LEGAL PROTECTION FOR PARTIES IN LAND BUYING UNDER THE HANDS

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ABSTRACT

The purpose of this research is to get an understanding of the legality of buying and selling land under the hands and to know and understand the legal protection for the parties in buying and selling land under the hands. Collection of Legal Materials, is carried out through literature study, which is collecting legal materials, both primary legal materials and secondary legal materials relating to the protection of the parties in the sale and purchase of land under the hand, in legislation. Literature study is done by studying various library materials related to the subject matter. While documentary studies by intervening in laws and regulations and qualifying them in order to obtain legal material in accordance with the material under study. Processing and Analysis of Legal Materials in Normative Juridical legal research by carrying out a systematized classification of written legal material in the form of theories and expert opinions relating to the subject matter. The legal materials obtained are then analyzed qualitatively and systematically to find conclusions from the problems discussed. The activities carried out in analyzing legal materials are as follows: (a) Primary legal materials in the form of laws and regulations are analyzed inductively qualitatively. Some of the legislation that has been classified and then selected articles governing the protection of the rights of indigenous peoples in the legislation; (b) Make a systematic of the articles so that it produces certain to be analyzed and then conclusions are sought. Legal protection for the parties in buying and selling with a deed under the hand, namely: a) Both parties, especially the seller acknowledge the sale and purchase agreement that is implemented, in this case the most important thing is to acknowledge the seller. If both parties acknowledge that the agreement under the hand that has been done is considered perfect and the legal force of the deed under the hand will be the same as the authentic deed. b) If one party denies that there has never been a sale and purchase then go back to the applicable Government Regulation as long as there is no other evidence to prove. Factors that cause people to buy and sell with a deed under the hand, namely: a) The community lacks understanding or even ignorance of the perpetrators of the transaction both the seller and the buyer of land regarding the applicable legal provisions. b) First of all, based only on mutual trust between the seller and the buyer and ignorance of the rights and obligations as the seller and buyer of the land d) Does not have the cost to transfer rights or even does not have the funds to pay income tax (PPh) or Land and Building Acquisition Fee (BPHTB). e) The type of land is still agricultural land (paddy / tegal), while only partially purchased, it must be requested to change the status of the land first to residential land. f) The type of land is still agricultural land, while the buyer resides outside the sub-district area where the land is the object of buying and selling or even outside the regency or province, so that it is still waiting for the process of moving the population for the buyer so as not to violate the provisions on absenteeism, or as such is taken the road is requested / processed for a request to change the type of land into residential land first. g) To facilitate the process of transferring rights because the land owner has died, while the heirs are quite a lot. Most of them are elderly and live far from the location of land for sale.

Keyword: Buying and Selling, Under the Hand, Land, and Legal Protection

INTRODUCTION

Land is very closely related to human life (Garrigues, Corson, Angers, van der Werf, & Walter, 2012). Every person certainly needs land even not only in his life, even for humans to die still need a piece of land. Land can mean different things to different people, that embrace the atmosphere, the soil, and the underlying geology (Whyte, 1976) and territory (Elden S., 2010)
being bounded by communities culturally and politically (Saugestad, 2001); (Li, 2007). The amount of land that can be controlled by humans is very limited, while the number of people who have a degree of land is constantly increasing (Peters, 2013). In addition to the increasing number of people who need land for shelter, economic and social, cultural and technological progress and development also requires the availability of large amounts of land, for example for plantations, animal husbandry, factories, offices, entertainment venues and roads for transportation facilities. Therefore, the longer it feels as if the land becomes narrow, while the demand is always increasing (Lambin, Tran, Vanwambeke, Linard, & Soti, 2010). So do not be surprised if the value of the land has increased. The imbalance between the supply of land with the need for land has caused many problems that are many in many parts (Long, Li, Liu, Woods, & Zou, 2012). Hence, sustainable land management is urgently required because of widespread resource degradation from poor land use practices (Motavalli, Nelson, Udawatta, Jose, & Bardhan, 2013) as the result of human uses land and the interactions of global climate changes on the Earth’s surface (Kim, 2016). At present, to obtain land can be obtained in several ways, namely by requesting rights, transferring rights.

In our society, the acquisition of land rights is more often done by transferring rights, namely through buying and selling. Transfer of rights / Transfer of rights, is a legal act aimed at transferring rights, including: Buying and selling, Grants, Exchange, Separation and distribution of shared assets and income in companies or inbreng. The words of sale and purchase in the everyday sense can be interpreted, where someone releases money to get the desired item voluntarily. According to Boedi Harsono, "In Customary Law the act of transferring rights (buying and selling, grants, exchanging) is a legal act in cash". In America, for instance, more than one-third of forested land is owned by individuals or families (Kueper, Sagor, & Becker, 2013).

Whereas, in Tanzania and Nicaragua, owning land is a marker of dominance (Grabe, Grose, & Dutt, 2014). Meanwhile, in Thailand, land ownership can be considered as a determinant of temporary migration in a rural area of Thailand (Vanwey, 2003). In Indonesia, owning land and other natural resources is dominated by a discourse based on adat (Bender & Arizona, 2019) and informal linkage between communities, their mediators, and local authorities (van der Muur, 2018). However, owning lands mean there is taxation (Kalkuhl, et al., 2018) as well as concerning the equalization of land rights (Schiffrin, 1957).

Buying and selling in land law with the payment of the price at the same time in cash. State laws and policies on the allocation of land usually favor the economically and politically dominant classes (Borras & Franco, 2012). In a conflict, based on this fact, the local people are generally at disadvantaged position (Alden Willy, 2012). It can happen and particularly rampant in countries with weak rule of law allows the formation of informal alliances between state bureaucracies and private enterprise (Kaag & Zommers, 2014); (Schmink, 1982); (Bavinck, Pellegrini, & Mostert, 2014). However, it has been through a lot that local people may have legitimized their counter-claims in various ways in terms of human rights, citizenship rights, and religious norms or values (Aspinall, 2004); (Johnson & Forsyth, 2002); (Gilbert, 2007).

Then according to Civil Law (BW) Article 1457 it is stated that the sale of land is an agreement with which the seller binds himself (meaning promises) to surrender the right to the land concerned to the buyer who is bound himself to pay the seller the price agreed upon. The provisions stipulated in all of Book II of the Civil Code have been revoked and are no longer valid. On September 24, 1960 concerning the Basic Regulations on Agrarian Principles was published in State Gazette Number 104, 1960 which is better known as the Basic Agrarian Law (UUPA).

With this UUPA, "dualism" disappears and a unity of law (Unification) is established in the field of Agrarian Law in our country. Agrarian issues are problems that require special attention and regulation, clear and as soon as possible. Therefore, in the 1945 Constitution Article 33 paragraph (3) determines as follows: "the earth, water and natural resources contained therein are controlled by the State and are used to the greatest prosperity of the people".

This provision becomes the basic foundation for the Indonesian government to form various laws and regulations in the land / agrarian sector. Agrarian sector has important role to play in particular in area of poverty reduction, ensuring food, and nutrition security (Wiegars, 2008). The provisions of Article 33 paragraph (3) are imperative, namely containing an order to the state so that the earth, water and natural resources contained therein, which are
placed in the control of the state, are used to realize prosperity for all Indonesian people. Thus, the purpose of state control over the earth, water and natural resources contained therein is to realize the magnitude of the prosperity of the people of Indonesia. Hence, the challenges facing agriculture in the coming decades are intimidating (Thornton, Dinesh, Cramer, Loboguerrero, & Campbell, 2018). The small landholders is the principal cause of deforestation (Sunderlin & Resosudarmo, 1999).

Land as part of the earth’s surface, has a very important meaning in human life, both as a place or space of life with all its activities, as a source of life, even as a nation land is an element of territory in the sovereignty of the state (Elden S. , 2013). Therefore, the land for the Indonesian people has a lasting and religious magic relationship, which must be properly guarded, managed and utilized. Land for traditional people or tribes can be territories, ceremonial areas, etc. (Wessing, 1993). In the course of the history of the Indonesian people, land has become an interesting part of legal development (Purwanto & Mangku, 2016). This is mainly because land resources directly touch the needs of life and human life in all walks of life, both as individuals, community members and as a nation. This is like the case in Surakarta, Indonesia, the land-titling program had a significant impact upon changing the lives of the residents, enabling them to access other person rights (Mulyani, 2015) or Upper Citarum Watershed has degraded the watershed and significantly can be seen impacting the water quality in the upper Citarum River (Agaton, Setiawan, & Effendi, 2016). The land use can also affect the way people of certain community lead their ways of life (Weber, et al., 2007).

Such is the importance of land that Jean Jacques places aspects of community land ownership as part of social contract theory. In determining the right to a piece of land, who is the first occupant becomes the determining factor. Legally, the position of the first occupant is recognized as the owner if he meets the following conditions. First, no one had occupied the land before. Second, the land is controlled only to fulfill their daily needs and not for community. Third, ownership processes are not determined by mere ritual ceremonies, but there is evidence of ownership that must be respected by others.

Land ownership is a human right that is protected by international and national law. As for land ownership, it can be transferred to other people. Transfer of land rights can be through sale and purchase, exchange, grants or because of inheritance. In article 26 paragraph (1) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, it is determined that: "sale and purchase, exchange, gift, gift, with wills and other acts intended to transfer ownership and control are regulated by government regulations". In this case the focus is on the sale and purchase of land, which in the Civil Code on Sale and Purchase Article 1457 explains: "buying and selling is an agreement, with which the parties commit themselves to surrender a material, and the other party to pay the price promised". In buying and selling there are always two sides of civil law, namely material laws and binding law. It was said so because on the legal side of material things, buying and selling gave birth to the rights of both parties to the bill, in the form of material submission to one party and payment of the selling price to the other party. Meanwhile, in terms of the engagement, buying and selling is a form of agreement that gives birth to obligations in the form of the delivery of material sold by the seller, and the delivery of money by the buyer to the seller.

Land sale and purchase institutions have been perfected without changing their nature as the transfer of land rights for ever which are cash and clear. Civil Code Regarding Sale and Purchase Article 1457 6 It's just that the current definition of "light" is that buying and selling is carried out according to the applicable written regulations, it must be proven by a deed made by a Land Deed Making Officer (PPAT), and after the deed is signed by the parties then it must be registered. Whereas "cash" means the transfer of rights and payment of the price carried out simultaneously. It is also a medium of exchange (Davidson, 1990) and as assets (lands) regarded as money (Goodhart, 1984).

In the absence of regulations that specifically regulate specifically the sale and purchase of land, of course there will be many different interpretations regarding the legal institution of buying and selling land. Buying and selling land which was originally sufficient to be done in front of the village head and now by agrarian regulations must be before the PPAT is a change aimed at improving the quality of evidence carried out according to customary law where the community is limited in personal and territorial scope that is enough to make a letter by the seller himself and know by the government of the country / village head.
In practice, buying and selling land certainly cannot always run smoothly, there are times when things arise that are actually unexpected, and usually these problems arise in the future. As much as possible in making an agreement it cannot be denied that there are gaps in weakness that one day if a dispute occurs it becomes a loophole to be used as reasons and self-defense and the party will cancel, and even seek their own benefits from the agreement.

However, despite the application of legal protection for victims of land cases, it is undeniable that there are still very many cases in Indonesia such as land cases, up to September 2013 the number of land cases reached 4,223 cases consisting of 1,888 remaining cases in 2012. 2,335 new cases and new cases. The number of cases completed has reached 2,014 cases or 47% spread over 33 provinces throughout Indonesia from the number of national buying and selling transactions which had the highest number in 2013, namely 1,109,104 thousand buying and selling transactions, and finally in 2016 national buying and selling transactions were still charted. the lowest is less than 250 thousand transactions.

Likewise, buying and selling land is a normal transaction activity carried out by the community, but behind all of the transaction activities there are very many obstacles or cases that can be obtained, because there are still so many unscrupulous people who buy and sell dishonestly and harm others, for example buying and selling with a deed under the hand, where from the results of the prewen research the author shows that only ± 30% of the community uses an authentic deed, and there is still a lack of public awareness of the law itself, so they do whatever they want, doing the practice of buying and selling land without regard to existing rules. Based on this, the authors are interested in conducting research on: "LEGAL PROTECTION FOR PARTIES IN LAND BUYING UNDER THE HANDS".

Sale and purchase of land under the hand, which is done between the seller to the buyer resulting in the transfer of rights and obligations of the land object to the buyer (Chauveau & Colin, 2010). The transfer of land can be carried out by buying and selling in a traditional manner that is done under the hands of the head of the village or head of the village by the parties concerned and confronted witnesses, relatives and neighbors. According to the Civil Code Article 1458 buying and selling under the hand is legal, but the proof is weak. Until now there are still many among the people who carry out buying and selling under the hand which consequently many parties get losses.

In this case the focus is on the sale and purchase of land, which in the Civil Code on Sale and Purchase Article 1457 explains: "buying and selling is an agreement, with which the parties commit themselves to surrender a material, and the other party to pay the price promised". 6 In buying and selling there are always two sides of civil law, namely material laws and binding law. It was said so because on the legal side of material things, buying and selling gave birth to the rights of both parties to the bill, in the form of material submission to one party and payment of the selling price to the other party. Meanwhile, in terms of the engagement, buying and selling is a form of agreement that gives birth to obligations in the form of the transfer of material sold by the seller, and the transfer of money by the buyer to the seller cash and bright.

Buying and selling land which was originally sufficient to be done in front of the village head and now by agrarian regulations must be before the PPAT is a change aimed at improving the quality of evidence carried out according to customary law where the community is limited in personal and territorial scope that is enough to make a letter by the seller himself and know by the government of the country / village head. In practice, buying and selling land certainly cannot always run smoothly, there are times when things arise that are actually unexpected, and usually these problems arise in the future. As much as possible in making an agreement it cannot be denied that there are gaps in weakness that one day if a dispute occurs it becomes a loophole to be used as reasons and self-defense and the party will cancel, and even seek their own benefits from the agreement.

However, despite the application of legal protection for victims of land cases, it is undeniable that there are still very many cases in Indonesia such as land cases, up to September 2013 the number of land cases reached 4,223 cases consisting of 1,888 remaining cases in 2012. 2,335 new cases and new cases. The number of cases completed has reached 2,014 cases or 47% spread over 33 provinces throughout Indonesia from the number of national buying and selling transactions which had the highest number in 2013, namely 1,109,104 thousand buying and selling
transactions, and finally in 2016 national buying and selling transactions were still charted. the lowest is less than 250 thousand transactions. Likewise, buying and selling land is a normal transaction activity carried out by the community, but behind all of the transaction activities there are very many obstacles or cases that can be obtained, because there are still so many unscrupulous people who buy and sell dishonestly and harm others, for example buying and selling with a deed under the hand, where from the results of the prewen research the author shows that only ± 30% of the community uses an authentic deed, and there is still a lack of public awareness of the law itself, so they do whatever they want, doing the practice of buying and selling land without regard to existing rules.

The objectives of this research are as follows: (1) To get an understanding of the legality of buying and selling land under the hand. (2) To know and understand the legal protection of the parties in the sale and purchase of land under the hand.

Stages of Research Methods are as follows: (1) Collection of Legal Materials, is carried out through literature study, which is collecting legal materials, both primary legal materials and secondary legal materials relating to the protection of the parties in the sale and purchase of land under the hand, in legislation. Literature study is done by studying various library materials related to the main problem. While documentary studies by intervening in laws and regulations and qualifying them in order to obtain legal material in accordance with the material under study. (2) Processing and Analysis of Legal Materials in Normative Juridical law research by carrying out a systematized classification of written legal material in the form of theories and expert opinions relating to the subject matter. The legal materials obtained are then analyzed qualitatively and systematically to find conclusions from the problems discussed. (3) Primary legal materials in the form of legislation are analyzed in a qualitative inductive manner. Some of the legislation that has been classified and then selected articles governing the protection of the rights of indigenous peoples in the legislation. (4) Make a systematic of the articles so that it produces certain to be analyzed and then conclusions are sought.

Targeted Output: (1) Theoretically, for academics this research is expected to be able to contribute ideas for Academics, Students, the World of Education in general, especially in the field of Civil, Development of Science, especially Legal Studies relating to Legal Protection of Buying and Selling Land Under the Hand. (2) Practically, for the practitioners it is hoped that this research will be of use to the Regional Government, Law Enforcement Officers, and the General Public in terms of Civil Law enforcement relating to issues regarding Legal Protection of Buying and Selling Land Under the Hands.

**METHODOLOGY**

In accordance with the issues raised, research on the legality of buying and selling land under the hands is included in the Normative Juridical Research. This study will examine primary legal materials (Laws), and secondary legal materials (books written by legal experts, papers, jurisprudences and etc.).

The type of legal research used in this study is Normative Juridical law that emphasizes library research and the statutory approach (Statute Approach), which is an approach that is carried out by reviewing the laws and regulations relating to or having relevance to the issues discussed. Nor do a conceptual approach (Conceptual Approach), which is an approach carried out by examining the concepts and views of experts relating to the issues discussed.

The nature of the research used in this thesis is a qualitative study, which is useful to provide an explanation of the legality of the sale and purchase of land laws under the legislation and will be described later in the analysis and then supported by research reports and interviews if needed.

Legal research in principle is a process of finding legal rules, legal principles, and legal doctrines in order to address the legal issues at hand. In legal research there are several approaches to obtain information from various aspects of the issue being tried to find the answer. The approach that researchers used in this study is a combination of several approaches, namely the statutory approach (Statute Approach), and the case approach (Case Approach).

In the method of the statutory approach, research is carried out by understanding the hierarchy and principles in statutory regulations. In other words, the legislative approach is an approach using legislation and regulation. In this study, researchers first departed from the provisions of the law, especially regarding the provisions in the legislation regarding the validity
of the law of buying and selling land under the hand.

RESULT AND DISCUSSION

Legal Protection for the Parties in Buying and Selling Land with Deed Under the Hand. Legal protection can be divided into preventive legal protection and repressive legal protection. Preventive legal protection is provided by the government before a violation is stated in a statutory regulation by providing signs or restrictions in carrying out a legal act.

Based on article 1491 of the Civil Code the seller in conducting a sale and purchase transaction must guarantee in advance that the possession of the object is safe without any interference from any party, and explain important matters relating to the object from hidden defects, it is included in preventive protection

Furthermore, repressive legal protection is protection provided when a violation of the law occurs. The form of protection is in the form of law enforcement which includes sanctions, such as fines, compensation, imprisonment and additional penalties as well as the methods adopted when resolving disputes in court.

The legal protection of the parties, especially buyers in the sale and purchase agreement carried out under the hand, Namely, by signing the deed before a Notary or official appointed for ratification of signatures (such as Consular Officers, Embassies, Regional Heads starting from the Regent level up) by explaining the contents in advance to the parties then a signing is done before a Notary or public official authorized to have very strong evidence in accordance with proof of authentic deed.

Legal protection provided by prospective sellers, is in the form of conditions that are usually requested by the prospective buyer himself. For example, there are several prospective sellers who in the binding sale and purchase agreement made to ask the buyer to make payment of the buyer's money with a certain period accompanied by with void requirements.

For example, if the buyer has paid off the entire sale and purchase price of land and buildings as stipulated in the bond binding agreement and has signed the Minutes of Handover of the building in front of the Land Deed Makers Officer appointed by the seller in this case the prospective seller, a Deed of Sale will be made.

Buy

Protection for buyers in addition to being carried out on conditions must be followed by a request for granting an irrevocable power of attorney. The intention is that if the seller does not fulfill it, the buyer can demand and claim compensation in accordance with the agreement stipulated in the binding agreement.

Buy and sell

Legal protection is very important. Associated with the sale and purchase of land with a deed under the hand of the community does not close the possibility of the absence of problems that occur and the problems caused by it, for example defaults

Loss for the parties themselves. Therefore there is a need for legal protection for the parties to be able to provide legal certainty and maintain the fulfillment of their interests and rights each party.

Legal protection for the fulfillment of the rights of the parties if one of the parties defaults or breaks a promise in a binding purchase agreement depends on the strength of the binding purchase agreement made, i.e. if made with a deed under the hand, the protection is in accordance with the protection of the Deed at under the hand.

The protection efforts that can be carried out by each party include: (1) Protection of Sellers. Protection that can be done to prospective sellers is to ask the buyer to pay the price of the object of the agreement with a certain period of time accompanied by cancellation conditions, if the buyer does not fulfill the payment as requested and agreed upon, the agreement to buy and sell the land rights that have been made and it is agreed to be canceled and the seller is not obliged to return the payment that has been paid unless the buyer requests an exception. (2) Protection for the buyer. Protection that can be done by the buyer in the implementation of the binding purchase agreement is to first check the proof of ownership of land / building rights that are the object of the agreement. The buyer can also ask the seller to guarantee that the object of the agreement is free from claims, claims and encumbrances, then the responsibility lies with the seller.

In addition, the buyer also requests the seller for authorization which cannot be withdrawn if all the requirements have been fulfilled for buying and selling, then the buyer
can transfer rights even though the seller is not present at the signing of the purchase deed.

In addition to the legal protection mentioned above, the legal protection granted to the parties conducting the sale and purchase under the deed is namely following: (1) Both parties, especially the seller, acknowledge that a sale and purchase agreement is carried out, in this case the most important thing to admit is the seller. If both parties acknowledge that the agreement under the hand that has been done is considered perfect and the legal force of the deed under the hand will be the same as the authentic deed. (2) If one party 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.

The problems of buying and selling land are endless, of the many problems that occur in society problems the deed under the hand is quite a complicated problem, this is not only due to the lack of attention from the government or the apparatus related to the problem, but also because of the awareness of the people themselves.

Lack of community education or lack of it knowledge of this matter is indeed a major obstacle in reducing the sale and purchase transactions with a deed under the hand, besides that there are still many other factors that cause people to buy and sell land with a deed under the hand.

The community chose to do a way of buying and selling land with the deed under the hand is because it does not require a lot of cost or is cheaper compared to the sale and purchase carried out in front of the PPAT, the process is fairly easy, quickly completed and practical, that is enough to do in front of the village head and witnesses, the process of buying and selling land that is happened already legitimate. The Camat has actually advised the community to buy and sell land to PPAT, but the community still chooses to buy and sell with a deed under the hand.

The factors that often cause the sale and purchase of land in underhand or not at the same time carried out before the PPAT between other: (1) Communities lack understanding or even ignorance of the perpetrators of the transaction both the seller and the buyer of the land regarding the provisions of the applicable law. (2) First, on the basis of only mutual trust between the seller and the buyer and ignorance of the rights and obligations as the seller and buyer of land. (3) Land which is the object of buying and selling is not yet certified, for example, it is still letter C and has not been converted. (4) Does not have a fee for the transfer of rights or even does not have the funds to pay Income Tax (PPh) or Land and Building Acquisition Fees (BPHTB). (5) The type of land is still agricultural land (paddy/tegal), while only partially purchased, it must be requested to change the status of the land first to residential land. (6) The type of land is still agricultural land, while buyers reside outside the sub-district area where land is the object of buying and selling or even outside the regency or province, so they are still awaiting the process of resettling for buyers so as not to violate the provisions on absenteeism, or as such, the road is requested / processed application to change the type of land to residential land first. (7) To facilitate the process of transferring rights because the land owner has died, while the heirs are quite a lot. Most of them are elderly and live far from the location of land for sale.

As a result of breaking promises (defaults) in the binding agreement of sale and purchase which of course brings losses to the parties themselves. Therefore, there is a need for legal protection for the parties to be able to provide legal certainty and maintain the fulfillment of the interests and rights of each party. Legal protection for the fulfillment of the rights of the parties if one party carries out a default or broken promise in the binding purchase agreement it depends on the strength of the binding purchase agreement made, that is if it is made with a deed under the hand, the protection is in accordance with the protection of the deed under the hand.

Whereas if it is made by or before a Notary Public by itself the deed becomes a notarial deed so that the strength of its protection is in accordance with the protection of the Authentic Deed. In dealing with issues such as the default also carried out preventive and repressive legal protection. The protection measures that can be done by each party includes: (1) Protection of the seller. Protection that can be done to prospective sellers is to ask the buyer to pay the price of the object of the agreement with a certain period of time accompanied by cancellation conditions, if the buyer does not meet the payment as requested and agreed upon, the agreement to bind the sale and purchase of land rights that have been made and agreed to be canceled and the seller is not obliged to return the payment that has been paid unless the buyer requests an exception. (2) Protection for the buyer. Protection that can be done by the buyer in implementation of the
binding purchase agreement is to first check the existence of proof of ownership of land/building rights that are the object of the agreement. The buyer can also ask the seller to guarantee that the object of the agreement is free from claims, claims or encumbrances, then the responsibility lies with the seller.

In addition, the buyer also asks the seller if there is an irrevocable power of attorney if all the requirements have been fulfilled for buying and selling, the buyer can transfer the right even though the seller is not present at the signing of the purchase deed.

Nur Susantiber opinion, to facilitate the community so buying and selling land is not done with trust or through receipts, as for the way of making evidence of buying and selling of land carried out under the hand, namely: (1) The parties concerned both the seller and the buyer come to the village or kelurahan office to make an agreement to measure the land to be sold and the village or lurah head and village officials here are also witnesses. (2) After the land is measured, then the data is written in a special village book. (3) After completion the buyer is obliged to pay the required money and money volunteer. (4) After making payment, the witnesses present at the sale and purchase of the land sign a statement of sale and purchase of the land.

Efforts that can be made by the buyer so that the sale and purchase of land carried out under the hand (without the deed of the official making the deed of land) can have definite legal force. According to the provisions of Government Regulation Number 24 of 1997, agreements relating to the transfer of land rights including land sale and purchase, it should be done in the presence of the Land Deed Making Officer.

In carrying out the land sale and purchase transaction, the seller and the buyer come together to the PPAT office to make the Land Purchase Deed. PPAT is a Public Official considered by the Head of BPN (National Land Agency) who has the authority to make the transfer of land rights, including buying and selling land.

After the application and the completeness of the file are submitted to the Land Office, either by the buyer himself or PPAT on the power of attorney from the buyer, the Land Office will provide proof of receipt of the application in name to the applicant. Furthermore, by the Land Office the crossing will be done on behalf of the old right holders, then changed with the names of the new rights holders.

The name of the old right-holder (Seller) in the land book and certificate was crossed out in black ink, and initialed by the Head of Office Land or designated official. The name of the new right-holder (buyer) is written on the pages and columns available on the land book and certificate, with the date of registration and signed by the Head of Land Office or appointed official. Within fourteen days the buyer can take the certificate already on behalf of the buyer, at the relevant Land Office.

Whereas if the land purchase agreement was made prior to the Government Regulation Number 24 of 1997 concerning Land Registration on July 8, 1997 and has not been certified, it is not necessary to use the deed from the Land Deed Making Officer (PPAT) but rather from the BPN using a statement of physical control plot of land (Sporadik) known or signed by the local village government.

There are still people who carry out the process of buying and selling land under the hand in the view of Mr. Suparmin as the Head of the Gondangmanis Village Government District of Bae so far the people carry out the process safely and there is no dispute to date. Because in general the buying and selling process that occurs in this village when an agreement occurs between the seller and the buyer, all heirs also sign a letter statement.

So this is done to strengthen that there has been a transfer of rights to the land for sale. The legal consequences of the process of buying and selling this land are legal because there has been an agreement between the two parties so that it is also valid for the exercise of their rights. However, from a legal standpoint it is not yet valid because there is no certificate.

According to Government Regulation Number 24 of 1997, agreements relating to the transfer of land rights, including the sale and purchase of land, should be made in the presence of a Land Deed Making Officer (PPAT). Therefore, in carrying out a sale and purchase transaction, the seller and buyer must come together to the PPAT office, to then make the Land Purchase Deed. PPAT is General officials who are considered by the Head of BPN (National Land Agency), who have the authority to make the deed of transfer of land rights, including the deed of sale of land. If a land purchase transaction takes place in an area where there is not yet a Land Deed Making Officer.
(PPAT), then it can go to the Camat in his position and capacity as a temporary PPAT. Things that need to be considered by the seller and the purchaser of the land are, that the PPAT that will be asked to make the deed of the sale and purchase agreement of the land is, the PPAT which is within its domicile and authority which covers the area of the land being used as the object of the sale and purchase transaction.

  The process of making Land Purchase Deed at the PPAT Office is as follows:

  Requirements for Making Purchase Agreement before PPAT. When facing the PPAT to make a land purchase agreement deed, then there are a number of things that need to be prepared by the relevant parties, namely: (1) The seller, is expected to bring: (a) The original certificate of land rights to be sold, on behalf of the seller. (b) KTP (Identity Card). (c) Proof of payment of PBB (Building Land Tax). (d) Approval of husband / wife, for those who are married. (e) KK (Family Card). (2) The Purchaser, is expected to bring: (a) KTP (Identity Card). (b) KK (Family Card). (c) Money payments that can be made in cash before the PPAT, or a warrant to issue money to the bank, which has been agreed between the seller and the buyer concerned.

  Preparation for Land Purchase Deed: (1) Before making a deed of sale and purchase the PPAT land must carry out an examination regarding the authenticity of the certificate to the land office related to. (2) The seller must pay income tax (PPh), if the selling price of land is above Rp. 60,000,000.00 (sixty million rupiah) at the bank or post office concerned. (3) Prospective buyers: can make a statement with that to buy the land he does not become the holder of land rights that exceed the maximum limit. (4) Declaration from the seller that, the land owned is not in dispute. (5) PPAT refuses to make a sale and purchase certificate, if the land to be sold is in dispute.

  Making Land Purchase Deed: (1) Drafting must be attended by the seller by the seller and prospective buyer, the person authorized by a written power of attorney. (2) Drafting must be attended by at least two witnesses. (3) The PPAT read the deed, and explained the contents and purpose of making the deed. (4) If the contents of the deed have been approved by the seller and prospective buyer, then the deed is signed by the seller, prospective buyer, witnesses and PPAT. (5) Two original copies were made, one sheet was kept at the PPAT office and one was only submitted to the land office, for registration purposes. (6) Each seller and buyer are given a copy.

  Process and Procedure of buying and selling land before buying and selling, must be done: (1) Checking the authenticity and validity of land certificates at the authorized land office. (2) The parties must pay off the sale and purchase tax on the land and building. (3) The tax calculation is as follows:

\[
\text{Seller tax (PPH)} = \frac{NJOP}{\text{sale price}} \times 5% \\
\text{Buyer tax (BPHTB)} = \left(\frac{NJOP}{\text{nontaxable sale value price}}\right) \times 5%
\]

  The processing of evidence of ownership of land rights includes the following matters: (1) Land registration. (2) How to arrange certificates. (3) Registration of land for former customary land rights. (4) Certification of customary land (ulayat land).

  The procedure of buying and selling land is as follows: After becoming an agreement on the price of land, the buyer and seller come to the office of the official land deed maker (PPAT) to make deed of sale and purchase of land. Terms of sale and purchase deed for the seller: (1) Original certificate of land rights to be sold. (2) ID CARD. (3) Proof of payment of land and building tax (last 10 years). (4) Letter of agreement of husband or wife for those who are married. (5) Family card.

  Whereas the deed of sale and purchase for prospective buyers: ID card and KK. The process of making AJB in the PPAT office is as follows: (1) Before making a sale and purchase deed, the PPAT checks the authenticity of the certificate to the land office. (2) Deed of sale and purchase: attended by the seller and prospective buyer or person authorized (in writing), attended by at least two witnesses, the PPAT reads the deed and explains the contents and purpose of his actions, if the contents of the deed have been agreed by the seller and prospective buyers, witnesses and PPAT.

  Two original copies were made, one was kept at the PPAT office and the other was submitted to the land office to give a copy of the name, the seller and the buyer.

  After making the AJB, the PPAT submits the AJB file to the land office to change the name, the submission is carried out no later than seven working days after the signing of the deed and the documents submitted: (1) Letter of application for transfer of name signed by the buyer. (2) Deed
of sale and purchase of PPAT. (3) Certificate of land rights. (4) Buyer's and seller's ID. (5) Proof of payment of fees for the acquisition of land and building rights.

The process carried out at the land office after the PPAT submitted all AJB files that were in accordance with the procedure was as follows: (1) After the file is submitted, the land office provides proof of receipt of the request for transfer of name to PPAT, then PPAT submit it to the buyer. (2) The name of the old right-holder (seller) in the land book and certificate is crossed out in black ink and initialed by the head of the land office or appointed official. (3) The name of the new holder or buyer is written on the pages and columns in the land book and certificate with the date of registration and signed by the head of the land office or appointed official. (4) Within 14 (fourteen) days the buyer can take its certificate already in the name of the buyer at the land office.

CONCLUSION

In the sale and purchase of land and houses, the object is the rights to land and houses for sale and not land or houses but rights to land and houses. The LoGA states that ownership rights except those granted to transmigrants and waqf land, use rights, building rights, can be transferred by buy and sell.

The legal subjects of the sale and purchase agreement are individuals or individuals, i.e. sellers and buyers. While the legal subject of a legal entity in the land and house sale and purchase agreement cannot enter into a relationship of sale and purchase agreement without the appointment of a power of attorney between the legal entity as the seller and the buyer.

Buying and selling is considered valid if the fulfillment of the material conditions of the sale and purchase, this is in accordance with the provisions of article 1320 of the Book Civil Law and Supreme Court Decisions Number 123 / K / Sip / 1970, including: (1) The ability and authority of the parties to carry out the relevant legal actions; (2) Fulfillment of the conditions by the buyer to become the holder of the rights to the land purchased; (3) Joint agreement to carry out the sale and purchase; (4) Fulfilled cash, clear and real terms.

The process of buying and selling can be declared null and void if the buyer really does not know that the land purchased is not the property of the seller, thus the buyer can use the reason to claim compensation to the seller, this is contained in articles 1471, 1472 of the Civil Code (Civil Code).

Legal protection can be divided into preventive legal protection and repressive legal protection. Preventive legal protection is given by the government prior to the occurrence of a violation that is listed in a statutory regulation by providing signs or restrictions in carrying out a legal act.

Based on article 1491 of the Civil Code the seller in conducting a sale and purchase transaction must guarantee in advance that the possession of the object is safe without any interference from any party, and explain important matters related to the object of hidden defects, it is included in preventive protection.

Furthermore, repressive legal protection is protection provided when a violation of the law occurs. The form of protection is in the form of law enforcement which includes sanctions, such as fines, compensation, imprisonment and additional penalties as well as the methods adopted when resolving disputes in court.

As for the legal protection of the parties, especially buyers in the sale and purchase agreements carried out under the hand, the legal protection provided in the binding sale and purchase agreement is very strong because of the evidentiary nature of the binding purchase agreement made before a public official in this case the Notary Public

Namely by signing the deed before a Notary or an official appointed for ratification of the signature (such as a Consular Officer, Embassy, Regional Head starting from the Regent level up) by explaining the contents to the parties first then signing before the Notary or the authorized public official has a very strong proof in accordance with the proof of an authentic deed.

Legal protection provided by prospective sellers, is in the form of conditions that are usually requested by the prospective buyer himself. For example, there are several prospective sellers in a binding sale and purchase agreement that they make asking the buyer to make payment of the buyer's money in term certain time accompanied by canceled requirements.

For example, if the buyer has paid off the entire sale and purchase price of land and buildings as stipulated in the bond binding agreement and has signed the Minutes of Handover of the building in front of the Land Deed Maker Officer appointed by the seller in
this case the prospective seller, then the Deed will be made Buy and Sell. The intention is that if the seller does not fulfill it then the buyer can sue and ask for compensation in accordance with the agreement stipulated in the binding agreement buy and sell.

**REFERENCE**


