

# Oral Agreement on Land Sale and Purchase Contract in Indonesia

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**Abstract**— Communities in Arjasa Subdistrict of Kangean Islands still do not understand the procedures for buying and selling land so they do it orally. The purpose of this study was to determine the implementation of the transfer of ownership of land through oral sale and purchase carried out by the community in Arjasa Subdistrict, Kangean Islands and its legal consequences. This research is an empirical legal research using facts obtained from primary data or directly from the public. The results of this study show that there are two characteristics of the transfer of ownership of the sale of land orally in the District of Arjasa Kangean Islands, namely the sale of land orally between buyers and sellers only and oral sale of land reported to the Head of the Village. The oral transfer of title to land is not in accordance with the applicable land law in Indonesia. In the legal concept of buying and selling, an oral land transaction is valid based on an agreement between the seller and the buyer of the land, but as a result, the transfer of rights to the land's buyer is not legal yet because the sale and purchase is not carried out before *Land Deed Official*.

**Keywords**— *Selling, Buying, Land, Oral, Indonesia;*

## I. INTRODUCTION

Every human needs land as a good source of life to be used for their residence. Acquisition of land rights by a person or legal entity can occur in two ways, namely:[1]

1. Originair is the acquisition of land that occurs through the determination of the government, or because of statutory provisions (affirmation of conversion).
2. Derivatives are the acquisition of land rights that occurs from land owned or controlled by other parties through the transfer of land rights, one of which is the transfer of land rights can occur due to buying and selling.

Buying and selling are a contract where 1 (one) party, called the seller, binds himself to surrender an object, while the other party, called the purchaser, binds himself to pay the price of the object for the amount agreed upon. According to the Civil Code Article 1457 "sale and purchase are an agreement, with which one party binds itself to surrender a material, and the other party to pay the price promised". Sale and purchase of land is an agreement in which the party who owns the land called the "Seller",

promises and binds himself to surrender his rights to the relevant land to another party called the "Buyer".

Arjasa District is one of the administrative regions of Sumenep Regency, located in the Kangean Islands. The lack of knowledge and education causes not all people understand the law. This condition causes an oral buying and selling process. The seller orally gives the land rights to the buyer and the buyer submits the land price according to the agreement agreed upon by the buyer and seller.

Law No. 5 of 1960 Article 26 regulates that "buying and selling, exchanging, granting, according to custom and other acts intended to transfer ownership and control are governed by Government Regulation" namely Government Regulation Number 24 of 1997. Transfer of rights to land and ownership rights over the unit of flats through the sale and purchase, exchange, grants, income, in companies and other legal acts of transfer of rights, except the transfer of rights through an auction can only be registered if proven with a deed made by the *Land Deed Official*. The fact is that the sale and purchase of community land in Arjasa District is done orally not before the *Land Deed Official*.

From the background of the problems that have been described, the problems in this study are formulated:

1. How is the transfer of ownership rights by oral agreement on land sale and purchase contract in Arjasa Subdistrict, Kangean Islands?
2. What are the legal effects of orally agreement land sale and purchase contract in Arjasa Subdistrict, Kangean Islands?

## II. RESEARCH METHOD

The method used in this study was the type of empirical legal research. Empirical research is research that sees law as reality, encompasses social reality, cultural reality, and so on.[2] Where to get proof of truth, one must look directly at the legal reality in society Arjasa Subdistrict of Kangean Islands.

The approach used in this research is the fact and statutory approach.[3] The research locations chosen were 3 villages in Arjasa Subdistrict, Kangean Islands, Sumenep Regency, East Java Province, including Pandeman Village, Paseraman Village, Sambakati Village.

### III. RESULTS AND DISCUSSION

#### A. *Ownership Transfer Character of Orally Agreement on Land Sales and Purchase Contract in Arjasa District*

First, Nur Aini and Moh.Jara orally bought and sold land in Pandeman Village, both parties still had family ties and neighbors. Based on Nur aini's statement (buyer), that the land to be sold must be offered in advance to the family and neighbors if between the family and neighbors no one will buy the land after it is offered to someone else. On December 4, 2019, Nur Aini, as the buyer of land, reported to the Village Secretary, Mr. Masul, to take measurements of the land that had been purchased from Moh.Jara as well as to report that between Nur Aini (Buyer) and Moh.Jara (Seller) an agreement had been made. Sale and purchase of land was on November 1, 2019. Village Secretary accompanied by the Village Head witnessed by Nur Aini and Moh.Jara (land seller and buyer) as well as Muhammadi and Ainur Rahman (Village figures) took measurements of the land while providing a Land Purchase Certificate signed by the Head of the Village, Land Buyers and Sellers, and Village figures. Buying and selling conducted by Moh Jara (Seller) and Nur Aini (Buyer) have been reported to the Head of the Village so that Nur Aini as the buyer gets a Land Purchase Certificate after measuring the land.

Second, the sale and purchase made by Mona (Seller) Juhairiyah (Buyer) in Paseraman Village and Saini (seller) Harma (Buyer) in Sambakati Village, were not reported to the Village Head because each party had assumed that land ownership rights were transferred to the buyer of the land after payment of the land price according to the agreement.

Buying and selling land in Paseraman Village took place in 2005, Juhairiyah bought Mona's land because it was located west of Juhairiyah's house. Both parties did not involve the village apparatus in buying and selling the land. Even now, from 2005 to 2019, both parties did not report to the Head of the Village that the land sale and purchase had occurred. But the community already knew that the land had become Juhairiyah's property after the 2005 land sale and purchase. Mona had also admitted that her land ownership had been transferred to Juhairiyah after payment had been agreed upon.

The sale and purchase of land in Sambakati Village is carried out by Saini (Seller) and Harma (Buyer), the price of land is Rp. 80,000,000.00 (eighty million rupiah) with a length of 13.5 M<sup>2</sup> and a width of 16 M<sup>2</sup>. From the sale and purchase of land, namely in 2016 there were no disputes from both parties, even though Harma (Buyer) did not have evidence that a sale and purchase of land had occurred between Harma and Saini. So Harma and Saini are still family, cousins.[4]

The sellers and buyers are of the opinion that they are cousins so that no dispute will occur, the community already knows that there has been a sale and purchase of land between Harma (the buyer) and Saini (the seller). So Saini (Seller) has assumed that the ownership rights to his land

moved after the agreement between Saini (Seller) and Harma (Buyer) and the payment has been made according to the agree price.

In Arjasa Subdistrict there are no Notaries and Land Deed Officials, so the transfer of land rights involves the Village Head and Provisional Land Deed Official (The PPATS). The PPATS is the Camat based on Government Regulation Number 24 Year 2016 Article 1 which regulates that "Land Deed Official, hereinafter referred to as PPAT, is a public official who is authorized to make authentic deeds concerning certain legal acts, namely land rights or ownership rights on housing units stacking "and article 2" Provisional PPAT is a Government Official who is appointed because of his position to carry out the PPAT duties by making PPAT deeds in regions where PPAT is not enough".

#### B. *Factors That Causes Of Oral Land Sale and Purchase Contract in Arjasa District*

As for several factors that cause oral buying and selling in Arjasa Subdistrict, Kangean Islands based on data or facts that occur in the field, namely:[5]

- a. There is no socialization to the community regarding the procedures for buying and selling land, so the public does not know about how the legal consequences of the oral sale and purchase and when the transfer of ownership of the land ownership. Communities assume that ownership or ownership rights to land move after the agreement and the price of land is paid according to the agreement.
- b. Based on trust because the person who buys the land is his family or neighbor, and therefore orally buying and selling land.
- c. There are no fees or unable to pay fees, because if the sale and purchase of land occurs between the buyer and seller then the costs incurred are in accordance with the price of the land.

#### C. *Legal Effects of Oral Land Sale and Purchase Contract*

All Indonesian citizens have the right to have legal certainty over their land rights. Holders of land rights have the authority to use their land in accordance with the types of rights to the land. For example, the authority on land ownership rights can be used for agricultural purposes and / or to construct buildings, Business Rights for agricultural, plantation, fishery and livestock interests. Property rights to land can be transferred to others through buying and selling. Article 20 of the Basic Agrarian Law of 1960 explains ownership rights as follows:[6]

1. Property rights are hereditary, strongest and most fully owned rights that can be owned by people on land, bearing in mind the provisions in Article 6.
2. Property rights can be transferred and transferred to other party.

The procedure for registering the transfer of rights through buying and selling is as follows :

- a. The person who has the right to sell is the person whose name is listed in the certificate or other than the certificate.
- b. Someone has the authority to sell his land if he is an adult.
- c. If the seller is not an adult, then his guardian represents.

The object of selling and purchasing the land, parties who can buy land are Indonesian citizens, government banks, religious institutions, and social institutions.

The main principle of buying and selling land is the inherent rights of the land owner, a person has legal power as the owner of the land rights. The ownership rights have legal consequences, so that the legality of selling if the legal subject is legitimate as the owner of the rights and buying and selling through a mechanism agreed upon and determined by the force of law.[7] So, in the implementation of buying and selling land the seller must have proof and the proof is a certificate of ownership on behalf of the seller as the legal owner. In this case, the sale and purchase of land by sellers and buyers of land that occurred in Arjasa Subdistrict, Kangean Islands Pandeman, Sambakati, and Paseraman Villages, where the seller does not have proof of his land ownership rights which are certificates that must be in the name of the land seller, so the seller and buyer trading orally. Both parties entered into an oral agreement based on an agreement between the two parties, namely the seller and the buyer of the land.

Everyone has the right to have an agreement whether written or unwritten (orally). The agreement is a legal relationship that often occurs in society. Agreement according to article 1313 of the Civil Code "An agreement is an act by which one or more people commit themselves to one or more people". Without realizing it, people often make unwritten (oral) agreements in conducting a social relationship. Though there will be risks that must follow if there is a default of the oral agreement.

For certain agreements, there are laws that determine the making of the agreement in written form in an authentic certificate, namely:[8]

- a. Transitional agreements (specifically the sale and purchase of land rights), except through an auction for registered lands must be in written form in the deed of the official making the land deed (vide article 37 PP Number 24 of 1997).
- b. Transitional agreements (in particular land purchase agreements and grants) ownership rights to the land of flats, except through auctions, must be in written form on the official deed of the land deed maker ( vide article 37 PP Number 24 of 1997).
- c. The agreement to transfer land rights or ownership rights to a unit of flats by auction must be in

written form on the official deed of the land deed (vide Article 41 PP Number 24 of 1997)

Agreement determined by law must be applied as it should. This is because if it is not implemented, the legal consequences are agreements made men so it is not valid, so it is null and void and does not cause an agreement (the agreement is considered never to exist). Oral agreements are permissible and remain valid as long as the object of the agreement is not regulated in the law for registered land. Obligations of sale and purchase deeds made by PPAT not only on land rights that have been registered or have been certified or ownership rights on flats, but also on land rights that have not been registered or not certified at the district / city land office. If the sale and purchase of land rights has not been registered or has not yet been certified and the purpose is not to be registered at the district / municipal land office, the sale and purchase can be made with a deed under the hand (made not by PPAT). With the deed of sale and purchase, then at that time there has been a transfer of rights from the right-holder as the seller to another party as the buyer.

Regarding the practice of oral sale and purchase of land is explained in article 59 of Regulation of the Minister of Agrarian Number 3 of 1997 Article 59 "For the purposes of researching juridical data, parcels of land are collected by means of evidence regarding ownership or control of land, both written and unwritten evidence in the form of witness statements and / or information concerned, which is shown by the holder of land rights or his attorney or other parties interested in the Adjudication Committee ". This process can only be carried out on systematic land registration.

Land registration is a Government policy and is implemented as an effort to align the land registration comprehensively for the community. These ways are regulated in Government Regulation Number 24 of 1997 years about Land Registry, they are: First, A land registration systematically is the first time of activity registration of land conducted simultaneously covering all objects of land registration that have not been registered in the territory or part of a village / district. Second, sporadic land registration is the first land registration activity concerning one or more objects of land registration within the territory or part of a village / district individually or massively.[9]

Proof of ownership basically consists of proof of ownership in the name of the right holder at the time of the coming into effect of the Law Number 5 Year 1960 and if the rights are subsequently transferred, proof of successive rights until the hands of the right holder at the time of bookkeeping rights, if there is no written proof or no more proof of ownership , can be done with witness statements or statements concerned that can be trusted according to the opinion of the Adjudication Committee in systematic land registration or by the Head of the Land Office in sporadic land registration.[10] In the Regulation of the Minister of Agraria Number 3 of 1997, if there is no proof of ownership

it can be carried out with witness statements which can be trusted in article 60 paragraph (3), namely "If the proof of ownership of a piece of land as referred to in paragraph (2) is incomplete or absent, proof of land rights can be carried out with evidence that is accompanied by the statement in question and reliable information from at least 2 (two) witnesses from the local community who do not have family relations with the person concerned to the second degree both in kinship vertical or horizontal, which states that the person concerned is the true owner of the plot of land.

In the oral practice of buying and selling land in Arjasa Subdistrict, if both parties report to the Head of the Village that the land has been bought and sold and there are witnesses who confirm this, then a Land Purchase Certificate will be made, signed by both parties, the Village Head, and witnesses. Then at that time there was a transfer of rights from the right-holder as the seller to another party as the buyer, but could not be registered sporadically (own initiative), because it was not a sale and purchase deed made by PPAT.[11] If you want to register land sporadically on the basis of oral sale and purchase, you must do a resale before PPAT.

Oral sale of land that is done by the seller to the buyer, namely by Moh. Jara and Nur'Aini (Pandeman Village), Harma and Saini (Paseraman Village), also Mona and Juhairiyah (Sambakati Village) Arjasa Subdistrict, Kangean Islands, are considered valid because they have fulfilled the legal requirements of Article 1320 Civil Code:

The conditions for the legality of the agreement in the Civil Code Article 1320, namely:

- a. A agree that those who bind themselves, the parties conducting the sale and purchase of land orally have agreed there is no compulsion in buying and selling the land.
- b. T the ability to make an agreement, In accordance with article 1330 of the Indonesian Criminal Code concerning legal competence in making agreements in this case the parties that make land purchase are already legally competent and have grown up.
- c. A certain thing, the goods or objects that are traded, namely land.
- d. A legal reason

Legally buying and selling land that is bought and sold not the land but the right to the land, ownership rights to the land can be transferred if it has been legally surrendered from the land seller to the land buyer.[6] Thus, the transfer of ownership through the oral sale and purchase of land by several communities in the Arjasa Subdistrict of the Kangean Islands, their ownership rights did not move because they did not legally surrender as evidenced by a deed made by and in front of the PPAT, even though selling and buying has fulfilled the terms of the agreement.

Article 1457 of the Civil Code regulates "Buying and selling is an agreement, with which one party is bound to submit a material, and the other party to pay the price

promised". Thus the buying and selling is valid according to Article 1458 of the Civil Code because between the seller and the buyer of the land has reached an agreement and paid the price in accordance with the agreement, but the rights to the land have not yet occurred because the transaction was not made in the form of a Deed of Sale Buy (AJB) before PPAT

#### IV. CONCLUSIONS AND SUGGESTIONS

The transfer of ownership rights to land through oral sale and purchase in Pandeman Village, Arjasa Subdistrict, Kangean Islands has 2 (two) characters, namely, oral sale and purchase of land carried out between the seller and buyer does not report to the Village Head and the sale and purchase of land is carried out orally between sellers and buyers followed by reporting to the Village Head a month after that. Character of oral sale and purchase of land carried out by the people of Arjasa Subdistrict, Kangean Islands is not in accordance with article 26 of the Basic Agrarian Law Number 5 of 1960 and article 37 of Government Regulation Number 24 of 1997.

The legal consequences of the sale of land orally in the Pandeman Village of Arjasa District The Kangean Islands carried out between the buyer and the seller not before the PPAT (Land Deed Making Official) are valid because they have reached an agreement as described in article 1458 of the Indonesian Criminal Code concerning buying and selling. However, the transfer of ownership does not occur as explained in Article 37 of Government Regulation Number 24 of 1997.

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