

## Legal Analysis of Transfer of Land Rights Through Deed of Sale and Purchase to Minors

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**Abstract.** *Transfer of land rights through a deed of sale to a minor discusses the implementation of guardianship over minors in implementation of land rights transfer due to sale and purchase. This study highlights the material and formal requirements for the transfer of land rights by minors, as well as the legal consequences. Minors cannot transfer land rights themselves and require a guardian and permission from a court order. The purpose of this study is to analyze and determine the legal analysis and obstacles and solutions to the transfer of land rights through a deed of sale and purchase to minors. This study uses empirical or sociological legal research that includes legal certainty and responsibility. This research is obtained through primary legal data or data obtained directly from sources and library materials as supporting data. The results of the study concluded: 1) Minors, namely if a minor child has land in his name and then the child's land is to be sold, then legally the act must be carried out by the legal guardian of the child based on a court ruling. The procedures are, the PPAT procedure, the National Land Agency (BPN) procedure, and the court's permit procedure. Based on the reality, for several requirements from the PPAT, clients who wish to apply for a determination to carry out guardianship in this case from the district court must carry out a transfer of land rights. 2) In terms of the transfer of land rights through a deed of sale and purchase to a minor child, it can cause several obstacles and requires a careful solution. In general, the community does not understand land, guardianship, and the procedure for transferring land rights through a deed of sale and purchase to a minor child. So that socialization or education is needed for the community through good coordination between the government, land office, and other communities to ensure that the process of transferring land ownership rights runs smoothly.*

**Keywords:** *Guardianship; Minors; Transfer.*

## 1. Introduction

Ownership of land rights by a child comes from various sources, whether it is given through a will, a gift according to inheritance from customs, or a gift from parents or other people to a child. The transfer of land rights through a sale and purchase begins with the making of a deed of sale and purchase agreement made before a notary. The validity of a sale and purchase transaction is considered valid if it is carried out by parties who have met the requirements both in terms of formal requirements and material requirements. In the material requirements of a sale and purchase, a seller must have the right and authority to sell the land he owns, while a buyer must also have the right and authority to buy the land offered by the seller. In addition, the land being traded must not have the status of disputed land. If all requirements, both formal requirements and material requirements have been met, then the sale and purchase process can be carried out before an official who has been given a mandate by the state to make an authentic deed regarding the sale and purchase transaction of land rights. The terms "land sale and purchase agreement" and "deed of sale and purchase agreement" have similar meanings, namely that both are made before a notary and are temporary in nature or as a preliminary agreement, because for the purposes of registering the transfer of land rights, they must be stated in a deed of sale and purchase made before a Land Deed Making Officer (PPAT).<sup>1</sup>

The obligation arising through this sale and purchase agreement must meet the legal requirements stipulated in Article 1320 of the Civil Code (KUH Perdata). For the process of making a deed of sale and purchase, it is made before a PPAT and the legal transfer related to the registration of the transfer of land rights is further regulated in the Agrarian Law. Agrarian Law includes a number of regulations, including Law Number 5 of 1960 concerning Basic Agrarian Principles, hereinafter referred to as UUPA, Government Regulation Number 24 of 1997 concerning Land Registration, and other land regulations.

A child who has rights to land does not automatically have the authority to transfer rights to the land. Because it is considered not yet having legal capacity or can be said to be incompetent to carry out a legal act. One of the requirements that must be met in making a deed of sale and purchase agreement is related to legal capacity (capacity to act). Article 39 of Law Number 02 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary stipulates that a person who can apply as an appearance before a Notary is a person who is at least 18 years old and is capable of carrying out legal acts. A minor who has the desire to carry out legal

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<sup>1</sup> M. Fuad Fatoni & Weppy Susetyo, 2017, "Legal Review of Land Sale and Purchase Agreement with Minors as Legal Subjects", *Jurnal Supremacy* Vol. 7 No. 1, p. 56.

acts related to the transfer of rights to land objects has a different legal status from a legal subject who is capable of carrying out legal acts.<sup>2</sup>

Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration states that the process of releasing land rights is an act of transferring rights which must be carried out with a deed made by a Land Deed Making Officer.<sup>3</sup>This is carried out as a requirement for registering the transfer of land rights at the Land Office. When carrying out the process of releasing rights, it is important to pay attention to the position of land rights. If land ownership is a joint ownership right, then the approval of all parties entitled to the land is required in order for the sale and purchase to be carried out, including in situations where there is ownership of land rights by minors.<sup>4</sup>

In the context of the transfer of land sale and purchase rights, it is important to consider the status of land rights. If the ownership of land rights is joint ownership, then each party who has rights to the land must provide consent and agree before the sale and purchase transaction can be carried out. However, it will cause a problem if one of the owners of the rights is under the age considered to have the capacity to carry out a legal act.

Based on the background above, the researcher is interested in discussing a study entitled Legal Analysis of the Transfer of Land Rights Through a Sale and Purchase Deed to Minors.

## 2. Research Methods

The research method used in this study is the type of empirical or sociological legal research. Empirical legal research is a study conducted on the actual conditions or real conditions that have occurred in society with the intention of knowing and finding the facts and data needed, namely to find out the problems being studied.<sup>5</sup>The approach method used is a qualitative approach expected to provide a detailed, systematic and comprehensive picture. The types and sources of data come from primary data and secondary data. Data collection methods include interviews and literature studies. The data analysis method used is a qualitative analysis method, which generally emphasizes its analysis on the

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<sup>2</sup> Zahra Apritania Jati, "Transfer of Land Rights Owned by Children by Persons Acting as Guardians", *Journal of Legal Studies: Alethea* Vol. 4, No. 2, 2021, p. 117.

<sup>3</sup> M. Fuad Fatoni & Weppy Susetyo, *Op. cit.*, p. 58.

<sup>4</sup> *Ibid.*

<sup>5</sup> Cholid Narbuko and H. Abu Achmadi, 2002, *Research Methodology*, PT. Bumi Aksara, Jakarta, p. 1.

deductive and inductive conclusion process and the dynamics of the relationship between observed phenomena using scientific logic.<sup>6</sup>

### 3. Results and Discussion

#### 3.1. Legal Analysis of the Transfer of Land Rights Through a Deed of Sale and Purchase to Minors and the Procedure for Transferring Land Rights Owned by Minors

##### a. Legal Analysis of Transfer of Land Rights Through Deed of Sale and Purchase to Minors

Transfer of land rights cannot be done by a minor child alone because of the lack of competence possessed by a child as a legal subject in carrying out the legal act. One of the requirements that must be met in making a deed of sale and purchase agreement is regarding the competence to act. Article 39 of Law Number 02 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary stipulates that those who can meet the requirements as a person appearing are a person who is at least 18 years old and is competent to carry out legal acts. A minor who has the will to carry out a legal act of transferring the rights of an object (land) has a different position from a legal subject who is competent to carry out legal acts.<sup>7</sup>

A child if he has rights to land does not automatically have the authority to transfer rights to the land. Because he is considered incompetent to carry out a legal act, a minor needs a guardian to be able to transfer rights to the land by selling or buying the land. The person who will become the guardian of the minor must obtain a decision from the district court in order to be given permission to carry out legal acts, namely buying and selling as a guardian for the child.<sup>8</sup>

Regarding the transfer of land rights by a minor child, basically it must be carried out by appointing a guardian first to act as the child's representative in order to carry out a sale and purchase agreement belonging to the child as the legal holder of land rights. This appointed guardian will later enter into an agreement with another party and sign the sale and purchase deed made by the PPAT.<sup>9</sup>

A PPAT has an obligation to provide considerations on deeds made by and/or before him/her and also provide views not only regarding the formal truth of the

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<sup>6</sup> M. Syamsudin, 2007, Operationalization of Legal Research, PT. Raja Grafindo, Jakarta, p. 133.

<sup>7</sup> Etik Rahmawati and Widyarini Indriasti Wardani, 2021, "Transfer of Land Rights to Minors", Jurnal Notary Law Research Vol 2, No. 2, p. 85..

<sup>8</sup> Zahra Apritania Jati, 2021, "Transfer of Land Rights Owned by Children by Persons Acting as Guardians", Journal of Legal Studies: Alethea Vol. 4, No. 2, p. 117.

<sup>9</sup> *Ibidp.* 127.

deed in question but also regarding the material truth regarding the matter, especially in terms of the transfer of land rights to minors. Boedi Harsono said that the PPAT deed functions as a means of proof that a sale and purchase has been made, in addition, the deed of sale and/or deed of sale and purchase can be made by the PPAT if the interested parties, namely the party selling the land rights and the party purchasing the land rights, meet the PPAT in his/her work area and must be attended by the parties carrying out the legal act in question or can be represented by a legal attorney to carry out the sale and purchase.<sup>10</sup>

In order for minors to obtain legal standing in the implementation of buying and selling, parents or guardians can submit an application for transfer of land rights to the National Land Agency/ATR. Legal action on the assets of minors can be carried out through a guardianship institution according to the Law based on parental authority (*onderlijke macht*) or guardianship determined by the court to one of the two parents (*voogdij*) or guardianship according to the Law by another party (*wettelijke voogdij*) as stated in Articles 45 to 54 of Law Number 16 of 2019 concerning amendments to Law Number 1 of 1974 concerning Marriage.<sup>11</sup>

To ensure legal certainty for minors in the implementation of land rights transfer through sale and purchase, they can submit a request for a court ruling as a basis for being able to carry out the land rights transfer process. This court application is submitted by the parents/guardians of the minors. After the court ruling, the minor can carry out the sale and purchase deed at the PPAT office. However, the child cannot immediately transfer rights as the subject of the land being sold, but the child requires guardianship from his/her parents.<sup>12</sup>

#### b. Procedure for Transferring Rights to Land Owned by Minors.

The procedure for transferring land rights through a deed of sale to a minor involves several stages, including:

##### 1) Court Order

Minors must transfer their rights through a guardian who has been appointed by the court.

##### 2) Subjective and Objective Conditions

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<sup>10</sup> Titik Triwulan, 2006, *Introduction to Legal Science*, Prestasi Pustaka, Jakarta, p. 472.

<sup>11</sup> Interview with W. Tri Marwoto Sulistiyanto, SH, M.Kn. Notary & PPAT Semarang Regency, December 22, 2023.

<sup>12</sup> Elita Savira, et. al., 2017, "Determination of Child Guardianship requested by PPAT as a Requirement for Making a Deed of Sale and Purchase of Land Rights", *Brawijaya Law Student Journal*, p. 8.

Subjective requirements for the transfer of land rights to minors generally involve the consent of the child's guardian or custodian. In Indonesia, based on Article 1266 of the Civil Code (KUHPperdata), the transfer of land rights to minors requires the consent of the child's guardian. In addition, Article 1267 of the Civil Code also states that court approval is required if the transfer of rights will result in harm to the child. So, the subjective requirements are the consent of the child's guardian and, a court ruling is required.

Then fulfilling the objective requirements for the transfer of land rights includes fulfilling applicable legal procedures, such as the requirements for making a deed of transfer of rights, and protecting the interests of the parties involved in the transfer of rights. In addition, objective requirements also include the right to own the land to be transferred and the validity of the object of the sale and purchase as well as things such as land ownership, legal status of the land, and the eligibility of the object of the sale and purchase.

### 3) Certificate Check at the Land Office

The next process is to check the certificate at the Land Office. A land certificate is proof of a person's rights and ownership of land or a plot of land issued by the National Land Agency (BPN). As an important document, checking or verifying the authenticity of a land certificate is something that needs to be done.<sup>13</sup>

### 4) Preparation of Sale and Purchase Deed by PPAT

Any transfer of land rights through sale and purchase can only be registered if it can be proven by a deed made by a Land Deed Making Officer (PPAT). Article 37 paragraph 1 of Government Regulation Number 18 of 2021 concerning amendments to Government Regulation Number 24 of 1997 concerning Land Registration states that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grants, income in companies and other legal acts of transfer of rights, except for the transfer of rights through auction can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations.

### 5) Registration of Buying and Selling Name Changes

The deed of sale and purchase is used as evidence to register the change of name of the sale and purchase at the land office.

Maintenance of data on the transfer of name of the sale and purchase is carried

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<sup>13</sup> Interview with W. Tri Marwoto Sulistiyanto, SH, M.Kn. Notary & PPAT Semarang Regency, December 22, 2023.

out if a sale and purchase process has occurred between the seller and the buyer legally as evidenced by a Deed of Sale and Purchase. The relevant rights holder is required to register the changes as referred to in the Land Office.<sup>14</sup>

#### 1. Obstacles and Solutions to the Transfer of Land Rights Through a Sale and Purchase Deed to a Minor at the PPAT Office.

In the case of the transfer of land rights through a deed of sale to a minor, several obstacles may arise and require careful solutions.

Based on the results of the interview with Notary/PPAT W. Tri Marwoto Sulistiyanto, SH, M.Kn. as Notary & PPAT in Semarang Regency, several factors that become obstacles in the implementation of the transfer of land ownership rights due to sale and purchase include:

- a. The indifference of the parties making the purchase and sale to all aspects of the transaction.
- b. Lack of public understanding of land law, guardianship, and sales permits.
- c. Many people do not include a court ruling when transferring land ownership rights because the sale is to a minor, and people tend to reject it on the grounds of costs in the court ruling process.
- d. The public in general does not understand the difference between a guardianship letter and a court order in implementing guardianship over a minor, so that in practice, transfers of land ownership rights due to sales to minors usually use a guardianship letter without a court order.
- e. Errors or error constraints in the land application or website.
- f. The process of registering land rights, which may be difficult due to lack of information or errors in procedures.
- g. Obstacles that may be faced by the land office, such as the process of completing the transfer of rights and registration.

From the factors above, several steps or solutions that can be taken to facilitate the process of transferring land ownership rights due to buying and selling to minors include:

- a. Improving public understanding of land law, guardianship, and sales permits.

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<sup>14</sup> Interview with Edi Purwanta, SH, M.Kn. Notary & PPAT Semarang Regency, December 21, 2023.

- b. There is a need for understanding and socialization regarding the importance of court decisions and education on the differences between guardianship letters and court decisions through village or sub-district officials and other government agencies.
- c. Providing training and education as well as technical support on land rights registration procedures.
- d. Providing resources and infrastructure that enable efficient land rights registration and transfer processes.
- e. Good coordination between the government, land office, and the community to ensure the process of transferring land ownership rights runs smoothly.<sup>15</sup>

#### **4. Conclusion**

Minors, namely if a minor child has land in his name and then the child's land is to be sold, then legally the act must be carried out by the legal guardian of the child based on a court ruling. The procedures are, PPAT procedures, National Land Agency (BPN) procedures, and court permit procedures. Based on the reality, for several requirements from PPAT, clients who wish to apply for a determination to carry out guardianship in this case from the district court must carry out a transfer of land rights. The aim is that an application effort made by the applicant and the PPAT will be used to provide legal certainty and protection for the rights of a child or heir in the future so that a problem does not occur. In terms of the transfer of land rights through a deed of sale and purchase to a minor, it can cause several obstacles and requires a careful solution. In general, the public does not understand land, guardianship, and the procedures for transferring land rights through a deed of sale and purchase to a minor. So that socialization or education is needed for the community through good coordination between the government, land offices, and other communities to ensure that the process of transferring land ownership rights runs smoothly.

#### **5. References**

##### **Book**

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<sup>15</sup> Interview with W. Tri Marwoto Sulistiyanto, SH, M.Kn. Notary & PPAT Semarang Regency, December 22, 2023.

### **Journal**

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### **Interview**

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