of which has the possibility of producing a complete settlement or vice versa. Therefore, this conflict resolution is hoped to cover all aspects of the case by providing apparent legal certainty and protection and harmonizing customary law with state law.

As such, the law should not be ignored. Even if possession of an object already exists in reality, the law must still make a decision. When the law is applied, it must determine whether or not a person has a right to be protected. If the law decides to recognize and protect a person's control over an object, then the law will protect that person's rights from interference from others. This will undoubtedly impact the community because the procedure for making land certificates is quite complicated. However, given the many complaints regarding the disorganized process, the BPN has drafted new rules to help speed up and simplify land titling. They also encourage people to apply for their land titles immediately. In addition, BPN officers routinely conduct socialization to educate the public on the importance of certificates as proof of ownership and to organize and simplify the land registration process. The absence of a land certificate indicates that the land has no legally recognized ownership status. If the land was acquired through inheritance or based on local tradition, the owner is not legally recognized as the rightful owner. Without a certificate, the land cannot be wholly owned by the person who controls it.

3.4. Legal Protection of Land Sale and Purchase Agreements that do not yet have a Certificate

Land disputes often arise due to the limited availability of land while the demand for land continues to increase. When resources become scarce, disputes will arise over who has the right to own land and how to acquire land rights. On the other hand, laws issued by the government to protect the rights of people with low incomes, including land rights for indigenous peoples, are still insufficient. Land issues in Indonesia are closely related to the basic principles of land registration. Many land holdings have not been registered entirely and accurately, despite evidence that land disputes still occur in various regions, especially in areas with poor land management. As a result, in the land acquisition process, it is necessary to discuss price compensation and resolve complicated administrative issues. Many landowners do not have valid land titles.

Even though some of them have land certificates, there are often other problems, such as discrepancies between the land area listed in the land certificate or letter and the actual size of the land in the field.

Legal certainty regarding land rights is essential to resolve long-standing land issues and their legal consequences. It ensures the protection of land rights and fairness in the distribution of land tenure across the country. Therefore, there should be no concentration of land tenure in the hands of a few people who control most of the area, while the majority only control a small amount of land. In addition to focusing on equity, land rights should be regulated in such a way as to provide optimal protection. Uncertainty over the status of land rights has been a significant cause of unresolved land conflicts and disputes in recent years. In practice, land and building sale and purchase transactions involve various parties, such as the seller, buyer, developer, local government (Pemda), PPAT or notary, and sometimes intermediaries. This transaction process, which often takes much time, energy, thought, and resources, shows how complicated the buying and selling of land and buildings is. Land as a place to live is one of the basic human needs, although obtaining it often requires sacrifice.

The interview results show that PPJB is a binding agreement between the seller and the buyer before the official AJB is made before the PPAT. In this agreement, the seller agrees to sell the goods to the buyer, and the buyer provides a deposit or down payment by the existing agreement. Usually, PPJB is written without going through a notary, with a specific purpose, such as settling the remaining unpaid payments. Some important elements in a PPJB include the price agreement, the repayment schedule, and the creation of AJB. A PPJB is only valid between party "A" (who uses the PPJB), who buys the house from the developer, and the party who has paid in full beforehand. Therefore, this transaction must be done with great care. PPJB is generally made when the payment has not been fully settled. Before the AJB is made, each party's obligations must first be explained and agreed upon in the agreement. Usually, this agreement contains a clause stating that the PPJB can be canceled if one of the parties fails to fulfill its obligations according to the agreed deadline. In other words, if the buyer signs the PPJB but does not fulfill his obligation to pay the house price, then the PPJB will be canceled, and the sale and purchase transaction will not proceed. Before the AJB is made before a PPAT, the PPJB functions as a temporary bond. No additional procedures are required as no Akta Jual Beli (AJB) or certificate has been created. As such, there is no transfer of land rights as no AJB is created. As a result, the PPJB's position as a document showing land ownership is degraded and only serves as a land warranty. (For information, as the split certificate is still in process, the GSA and AJB have not been made since the sale of the developer unit to A in 2015.) Based on Article 1 point 20 of Government Regulation No. 24 of 1997 on Land Registration, a certificate is written evidence that states the right to land, management, waqf, apartment units, and dependents that have been registered in the relevant land book by the provisions in Article 19 paragraph (2) letter c of the UUPA. From a civil law perspective, both parties prepare and agree upon a binding sale and purchase agreement (PPJB). After both parties reach an agreement, the agreement will determine the rights and obligations of each party. The parties who sign the agreement will be legally bound by the PPJB that has been made. If there is a dispute in the future related to the sale and purchase of land that does not yet have a certificate, then the agreement becomes the basis for resolving the problems that arise. The buyer can use the PPJB as a guide to prove that the land has been purchased with witnesses recorded in the binding sale and purchase agreement.

Therefore, the legal protection of each party's rights in a sale and purchase binding agreement is highly dependent on the strength of the agreement itself. If the sale and purchase agreement is made with a deed under hand, its protection will be equivalent. Conversely, if the agreement is made in the presence of or by a notary, the deed will become a notarial deed, providing legal protection equivalent to an authentic deed. Due to the evidentiary nature of the PPJB and the power of sale made before a public official, the legal protection given to the buyer who has paid off the payment becomes more substantial and more valid. In this case, the notary plays a vital role. This is because it provides legal certainty and protection for buyers who have completed payments. However, even if specific requirements have not been met, making a Sale and Purchase Deed (AJB) and registering a name change cannot continue.

IV. Conclusion

Uncertified land titles must be converted before a sale and purchase transaction can occur in Medan City. After the sale and purchase transaction is completed, the land can only be handed over to the buyer. The legal protection of the sale of uncertified land, which does not fulfill all the prevailing laws and regulations requirements, remains at risk. In contrast, certified land provides legal certainty, where the buyer has legal rights to the land after paying the seller. Some of the obstacles that hinder the process of registering uncertified land rights at the Medan National Land Agency (BPN) include incomplete title documents, unmarked land boundaries, land-related disputes or conflicts, inefficient mapping systems, limited equipment, labor shortages, and complex and time-consuming procedures, which lead to high costs, including costs for state revenue and title acquisition fees. In addition, many parties still think the land revitalization process is relatively easy because they feel their land title already has legal force equivalent to a land certificate.

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