

Legal Implications of the Sale and Purchase of Land Rights Underhand in Demak Regency (Decision Study No. 34/Pdt.G/2020/PN. Dmk)

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Abstract. *It is undeniable that in everyday life, there are still many land sales and purchases carried out underhand, not in the presence of an authorized official, namely a Notary/PPAT. This study aims to analyze the legal implications of the sale and purchase of land rights underhand in Demak Regency (Study of Decision No. 34/Pdt.G/2020/PN. Dmk). The type of research used in this thesis is normative legal with a case approach. This approach method uses a normative legal approach or written legal research. The types and sources of data used are secondary data. Data collection methods are literature research and documentation studies. The data analysis method used in analyzing the data is qualitative analysis, namely the data obtained is then analyzed qualitatively to achieve the objectives. The results of the study show that in the concept of legal certainty, it can be made in writing in the form of an agreement before an authorized official and recognized by the state, so that it has perfect legal force before the court. In accordance with Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. A sale and purchase agreement made underhand is difficult to prove if a legal act of transferring land rights has occurred. Therefore, legal protection is needed, namely repressive legal protection and preventive legal protection.*

Keywords: Land; Purchase; Transfer.

1. Introduction

Land is one of the sources of life and livelihood for humans and society, so it becomes the most basic human need, with the belief that land is highly valued and beneficial for human life, even land and humans cannot be separated. The urgency of land for human life is appreciated by the Government of the Republic of Indonesia through the National Land Policy by issuing Law Number 5 of 1960 concerning Basic Agrarian Principles, also abbreviated as UUPA. The authority of the Government to regulate land throughout the territory of the Republic of

Indonesia is born from the state's right to control land as stated in Article 33 Paragraph (3) of the Constitution of the Unitary State of the Republic of Indonesia (hereinafter referred to as the 1945 NRI Constitution) which emphasizes that the earth, water, and natural resources contained therein are controlled by the State to be used for the greatest prosperity of the people. The constitutional provisions in Article 33 of the 1945 NRI Constitution concerning the state's right to control land are then described in Law Number 5 of 1960 concerning Basic Agrarian Principles (hereinafter referred to as UUPA).

Transfer of land rights due to legal acts is carried out with a deed of transfer of land rights made by the Land Deed Official (hereinafter referred to as the Land Deed Official or PPAT) who is a public official who is given the authority to make authentic deeds regarding certain legal acts regarding land rights or ownership rights to flats. Law Number 5 of 1960 concerning Basic Agrarian Regulations in Article 19 regulates the implementation of land registration in order to guarantee the legal certainty in question, the implementation of said land registration is then regulated in Government Regulation Number 24 of 1997 concerning Land Registration. According to Article 19 of the Basic Agrarian Law in conjunction with Article 37 Paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, the sale and purchase of land must be proven by a deed made by and before the Land Deed Official or PPAT.¹

Legal acts in the form of buying and selling land rights which are only evidenced by a receipt, without a deed of sale made before a Land Deed Making Officer (PPAT), of course, such legal acts will be very detrimental to the buyer, because the buyer has no legal certainty regarding the transfer of rights to the land he purchased, which in fact has paid a sum of money to the seller. Normatively, the certificate that has been purchased does not provide evidence of the transfer of rights to the land in question and the certificate is still in the name of the seller, even though it has been submitted to the buyer.²

One example of a case in the Demak District Court decision No. 34/Pdt.G/2020/PN. Dmk, the legal consequences of a sale and purchase transaction carried out underhand without the presence of a Land Deed Making Officer (PPAT) or Notary. Cases like the one in the decision often occur around us every day, so we must be more careful and adhere to the agreement in the sale and purchase of land. Based on the background above, the researcher is interested in discussing a study entitled Legal Implications of the Sale and

¹Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997 concerning Land Registration, Jakarta.

²Salim HS, 2007, Development of Contract Law Outside the Civil Code (A), Raja Grafindo Persada, Bandung, p. 17.

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2. Research Methods

This type of research is normative juridical with a case approach. Normative research with a case approach aims to study the application of legal norms or rules carried out in legal practice, especially regarding cases that have been decided as can be seen in the jurisprudence of cases that are the focus of the research. The approach method in this research is the normative juridical approach, namely an approach that examines law as a rule that is considered in accordance with normative juridical research or written legal research. The types and sources of data used in this research are secondary data, which are taken by means of library research and documentation studies. Data collection techniques are carried out based on the type and source of data, therefore the secondary data category of this research is collected using the Literature Research methodology, or literature review which aims to collect all the facts and decide what steps should be taken as an important step in scientific efforts and Documentation studies, namely research on documents related to research. The data analysis method used in this research is qualitative analysis, namely the data obtained is then systematically arranged and then analyzed qualitatively to achieve clarity on the problems discussed.

3. Results and Discussion

3.1 Position of Private Deeds of Sale and Purchase of Land Rights in the Concept of Legal Certainty

As explained above, for a land sale and purchase to occur before a Land Deed Official (PPAT) it must be final, both in terms of formal and material requirements. For formal requirements, the requirements for complete documents as evidence of land rights have usually been met, while for material requirements, the price determined for the sale and purchase has been paid in full by the buyer. If the payment for the sale and purchase has not been met, then the sale and purchase agreement of the parties is the temporary basis for the implementation of the sale and purchase that has not been fulfilled.

Referring to the concept of evidence, the position of the receipt is included in written evidence as per Article 164 HIR/284 R.Bg and Article 1866 of the Civil Code, which is a private letter made intentionally for a statement of intent. This private letter has the power of proof if there is no denial from either party. It would be better for the parties to conduct a land sale and purchase with a receipt accompanied by a written agreement or also strengthen their position with a land sale and purchase before a Notary/PPAT, so that the legal act has an authentic deed for the purpose of transferring rights and land registration.

Because an authentic deed is binding evidence that will be considered true and trusted by the judge if a dispute occurs in the future.

Receipts are made privately by the parties as written evidence (private letters) for the sale and purchase of land as initial evidence. If in the proof only has evidence of receipts for the sale and purchase, then its position is not strong enough, therefore other evidence such as witnesses is added to strengthen the receipt as evidence in the implementation of the sale and purchase of land carried out by the parties. In response to this, based on the Circular of the Supreme Court No. 4 of 2016 concerning the Enforcement.

Formulation of the Results of the 2016 Supreme Court Chamber Plenary Meeting as a Guideline for the Implementation of Duties for the Court (SEMA 4/2016) number 7 (SEMA 4/2016), reads as follows: "The transfer of land rights based on the Sale and Purchase Agreement (PPJB) legally occurs if the buyer has paid the full price of the land and has taken control of the object of the sale and purchase and is carried out in good faith." According to Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to one or more people. in making an agreement, the position between the parties entering into the agreement is the same and equal.³

To ensure the concept of legal certainty in conducting underhand buying and selling transactions, in this case legal certainty contains 2 (two) meanings, namely first, the existence of general rules that make individuals know what actions may or may not be done, and second, in the form of legal security for individuals from government arbitrariness because with the existence of general legal rules, individuals can know what the State may charge or do to individuals. Legal certainty is not only in the form of articles in the law but also the consistency in the judge's decision between one judge's decision and another judge's decision for similar cases that have been decided.⁴

Based on the theory of legal certainty which states that to guarantee the certainty of the parties in carrying out land sale and purchase transactions, it can be done or made in writing in the form of an agreement made before an authorized official and recognized by the state, so that it can be in the form of an authentic deed that has perfect legal force before the court. In making an agreement, the parties make an agreement without burdening one party even with an agreement to provide benefits to the parties. The agreement essentially contains an obligation to submit something, to do something or not to do something as regulated in Article 1234 of the Civil Code. An agreement that is not implemented by one and/or both parties is a form of default. An agreement

³R. Subekti, 1995, *Various Agreements*, Bandung, PT. Citra Aditya Bakti, p. 282.

⁴Peter Mahmud Marzuki, 2009, *Introduction to Legal Science*, Jakarta, 2nd edition, Kencana Prenada Media Group, page 158

cannot be withdrawn other than by agreement of both parties, the agreement is not only binding for things that are expressly stated therein, but also for everything that is according to the nature of the agreement. This is as stated in Article 1338 paragraph (1) of the Civil Code.

3.2 Legal Implications of the Sale and Purchase of Land Rights Underhand in Demak Regency

Regarding private deeds, there are several things that need to be known, namely in Article 1877 of the Civil Code it is stated that, if someone denies his writing or signature, then the judge must order that the truth of the writing or signature be examined in court. The main difference between an authentic deed and a private deed is the way the deed is made or occurs. There are at least two shortcomings or weaknesses of such private deeds. First, the absence of witnesses who made the private deed will make it difficult to prove it. Second, if one party denies or denies his signature, then the truth of the private deed must be proven in court. Because of these shortcomings or weaknesses, it is one of the considerations why people from time to time increasingly use authentic deeds for various transactions they carry out.

If it is heeded, then if the obligation is denied, the private deed can only be accepted as the beginning of written proof, according to Article 1878 of the Civil Code, the contents of which are the same as Article 1291 Rbg and Article 4 Stbl. 1867 No. 29. What is meant by the beginning of written evidence, is explained in Article 1902 paragraph (2) of the Civil Code, which reads: "what is called the beginning of written evidence is all written deeds originating from the person against whom the claim is made, or from the person represented by him, and which provide an assumption regarding the truth of the events put forward by a person." A sale and purchase that is not made before a Land Deed Making Officer (PPAT) remains valid even if it is only based on a receipt. This is based on Supreme Court Jurisprudence Number 126.K/Sip/1976 dated 4 April 1978 which decided that:

"For a land sale and purchase to be valid, it does not absolutely have to be a deed made by and before the Land Deed Official. This official deed is only a piece of evidence."

This is enforced in order to maintain legal certainty and protection for each party to the agreement and to realize the transfer of rights in accordance with the law. Regarding the proof of the contents of the private agreement submitted in the case file in decision No. 34.Pdt.G/2020/PN. Dmk cannot be explained in detail, this is due to the absence or even ignorance of the defendant's position which resulted in the decision being made unilaterally. The transfer of land rights in the decision raised by the researcher shows what has been discussed in the previous chapter, namely that the use of a private deed will give rise to bad faith by one of

the parties, in this case decision No. 34/Pdt.G/2020/PN Dmk bad faith is carried out by the seller by defaulting on his obligation to hand over the land in accordance with the agreement.

Decision No. 34/Pdt.G/2020/PN Dmk does not explain in detail the reasons why the buyer made a land purchase underhand, the buyer in the decision is explained to have made the payment without explaining the clear reasons why he did not make a binding sale and purchase agreement to the notary. Decision No. 34/Pdt.G/2020/PN Dmk explains the position where the seller is in default in the delivery of land that has been purchased and paid in full by the buyer. The parties involved in the sale and purchase have rights and obligations, the seller's obligation is to guarantee that the object being traded is legally his property based on applicable laws and is not bound by dispute status, while the buyer's obligation is to hand over a sum of money to the seller as agreed.

A private sale and purchase agreement is made in bad faith, then this results in an agreement not having binding legal force, in the sense that it is immediately null and void and is considered to have never existed because it no longer fulfills the elements of Article 1320 of the Civil Code, namely there is no free will. As explained in the provisions of Article 1338 of the Civil Code, namely: "All agreements made legally in accordance with the law apply as laws for those who make them. The agreement cannot be withdrawn other than by agreement of both parties, or for reasons determined by law. The agreement must be carried out in good faith. " Viewed from the perspective of the parties to the case, evidence is a tool or effort used to convince the judge in court.⁵ According to the HIR and RBg systems. Judges are bound by valid evidence, which is regulated by law. This means that judges may only make decisions based on evidence that has been regulated by law. This means that judges may only make decisions based on evidence that has been regulated by law. According to the provisions of Article 164 HIR-284 RBg, there are five types of evidence in civil cases, namely: written evidence, witness evidence, suspicion, confession and oath. A private deed is a deed made by the parties without the intermediary of a public official. A private writing requires recognition of the truth of the writing from the parties and other witnesses. However, if the signature in the private writing has been recognized by the parties, then the writing is binding and perfect as evidence. An authentic written agreement is also called an authentic deed. Theoretically, the definition of an authentic deed is a letter or deed that from the beginning was intentionally officially made for evidence if one day a dispute occurs.

The validity of land sale and purchase when viewed from the Law or Government Regulation, land sale and purchase that is considered valid is land sale and purchase conducted in the presence of a land deed making official or sale and

⁵Anshoruddin, 2004, *Law of Evidence According to Islamic Procedural Law and Positive Law*, Pustaka Pelajar, Surabaya, p. 25.

purchase with an authentic deed authorized by an authorized official. This is in accordance with PP No. 24 of 1997 concerning Land Registration in Article 37 number 1 stating 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. If the transfer of land rights is carried out with a private sale and purchase agreement, the agreement remains valid as long as the parties acknowledge the existence of the act. However, this agreement cannot be used to change land ownership data because the creation of a sale and purchase deed is not in accordance with Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. In addition to the difficulty of changing land ownership data, land sales and purchases with underhand agreements will make it difficult to prove that a legal act of transferring land rights through a sale and purchase has occurred, considering that underhand agreements are made only by the parties without a notary/PPAT.⁶

Legal protection in theory is divided into two, namely repressive legal protection and preventive legal protection. Repressive legal protection aims to resolve problems or disputes that arise, this legal protection is carried out by applying sanctions to the perpetrator or person who commits a violation to restore the law to its actual state. Repressive legal protection is usually carried out in court. Preventive legal protection aims to prevent a dispute from occurring. Legal protection has another meaning, namely protection given to legal subjects in the form of preventive or repressive legal instruments. Legal protection can be said to be a description of the function of law, namely where the law can provide certainty, benefit and justice.⁷

Preventive legal protection for the parties is also contained in the Civil Code. Legal protection for private agreements is only Article 1338 of the Civil Code where all agreements made legally apply as laws for those who make them. An agreement that has been made cannot be withdrawn except by agreement of both parties or for reasons that are stated by law to be sufficient for that. Repressive legal protection can be obtained by filing a lawsuit with the court filed by the party who feels aggrieved by the other party due to a breach of contract. However, in resolving disputes that may arise between the parties or with a third

⁶Endang Sri Kawuryan, 2014, "Legal Protection of the Legitimate Buyer of Rights Over Land Acting in Good Faith" Academic Research International Vol. 5(2) Brawijaya University, Malang, Indonesia.

⁷Sorin Fildan and Narcisa Mihaela Stoicu, "The Legal Characters of the Sales Contract" International Journal of Social Sciences and Humanity Studies Vol 4, No 2, 2012 ISSN: 1309-8063 (Online). "Vasile Goldis" Western University, Arad, Romania

party, it is not only possible to choose to resolve them through the courts. The settlement of the dispute is carried out in the following ways:

1. Deliberation, is an effort to negotiate a problem where both parties meet outside the court to reach a "win-win solution" agreement. Deliberation is generally carried out witnessed and led by a community leader or a person whose decisions are respected by the local community who is neutral where the dispute occurs;
2. The trial process through the courts.

The court in question is a general court which, based on Article 25 paragraph (2) of Law Number 48 of 2009 concerning Judicial Power, has the authority to examine, try, and decide criminal and civil cases in accordance with the provisions of laws and regulations. However, before the trial is held, in Supreme Court Regulation Number 1 of 2016 concerning Mediation Procedures in Court, it is stated that mediation must be carried out by the parties in a civil case in court which is carried out on the first trial day. Mediation is carried out so that the parties can resolve the dispute peacefully; and

3. Arbitration, which is the resolution of disputes outside the courts.

Efforts to resolve civil disputes can be carried out outside the state court, namely through arbitration or alternative dispute resolution.

Based on the General Provisions of Article 1 number 1 of Law Number

30 of 1999 Concerning Arbitration and Alternative Dispute Resolution, Arbitration is a method of resolving a civil dispute outside the general courts based on an arbitration agreement made in writing by the disputing parties. An arbitration agreement is an agreement in the form of an arbitration clause contained in a written agreement made by the parties before a dispute arises, or a separate arbitration agreement made by the parties after a dispute arises.

In the event of a breach of contract, each party may seek protection that can be carried out by the parties. This protection includes:

1. Protection for sellers

Protection that can be done is to ask the buyer to immediately pay the price of the object of the agreement within a certain period of time. Based on Article 1513 of the Civil Code, the main obligation of the buyer is to pay the purchase price at the time and place as determined by the agreement. However, if it is not determined at the time of making the agreement based on Article 1514 of the Civil Code, the buyer must pay at the place and time where the delivery must be made.

2. Protection for buyers

Protection that can be done by the buyer in the implementation of the sale and purchase agreement is to check the existence of evidence of ownership of land rights that are the object of the agreement. The buyer based on Article 1491 of the Civil Code can ask the seller to guarantee that the object of the agreement is in the possession of the sold safely and peacefully and guarantees from hidden defects.

According to Article 1320 of the Civil Code, an agreement must meet the following requirements:

- a. Agree those who bind themselves
- b. Able to make an agreement
- c. Regarding a particular matter
- d. A lawful cause

The first two conditions are called subjective conditions, because they concern the people or subjects who enter into the agreement, while the last two conditions are called objective conditions because they concern the agreement itself or the object of the legal act carried out.

4. Conclusion

The position of the receipt is included in written evidence as per Article 164 HIR/284 R.Bg and Article 1866 of the Civil Code, in the form of a private letter made intentionally for a statement of intent. This private letter has the power of proof if there is no denial from either party. The parties conduct land sales and purchases with receipts accompanied by a written agreement or their position is strengthened by land sales and purchases before a Notary/PPAT, so that the legal act has an authentic deed for the purpose of transferring rights and land registration. Based on the theory of legal certainty which states that to guarantee the certainty of the parties in conducting land sales and purchases, it can be done or made in writing in the form of an agreement made before an authorized official and recognized by the state. Therefore, legal protection is needed, namely repressive legal protection and preventive legal protection. Repressive legal protection aims to resolve problems or disputes that arise, carried out by applying sanctions to the perpetrator or person who commits a violation to restore the law to its actual state, usually carried out in court which aims to prevent a dispute from occurring, for the parties it is also contained in the Civil Code. Legal protection for private agreements is only Article 1338 of the Civil Code where all agreements made legally apply as laws for those who make them. Repressive legal protection can be obtained by filing a lawsuit in court filed by a party who feels aggrieved by another party due to a breach of contract. However,

in resolving disputes that may arise between the parties or with a third party, it is not only possible to choose to resolve it through the courts.

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