**ABSTRAK**

An underhand deed is a deed that has been made by the parties who made it without being made before an authorized official or it can be called PPAT. The binding power between the seller and the buyer in an underhand deed is the same as an authentic deed. The purpose of this is that it is allowed based on an agreement and does not conflict with the law so that the legal action is indeed legal in accordance with article 1338.

The purpose of this study is to analyze and describe the legal protection for buyers against buying and selling land rights that are carried out under the hands. The research conducted in writing this thesis is empirical research, using a sociological juridical approach. Based on the results of the study, it can be concluded that (1) the buyer does not get legal protection for the land he bought; (2) the buyer does not get legal certainty over the land he bought; (3) the buyer does not get strong evidence against the rights to the land he bought. This of course will be detrimental to the buyer who purchases land rights under his own hands. This incident is expected to make people aware of buying and selling before PPAT so that they get legal protection and certainty.



JUSTICIABELEN

Jurnal Hukum

Journal homepage: <http://journal.umg.ac.id/index.php/justiciabelen/index>

**DUE TO THE LAW OF SELLING AND BUYING LAND WITH CERTIFICATE OF PROPRIETARY RIGHTS IN UNDER HANDS**

Muhammad Azkannasabi

Universitas Muhammadiyah Gresik, Jl, Sumatera No. 101, Gn. Malang, Randuagung, Kec. Kebomas, Kabupaten Gresik, Jawa Timur 61121, Indonesia.

azkannasabi05@gmail.com

***Kata Kunci :***

*Sale and Purchase of Land, Underhand Deed, PPAT*

1. INTRODUCTION

Land is very closely related to human life. Everyone certainly needs land, not only in their lives, even to die humans still need a piece of land. Land has an important role in human life because it has a dual function, namely as a social asset and a capital asset. As a social asset, land is a means of binding unity among the Indonesian people in living in society, nation and state, while land capital assets are a capital factor in development and land must be used and utilized as much as possible for the welfare of the people in a fair and equitable manner, and its sustainability must also be maintained.

The National Land Law is based on the Customary Law on land. The statement regarding Customary Law in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles can be seen in Article 5 which states that: Agrarian law applicable to earth, water, space is customary law, as long as it does not conflict with national interests and The state, which is based on national unity, with Indonesian socialism as well as with the regulations contained in the UUPA and with other laws and regulations, all by taking into account the elements that rely on religious law.

In accordance with the principle in Article 5, that the National Land Law is based on Customary Law, the determination of land rights in this article is also based on the systematics of Customary Law. The customary law used is in the form of legal norms as outlined in the legislation as written law. The conception that underlies customary law is religious communalism, which allows individual land tenure, with private land rights, as well as containing elements of togetherness.

Legal institutions known in Customary Law are generally the institutions needed to meet the needs of the people who are still simple. Thus, the institutions adopted in developing the National Land Law need to be refined and adapted to the needs of the times and changing society. To meet the needs of an open modern society, such as a land buying and selling institution, it must undergo modernization and adjustment, without changing its nature as a legal act of transferring land rights.

The sale and purchase of land as a form of transfer of land rights according to Government Regulation Number 10 of 1961 which has been updated by Government Regulation Number 24 of 1997 concerning Land Registration in Article 37 must be proven by a deed made by a Land Deed Maker Official (PPAT). . The deed made by the PPAT is used as a strong basis for the registration of the right in question. With this Government Regulation, the sale and purchase of land must be carried out with a PPAT deed. The legal act of buying and selling carried out with the PPAT deed has fulfilled the formal requirements for the transfer of land rights and fulfilled the clear requirements (not a "dark" legal act, which was carried out secretly) as well as the deed signed by the parties showing the real or "real" sale- buy done.

Therefore, the PPAT Deed is proof that a cash legal action has been taken, as well as proving the transfer of land rights to the recipient of the right, as well as proving implicitly that the recipient of the right has become the new right holder.

Life in everyday society is still a lot of buying and selling land is carried out between sellers and buyers without any PPAT intervention. The act of "buying and selling under the hands" is sometimes only proven by a deed made by the seller himself and known by at least two witnesses. This sale and purchase of land under the hands is a sale and purchase carried out by both parties who only enter into an agreement with a simple agreement regarding the object of land to be sold and the price and method of payment.

The sale and purchase of land and buildings under the hands does not meet the formal requirements for the transfer of land rights. In addition to the formal requirements that must be met, the sale and purchase must meet material requirements. This material requirement is the basis for whether or not the formal requirements can be implemented. Material requirements determine whether or not the sale and purchase of land and buildings will be legal. The first condition is that a buyer must be the person who has the right to buy the land in question or a buyer as the recipient of the rights must meet the requirements to own the land to be purchased. According to Article 21 of the UUPA, only single Indonesian citizens and legal entities can have ownership rights over land. The second condition is that a seller must be the legal owner of the right to the land or a person who has the authority to take legal actions against the land in question. The third condition is that land as an object of sale and purchase is not in dispute or is land that cannot be traded. Land that is not in dispute implies that the ownership of the land is not in doubt.

Since the enactment of Law Number 4 of 1996 concerning Mortgage Rights on Land and Objects Related to Land or often referred to as UUHT, land and buildings can be encumbered with Mortgage Rights. Land and buildings that are being encumbered with Mortgage Rights and will be sold

implies that land and buildings as objects of Mortgage as well as objects of buying and selling. Mortgage speaks of modern credit activities that provide protection and a special position to certain Mortgage Holder creditors. The special positions include Droit De Preference and Droit De Suite. Thus, if the object of the mortgage is to be transferred, the giver of the mortgage must notify the holder of the mortgage to know whose hands the object is in.

The practice in society of objects that are being encumbered with Mortgage Rights is buying and selling under the hands but not for execution. The sale and purchase under the hand is in the context of the transfer of rights which should be based on an agreement between the giver and the holder of the Mortgage in accordance with Article 20 paragraph (2). However, in buying and selling under the hands, it is only known by the seller as the debtor giving the Mortgage and the buyer and witness, without being known by the holder of the Mortgage and without being carried out with the PPAT deed. This is not in accordance with Article 20 UUHT which actually sells under the hand can only be carried out in the context of execution and must obtain an agreement between the giver and the holder of the Mortgage. Article 20 paragraph (4) states that any agreement that is contrary to the regulated provisions is declared null and void.

This research is included in the type of empirical research. Juridically this research focuses on Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration

1. RESULTS AND DISCUSSION

Legal Protection for Buyers Against Buying and Selling Land Rights Conducted Underhand

The sale and purchase of land rights carried out under the hands has made and stated that there has indeed been a legal action between the two parties, namely between the seller and the buyer, and although it is only limited to under the hands, it is also a means of proof as regulated in the Criminal Code. The Civil Code, especially in Article 1866, where one of the evidences is written evidence, this is further strengthened in Article 1874 of the Civil Code which states that one of the written evidence also includes an underhand letter that has been signed or has been affixed with a thumbprint by the parties. interested parties in the agreement.

The basis of buying and selling land can be viewed from the perspective of laws and government regulations, legitimate land sales and purchases are sales and purchases carried out before an official who makes a land deed who has an authority that has been regulated by a regulation or can be called an authentic deed ratification. carried out by the competent authority. This has been regulated in the form of a government regulation on land registration which tercantum pada pasal 37 ayat 1. However, in this case there is an exception to the transfer of rights through an auction which can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

The community in carrying out buying and selling with an authentic deed that is ratified/done by an authorized official in order to provide a certainty/strength to the deed made. So this can be seen from a previous good deed or that preceded it, such as from the offer and acceptance stage, conformity with the statement of will, and so in the implementation of the agreement.

The sale and purchase agreement is an agreement that binds one party to another with the existence of an agreement, then each party has a responsibility for its performance in the form of the ability and delivery of voting rights over an item, and the ability to pay an amount of money which is the price of the goods. an item. So if it has been agreed from the emergence of the agreement to give a clear thing to the object.

Basically, the seller and the buyer have their respective obligations, such as the seller must submit and guarantee the buyer of the land sold in a state of dispute. Meanwhile, the buyer must make timely payment/repayment because if the agreed settlement does not occur, the agreement is void and never happened.

The sale and purchase carried out before the village head is a legal act according to the law because if the material conditions are met. However, buying and selling before the village head is something that does not provide legal certainty, protection, and strength to the land deed. So buying and selling before the village head can be said to be buying and selling that cannot be registered and results in the transfer of land rights being invalid.

The sale and purchase of legal land rights is something that strengthens evidence, expands the evidence by making the sale and purchase deed that can be known by the public and anyone with an interest. Registration of transfer of land rights due to sale and purchase at the National Land Agency Office is not a condition for the validity of the sale and purchase that has been carried out but only to determine the validity of a deed that has been registered and made before an authorized official.

The execution of the deed of sale and purchase before the official making the land deed in the form of the presence of one party and another party to carry out a legal action in question or a person who has been authorized by applicable regulations and there must be at least two witnesses to fulfill syarat.(Pranciska Romana Dwi Hastuti, 2015)

Legal protection is present to provide a certainty that regulates the fulfillment of the rights of the parties if one of the parties defaults or does not fulfill the promise in the agreement that has been bound in the form of a sale and purchase agreement, it really depends on the strength of the sale and purchase binding agreement made, namely if made with an underhand deed, the protection is in accordance with the protection against an underhand deed.

Whereas in the deed of sale and purchase in doing so or made by a Notary, the deed automatically becomes a Notary deed so that the power of protection is in accordance with the protection of the Authentic Deed. In dealing with problems such as default, preventive and repressive legal protection can also be carried out.

Preventive legal protection is protection given to the government before there is a violation listed in a rule so as to create a limit in carrying out legal actions. However, repressive legal protection is a form of action which is subject to imprisonment, compensation, and fines.

Legal protection is given to the parties who make a sale and purchase with an underhand deed in the form of between the two parties acknowledging the agreement to be made, most importantly on the seller's side. and the legal force of the private deed will be the same as the authentic deed. (Yulia Kumalasari, 2016)

If one of the parties denies that there has never been a sale and purchase, then return to the applicable Government Regulation as long as there is no other evidence to prove it.

Legal Consequences of Transfer of Land Rights Through Underhand Agreements

In an activity of transferring land rights, there is a transfer of land rights from the seller to the buyer. The occurrence of the transfer of rights is based on buying and selling activities that arise from a process of transferring property rights using money as the medium of exchange.

However, we can no longer deny that in the midst of everyday people's lives, there are still many buying and selling of land that is carried out between the seller and the buyer doing it under the hands, which is not done in front of the official making the land deed. Usually the legal action is by using a receipt as proof that a sale and purchase has taken place.

Buying and selling carried out under the hands is allowed if it meets the requirements in Article 1320 of the Civil Code, and fulfills the material requirements that are cash, clear and real. However, this makes the absence of a legal certainty as in the case of the transfer of rights or statuses that want to be renamed on the certificate because it is not registered with the official making the land deed. It performs transactions based on a handle on the receipt. Whereas in carrying out an act registered with the official who made the deed, it is in accordance with Article 19 of the UUPA, and is regulated by the provisions of PP nomor 24 Tahun 2016.(Angreni & Wairocana, 2018)

1. An underhand deed is a deed that has been made by the parties who made it without being made before an authorized official or it can be called PPAT. The binding power between the seller and the buyer in an underhand deed is the same as an authentic deed. The purpose of this is that it is allowed based on an agreement and does not conflict with the law so that the legal action is indeed legal in accordance with article 1338 of the Civil Code. (Rismadewi & Utari, 2015)
2. Except when there is an agreement between the two parties and Article 1459 of the law has stipulated, meaning that if no delivery has been made to the buyer then all risks are the responsibility of the seller. (R Subekti, 2010)
3. 1. CONCLUSION
4. Legal protection is present to provide a certainty that regulates the fulfillment of the rights of the parties if one of the parties defaults or does not fulfill the promise in the agreement that has been bound in the form of a sale and purchase agreement, it really depends on the strength of the sale and purchase binding agreement made, namely if made with an underhand deed, the protection is in accordance with the protection against an underhand deed.
5. An underhand deed is a deed that has been made by the parties who made it without being made before an authorized official or it can be called PPAT. The binding power between the seller and the buyer in an underhand deed is the same as an authentic deed. The purpose of this is that it is allowed based on an agreement and does not conflict with the law so that the legal action is indeed legal in accordance with article 1338.
6. The legal consequences for the buyer of the sale and purchase of land rights carried out under the hands, among others:
7. a. Unable to register the transfer of land rights (transfer of name) certificate to the local Land Office.
8. b. Not getting a strong evidence if later the land he bought is in dispute.
9. c. The buyer cannot guarantee his certificate to obtain the credit he submitted, without involving the seller of the land concerned
10. d. Legal protection for buyers against the sale and purchase of land rights carried out under the hands is evidence of the agreement, even though it is carried out under the hands, but it can be used as a form of legal protection because it can be a piece of evidence with weak evidentiary strength.

**BIBLIOGRAPHY**

Harsono, B. (2015). Hukum Agraria Indonesia, Sejarah Pembentukkan UUPA, Isi dan Pelaksanaannya. Djambata

Pranciska Romana Dwi Hastuti. (2015). 117KEABSAHAN JUAL BELI HAK ATAS TANAH DIBAWAH TANGAN DIDESA PATIHAN KECAMATAN SIDOHARJO KABUPATEN SRAGEN (Tinjauan Beberapa Kasus Terkait di Pengadilan Negeri di Surakarta). Reportorium, 2

R Subekti. (2010). Pokok-Pokok HUkum Perdata. Intermasa.

Rinto Manulang. (2011). Segala Hal Tentang Jual Beli. Buku Pintar.

Rismadewi, A., & Utari, A. A. S. (2015). KEKUATAN HUKUM DARI SEBUAH AKTA DI BAWAH TANGAN. Ilmu Hukum, 3, 3–4.

Soenaryo. (2010). Metode Research Kesatu. Universitas Sebelas Maret Press.

Sutedi, A. (2012). Sertifikat Hak Atas Tanah. Sinar Grafika.

Sutedi, A. (2016). Peralihan Hak atas Tanah Dan Pendaftarannya. Sinar Grafika.

Yulia kumalasari. (2016). Perlindungan Hukum Terhadap Pihak Pembeli Beritikad Baik Dalam Jual Beli Tanah Bengkok.