

Legal Protection for Land Buyers Who Lose Rights as a Result of the Sale and Purchase of Land that was Once the Object of a Dispute in The State Administrative Court (Decision of the Supreme Court of the Republic of Indonesia Number 658 PK/Pdt/2017)

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ABSTRACT

Land is the authority of the State to regulate the granting and use of land to the community so that land is used for the greatest achievement for the prosperity of the people with the demands of legal certainty and legal protection between communities. Even though there is a policy regarding land use regulated by the state, in reality there is often chaos and legal uncertainty. As an example of the case in the Supreme Court Decision Number 658 PK/Pdt/2017, namely the issuance of 2 (two) certificates of the same land with different rights, Dirman Pardosi with the Right to Build and John with the Right of Ownership, which turned out to be the land belonging to John Tandiar. Become the object of dispute in the State Administrative Court. The results of the study reveal that legal protection will be obtained if the land buyer can prove their rights in court then if the seller provides compensation costs and returns the money for the purchase transaction of the land sale and purchase object 100% (one hundred percent) to the buyer who is declared to have to return the land to the owner on behalf who won the lawsuit in the State Administrative Court and PPAT are responsible only for the deed of sale and purchase made between Gunadi Yauw and John Tandiar because it was made consciously both personally and jointly that the land was in dispute with the State Administrative Court.

Keywords: Sale and Purchase of Land, Object of Administrative Court Dispute, Land Rights

1. INTRODUCTION

Land is part of the earth's surface that has various rights, including Property Rights, Building Use Rights, Use Rights, Business Use Rights, and Lease Rights. Ownership rights to land are rights granted by the State so that they can be owned by Indonesian citizens by registering land. Land has a very strategic value for human life.[1] Because land has a very strategic value for human life, the state has the authority to regulate the granting and use of land to individuals, communities, and companies so that land can be utilized for the achievement of the greatest prosperity of the people. The prosperity of the people contained in Article 33 Paragraph 3 of the 1945 Constitution of the Republic of Indonesia as a manifestation of the benefits achieved, which means the result of an effective policy, which is not determined arbitrarily but legally. This is related to the demands of justice, including the balance of interests, or related to the demands of law order or legal certainty.[2] Although there is a policy regarding land use regulated by

the state, in reality there is often no order and legal certainty. The legal uncertainty that occurs in society is very detrimental to society, especially people who really obey the law. In addition, the need for land continues to increase and is very rapid while the availability of land is limited so that it often causes land conflicts in the form of ownership conflicts, as well as conflicts involving the use of the land itself. [3] Based on the many cases of disputes in the world of land that often occur, it is very necessary to carry out land registration with the aim of providing legal certainty and legal protection for land rights holders. [4] Several things are carried out at the land registration stage according to Article 19 Paragraph 2 of the LoGA which states: [5] Measurement, mapping and bookkeeping of land, Registration of land rights and the transfer of rights, Provision of certificates of proof of rights, which are valid as a valid proof of evidence. strong.

In a positive negative publication system, the state only passively accepts what is stated by the party requesting registration. Therefore, at any time it can be sued by people who feel more entitled to the land. The party who acquires

land from a registered person is not guaranteed, even though he has obtained the land in good faith. Like the case that occurred in the Supreme Court Decision Number 658 PK/Pdt/2017, the subject of this case is Dirman Pardosi as the owner of a plot of land on Jalan Andi Pangeran Pettarani, Banta-Bataeng Village, Rappocini District, Makassar City with a Building Use Rights Certificate Number 20076 which was published on July 21, 2002, John Tandiar as the owner of the same piece of land on Jalan Andi Pangeran Pettarani, Banta-Bataeng Village, Rappocini District, Makassar City with a Certificate of Ownership Number 21266 issued on 22 October 2010, and Gunadi Yauw who bought land with an area of 1,243 m² from a fraction of a certificate of ownership over a land area of 10,980 m² in the name of Bacce Bin Kido, the original owner of the land. Based on the Decision of the Supreme Court of the Republic of Indonesia Number 161 K/TUN/2008 which states/orders the Regional Office of the National Land Agency of South Sulawesi Province to revoke the cancellation of the certificate of Building Use Rights Number 20076/Banta-Bataeng, registered under the name of PT Asuransi Jiwa Bersama Bumi Putra 1912, Dirman Pardosi analogy that the certificate of Building Use Rights that has been canceled becomes valid again automatically because of the decision of the State Administrative Court. Starting from the thoughts stated above, the authors are interested in studying this problem in the form of a thesis proposal with the title "Legal Protection of Land Buyers Who Lose Rights Due to Sale and Purchase of Land that Was Once the Object of a State Administrative Court Dispute (Case Example: Supreme Court Decision Number 658 PK/Pdt/2017)".

1.1. Related Work

According to some theories, we use (3) three theories in this writing:

1.1.1. Legal Protection Theory

Legal protection according to Satjipto Rahardjo is to provide protection for human rights that are harmed by others and that protection is given to the community so that they can enjoy all the rights granted by law. [6] Legal protection is something that protects legal subjects through applicable laws and regulations and enforced its implementation with a sanction. Legal protection can be divided into two, namely: [7] Preventive Legal Protection is Protection provided by the government with the aim of preventing violations before they occur. This is contained in laws and regulations with the aim of preventing a violation and providing signs or limitations in carrying out an obligation. Repressive Legal Protection is Repressive legal protection is the final protection in the form of sanctions such as fines, imprisonment, and additional penalties given if a dispute has occurred or a violation has been committed. [8]

1.1.2. Legal Certainty Theory

Legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. [9] When viewed from the side of the judiciary, legal certainty is nothing but what a person can and/or may do and the extent to which that person can act without being punished, or the consequences of an act that a person wants cannot be canceled by a judge. [10] Legal certainty is stated in accordance with the provisions of the 1945 Constitution of the Republic of Indonesia Article 28 letter d Paragraph 1 which reads "everyone has the right to recognition of guarantees of protection and fair legal certainty and equal treatment before the law". According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is carried out, that those entitled by law can obtain their rights and that decisions can be implemented. [11] Certainty in law according to Syafruddin Kalo is that every legal norm must be formulated with sentences that do not contain different interpretations. As a result, it will bring obedient or disobedient behavior to the law. In practice many legal events arise, where when faced with the substance of the legal norms that govern them, sometimes they are not clear or imperfect so that different interpretations arise which consequently will lead to legal uncertainty. While certainty because of the law is meant, that because of the law itself there is certainty, for example the law determines the existence of an expired institution, with the passage of time a person will gain rights or lose rights. This means that the law can guarantee certainty that someone with an expired institution will get certain rights or will lose certain rights. [12]

1.1.3. Theory of Justice

The theoretical basis for the use and utilization of land is social justice and just and civilized humanity and other principles in Pancasila. The moral basis in the Unitary State of Indonesia which originates from the view of humans as creatures created by God and the fair and civilized attitude of Indonesian humans. [13] Hans Kelsen argues for justice as a subjective value judgment. Although a just order which assumes that an order is not the happiness of every individual, but the greatest happiness for as many individuals as possible in the sense of a group, namely the fulfillment of certain needs, which are considered by rulers or lawmakers as needs that must be met, such as the needs of clothing, food and shelter. But which human needs should be prioritized? This can be answered by using rational knowledge, which is a value judgment, determined by emotional factors and therefore subjective. [14]

1.2. Our Contribution

This paper presents to find out the form of legal protection for land buyers who lost rights due to buying and selling land that had been the object of a Court dispute and the form of PPAT's responsibility for the deed of sale and purchase

made between Bacce bin Kiddo and Gunadi Yauw and Gunadi Yauw and John Tandiar.

1.3. Paper Structure

The rest of the paper is organized as follows. Section 1 introduces the background, identification and formulation of problems, research objectives, research uses, research methods, and systematic accountability. Section 2 presents in general, regarding theoretical studies, namely the theory of legal protection, the theory of legal certainty and the theory of justice. Section 3 presented research data related to the problems studied in this paper. Section 4 outlines legal issues regarding legal protection for owners of Property Rights Certificates who lose rights due to the re-enactment of cancelled Building Use Rights Certificates and arrangements for the cancellation of Building Use Rights certificates on land that already exists before the Ownership Certificates. Section 5 is the last chapter which contains conclusions which are answers to problems and suggestions which are recommendations for science in the field of law, especially in the land sector.

2. BACKGROUND

2.1. Legal Protection for Land Buyers Who Lose Rights Due to the Sale and Purchase of Land that was once the Object of a State Administrative Court Dispute

Talking about buying and selling, before buying and selling transactions are carried out, there are several things that land sellers and land buyers must know, such as the rights and obligations of the parties. Before making a transaction, the buyer must know the history of the land to be purchased as clearly as possible, the method is to match the information given by the seller by directly checking the condition of the land to the National Land Agency where the land to be purchased is located. It can also be through PPAT assistance in the examination if the buyer does not understand the process.

In customary law, it is also explained that the sale and purchase of land is a legal act of transferring land rights forever so that it must be done openly and in cash. It clearly means, the transaction is carried out in the presence of an authorized public official, in this case the authorized public official is the PPAT, whose authority is to make certain deeds such as the Sale and Purchase Deed, exchange, grants, granting of building rights on land rights, granting rights dependents, and granting of usufructuary rights over the land with the right of ownership. Obviously, according to customary law, it is before the customary head. In cash, it means that the seller hands over the land to the buyer and the buyer pays the agreed price. Although the price paid has not been paid off, the land rights have been transferred to the buyer because the sale and purchase has been carried out. In order for the clear and cash conditions in the sale and

purchase to be achieved, the first thing the seller and buyer must do is to come to the PPAT office selected based on an agreement between the seller and the land buyer to conduct a land sale and purchase transaction. Because legally, the transfer of land rights must be carried out through PPAT, if not with PPAT the documents signed have no legal force so there is a high risk of disputes in the future. After coming to the PPAT office, PPAT will provide an explanation of the procedures and conditions that need to be completed by both the seller and the buyer. In general, the first thing that PPAT does before the transaction is carried out is to examine land rights certificates and Land and Building Tax (PBB). For this inspection, PPAT will ask for the original land title certificate and the PBB Deposit Receipt (STTS) from the seller. Examination of land rights certificates is required to ensure the suitability of technical and juridical data between land certificates and the Land Book at the Land Office.

PPAT also conducts inspection of land rights certificates to ensure that the land is not involved in a legal dispute, is not being pledged as collateral, or is not being confiscated by the authorities. The UN STTS inspection was carried out by PPAT to ensure that the land did not have any outstanding bills.

Another thing that needs to be confirmed before signing the Sale and Purchase Deed is also the importance of approval from the seller's husband or wife in the event that the seller is married. In a marriage, there will be a mixture of assets with the wealth of each husband and wife. Likewise with land rights. Since land rights are joint property in marriage, their sale requires the consent of the husband or wife. Such approval can be given by signing a special approval letter. In this case, the husband or wife of the seller also signs the AJB. If the seller's husband or wife has died, this situation needs to be proven by a Death Certificate from the Kelurahan office. With the death of the husband or wife, the children born from their marriage will be present as heirs of the land to be sold. The children are also required to give their consent in AJB as heirs to replace the consent of the husband or wife who died. Then the seller and buyer must have an agreement on the sale and purchase price of the land, the cost components that need to be incurred by both the seller and the buyer consist of Income Tax (PPh) and Land and Building Rights Acquisition Fee (BPHTB). For sellers subject to PPh Tax. PPAT must check the authenticity of the certificate to the relevant Land Office then, before getting the deed of sale and purchase, the seller must first pay PPh. Without any PPh payment, the seller is considered to have violated the rules so that the Land Deed Making Officer (PPAT) can refuse to make the Sale and Purchase Deed. Then the price for PPAT services itself is 1% of the total transaction. The amount of income tax from the transfer of land and/or building rights is 2.5% of the gross value of the transfer of land and/or building rights. After the seller and buyer submit the land certificate, proof of tax deposit and identity documents of the parties and pay the transaction fee components, the seller and buyer go to PPAT to sign the Sale and Purchase Deed. Meanwhile, for the buyer, BPHTB is a tax imposed on the acquisition of land and or building rights. According to the provisions in

Article 85 Paragraph 1 and Paragraph 2 letter a number 1 of Law Number 28 of 2009 concerning Regional Taxes and Regional Levies which stipulates that the object of tax is the acquisition of land and or building rights. The acquisition of rights to land and or buildings, one of which includes the transfer of rights due to sale and purchase.

The BPHTB rate is set at a maximum of 5% which is stipulated by a Regional Regulation. For this reason, BPHTB needs to be reviewed and adjusted to the local regulations. As in DKI Jakarta, BPHTB is regulated in the Regional Regulation of the Special Capital Region of Jakarta Number 18 of 2010 concerning Fees for Acquisition of Rights to Land and Buildings as well as Regulation of the Governor of DKI Jakarta Province Number 126 of 2017 concerning the Imposition of 0% (Zero Percent) Fees for the Acquisition of Land Rights, and Buildings for the First Acquisition of Rights with an Acquired Value of Tax Objects up to Rp. 2,000,000,000.00. If all of these conditions have been met, then the seller and buyer must submit these requirements to PPAT and then PPAT will process the sale and purchase transaction of land rights by making a Sale and Purchase Deed (AJB) between the seller and the buyer. The signing must be attended by the seller and the prospective buyer or a person authorized by a written power of attorney if authorized and to avoid misunderstandings in the making of the deed, it is usually witnessed by two witnesses who also signed the Sale and Purchase Deed. Generally, the two witnesses came from the PPAT office in question. The author argues that based on this theory, it is legitimate if Dirman Pardosi and John Tandiarri take legal action, namely the courts to get their rights, where Dirman feels that his rights have been taken away by John and John also feels that his rights have been taken away by Dirman.

2.2. PPAT's Responsibility for the Deed of Sale and Purchase Made Between Bacce Bin Kiddo and Gunadi Yauw and Gunadi Yauw and John Tandiarri

In terms of the power of office owned by PPAT, PPAT has the authority to issue legal products. One of the legal products issued by PPAT in discussing this 2nd issue is the Sale and Purchase Deed. PPAT as an official authorized to make deeds according to the provisions of Article 2 Paragraph 1 of Government Regulation Number 37 of 1998, namely carrying out part of land registration activities by making a deed as evidence that certain legal actions have been carried out regarding land rights or Ownership Rights to Flat Units, which will be used as the basis for the registration of changes in land registration data resulting from the legal act.

The transfer of land rights through buying and selling can only be registered if there is a deed made by PPAT, namely the Sale and Purchase Deed. The signing of the Sale and Purchase Deed is carried out directly by the Seller and Buyer. The implementation of the PPAT Sale and Purchase Deed must be attended by the parties who carried out the legal action concerned or the person authorized by them

with a written power of attorney. The making of the PPAT Sale and Purchase Deed must be witnessed by at least 2 witnesses who according to the applicable laws and regulations meet the requirements to act as witnesses in a legal act, who testify, among others, regarding the presence of the parties or their proxies, the existence of documents shown in the making of the deed, and the legal action has been carried out by the parties concerned. Witnesses present must be able to testify regarding the identity of the appearers, the presence of the parties, the truth of the physical and juridical data of the object, the existence of documents and the execution of a legal action. Then the PPAT is obliged to read the deed to the parties concerned and provide an explanation of the contents and purposes of making the deed, and the registration procedure that must be carried out subsequently in accordance with applicable regulations. The making of a Sale and Purchase Deed can be made if all the required formal documents are in existence, such as a Certificate of Heirs' Rights or a Statement of No Dispute from the National Land Agency. After the sale and purchase takes place, a Sale and Purchase Deed is made to be used as the basis for land registration and the transfer of land rights. The land rights are realized in the form of certificates. Certificate as proof of ownership of a land according to the provisions in Article 32 Paragraph 1 Government Regulation Number 24 of 1997, namely: A certificate is a letter of proof of rights that applies as a strong means of proof regarding the physical data and juridical data contained in it, as long as the physical data and juridical data are in accordance with the data contained in the letter of measurement and the book of land rights in question. The certificate is a strong proof of right, in the sense that as long as it cannot be proven otherwise, the physical data and juridical data contained therein must be accepted as correct data. Of course, the physical data and juridical data listed in the certificate must be in accordance with the data listed in the land book and the measuring document in question, because the data is taken from the land book and the measuring letter. The four conditions above must be fulfilled by the parties, but it must be remembered that on the basis of the agreement the sale and purchase agreement took place. Therefore, which party makes the Sale and Purchase Deed is determined on the basis of an agreement. So that the obligation of who bears the costs of making the Sale and Purchase Deed at PPAT has been mutually agreed. This can be one party who bears the entirety or it can also be that both parties agree to pay the cost of making AJB together.

In the event that the fees received by the PPAT in making the Deed of Sale and Purchase according to the provisions in Article 32 Paragraph 1 of Government Regulation Number 24 of 2016 namely Fees or honorarium for PPAT and Temporary PPAT, including service fees or witness honoraria may not exceed 1% (one percent) the transaction price stated in the deed. The Sale and Purchase Deed made by the PPAT must not contain legal defects, because it can interfere with the process of issuing land certificates for the right owner. The Sale and Purchase Deed made must be in accordance with the legal documents brought by the Appraisers and the PPAT is obliged to examine the truth of

the letters. Actually, PPAT is not required to check identities such as Identity Cards, Birth Certificates and Family Cards, but if PPAT still has doubts about the veracity of these formal documents, PPAT can ask his appearer to make a statement. However, what is the obligation of a PPAT based on the results of an interview with Siau Hendry Leo Prayogo, a PPAT in making a Sale and Purchase Deed, both PPAT and prospective buyers must and must examine both physical data and juridical data from the land, whether the land is in dispute, whether it becomes object of court dispute or other ownership dispute. If the land is in dispute, the PPAT has the right to refuse to make the Sale and Purchase Deed, because as a PPAT it is not permissible to provide information to the client as clearly as possible until the history of the land if PPAT knows it so that no party is harmed, either PPAT itself or the parties involved in the process of making the Sale and Purchase Deed. The PPAT may refuse to make a Deed if the registered land parcel or property rights to the apartment unit are not submitted to him or her original certificate of the right in question or the certificate submitted is not in accordance with the registers in the Land Office and the object of the legal action concerned is still under investigation. disputes regarding physical data and/or juridical data. In the case of land that is the object of dispute in court, it is not allowed for any reason to take any legal action on the land even though there is agreement from the owner of the land concerned and the prospective land buyer, because the object in the dispute in court there is no decision that has permanent legal force or *inkracht*. . It is very risky if a legal action is taken on the land that is the object of the dispute. Objects that have been declared confiscated in court, before that the judge will give orders to several people to check the condition of the location or in the field whether it is true that the object is in fact. If it has been agreed to be confiscated, it will be notified through a Notification Letter so that no one may take legal action on the object until there is an *inkracht* decision on the object, even if the object is land. It is possible that the notification letter is only known to one party, if in the case of a dual certificate, the owner of another certificate on the same land, namely the land that is the object of confiscation by the court, does not know what happened to the land which was severely damaged. In the opinion of the author, the Judge gave this consideration because the first issue was the Certificate of Building Use Rights in the name of Dirman Pardosi, so that Gunadi could not take the right and replace it with ownership rights even though it was obtained based on the Sale and Purchase Deed. Based on the Makassar High Court Decision No. 164/Pdt/2012/PTMks Gunadi Yauw and John Tandiarri as the petitioners for the appeal and lost the appeal because the High Court Decision upheld the Makassar District Court Decision Number 143/Pdt.G/2011/PN.Mks with the same consideration, namely stating according to law that the disputed object land belongs to Dirman Pardosi based on the HGB certificate stating that the documents in the hands of Gunadi Yauw and John Tandiarri as long as they are related to the disputed object land do not have binding legal force, stating that the actions of the defendant and co-defendants control

the disputed object's land are unlawful acts, punishing Gunadi Yauw and John Tandiarri or anyone who obtains rights from him on the land of the object of dispute to vacate and hand over the land of the object of dispute to Dirman Pardosi without any conditions, stating that the actions of Gunadi Yauw and John Tandiarri to control the land of the object of dispute are against the law.

Based on the Supreme Court Decision Number 2996 K/Pdt/2012 Gunadi Yauw and John Tandiarri as the petitioners for Cassation and the Cassation filed were rejected because according to Judge Dirman Pardosi's consideration he was able to prove his argument as the owner of the Right to Build and that the object of the dispute was proven to be the land belonging to Dirman Pardosi purchased from PT. Timurama in 1974.

3. CONCLUSION

3.1. Legal Protection for Land Buyers Who Lose Rights Due to the Sale and Purchase of Land that was once the Object of a State Administrative Court Dispute

Based on the research that has been carried out, the author concludes that the legal protection for land buyers who lose their rights due to the sale and purchase of land that has been the object of a State Administrative Court dispute is through a lawsuit contained in Article 32 of Government Regulation Number 24 of 1997 which states that the party who feel that they have land rights, they can submit a written objection to the certificate holder and the relevant Head of the Land Office or directly through the Court because a lawsuit is the right of every Indonesian citizen whose rights have been confiscated or harmed by another person. Then the buyer who has good intentions and buys land on a legitimate sale and purchase suffers a loss gets compensation money along with the sale and purchase price of the land 100% (one hundred percent) from the seller, then for the PPAT who makes the Deed or the National Land Agency who is proven guilty of committing a crime. provide information that it turns out that the land where the legal action is being carried out is in the object of dispute. The State Administrative Court returns 100% (one hundred percent) of the cost of making a Sale and Purchase Deed (PPAT fee) or administrative fees for registration of sales and purchases carried out at the National Land Agency of the local area. In this way what should be contained in the Court's Decision according to the author so that the buyer who is harmed is not because of his fault but because of the mistake of the PPAT or the National Land Agency can get legal protection and justice, because the buyer must surrender the land that was originally his to the actual land owner.

3.2. PPAT's Responsibility for the Deed of Sale and Purchase Made Between Bacce Bin Kiddo and Gunadi Yauw and Gunadi Yauw and John Tandiar

Based on the research that has been done, the author concludes that PPAT cannot be held accountable because at the time of making the Sale and Purchase Deed for the heirs of Bacce Bin Kiddo as the land owner and the land seller with Gunadi Yauw, the land has not yet become the object of confiscation and the National Land Agency does not provide information that the land has been certified with Hak Guna Bangunan on behalf of PT Asuransi Jiwa Bumiputra, the National Land Agency should notify that the land has been certified as Hak Guna Bangunan on behalf of PT Asuransi Jiwa Bumiputra because it could become a dispute over multiple certificates or overlapping ownership. PPAT liability can be asked for the making of the Sale and Purchase Deed between Gunadi Yauw and John Tandiar for violating the law which he consciously did, according to the author, witnesses can be given in the form of administrative sanctions, namely the PPAT can be subject to a dishonorable dismissal from his position and an administrative fine for having violates the prohibition or neglects its obligations under Article 10 Paragraph 1 and Paragraph 3 of Government Regulation Number 24 of 2016 concerning the Regulation of the Position of the Official Making the Land Deed. Then the civil sanctions due to the PPAT deed which is declared null and void based on the Court's Decision which has permanent legal force, namely in this case the Supreme Court Decision Number 658 PK/Pdt/2017 is categorized as an unlawful act that causes a loss to the parties. , then PPAT can be held liable in the form of reimbursement of costs, compensation and interest based on Article 1243-Article 1252 of the Civil Code and Criminal Sanctions because according to the author, the PPAT's actions were proven intentionally and planned either alone or jointly with Gunadi Yauw and John Tandiar knowing that the land to be sold and bought is being confiscated by the State Administrative Court may be subject to criminal sanctions in accordance with applicable regulations.

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