

# Legality of Transfer of Land Rights Through Selling Buy Under Hands According to Land Law (Case Study: Decision of the Tangerang District Court Number 376/PDT.G/2017/PN.TNG)

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## ABSTRACT

The land is one of the basic human needs and limited land can cause problems because it will encourage the purchase and sale of land and the process of land right switchover. The purchase and sale agreement is law that was born as a result of community needs. This research was conducted because there was one of decision that contained an incident that there had been a sale and purchase of land in 1999 but used a receipt, the buyer hasn't has not transferred the name of the certificate and the seller's whereabouts are not found before the legalization of the sale and purchase is carried out so that the buyer files a lawsuit to the court and the buyer/plaintiff's request is granted because the seller/defendant did not come during the trial and did not send a guardian to come to the trial. How is the validity of the sale and purchase that is carried out using only proof of receipt without an authentic deed? The research method used by the author is a normative legal research method that is library research, examines the decision of the District Court Number 376/PDT.G/2017/PN.TNG and is associated with statutory regulations, case approaches, and conceptual approaches. Sources of data used in this study are primary and secondary data sources using data collection techniques used, namely interviews and literature study. Based on the research data, it is known that the legitimacy of buying and selling land rights under the hands that have not been carried out before the PPAT does not automatically become illegal according to law and shows that there are still people who have not legally bought and sold according to the law it is detrimental to the buyer that the sale and purchase of land should use an authentic deed because if it does not have an authentic deed, it cannot be renamed the certificate.

**Keywords:** *Legality, Transaction, Land Rights, Under The Hand.*

## 1. INTRODUCTION

The land is one of the basic needs of human life, both as a place to live with the determination of living space as a place to live and in its function as a livelihood in various fields such as fisheries, animal husbandry, agriculture, plantations, industry. The development of a large population in Indonesia also increases the need for land for housing, as well as for economic, socio-cultural, and technological progress and development that requires the availability of a plot of land, for example for offices, entertainment, agriculture, plantations, livestock, fisheries,

and factories. The provisions of Article 33 paragraph (4) of the 1945 Constitution of the Republic of Indonesia states that: "The national economy is organized based on economic democracy with the principles of togetherness, efficiency, justice, sustainability, environmental insight, independence, and maintaining a balance of progress and national economic unity".

Based on Article 33 paragraph (4) above, there are principles for the implementation of national economic development aimed at realizing community welfare. Welfare for the Indonesian people is the responsibility of all interested parties such as the state and Entrepreneurs who

participate in enjoying the wealth of the Republic of Indonesia is not only the responsibility of one part.

Article 33 Paragraph (3) of the 1945 Constitution stipulates that "earth, water, space and natural resources contained therein shall be controlled by the state and used as much as possible for the prosperity of the people of the country". So that the basic human need is land. Human activities in everyday life are carried out on the ground so that humans can always be in contact with the ground at any time. On September 24, 1960, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles or referred to by its official abbreviation UUPA was a follow-up to Article 33 Paragraph (3).

The availability of a limited amount of land with the community's need for very large land can result in problems related to land due to an imbalance between supply and human needs, therefore the community's need for land will increase and this will also support increased income. sale and purchase of land as a means and form of the process of transferring land rights. So that land has a high economic value so that most humans who are social beings will be the obligation of everyone to maintain and defend their land in any way. To prevent land problems from causing disputes and even conflicts in the community, it is necessary to regulate, control, and use land or in other words, called land law. In order to provide legal certainty in the land sector, guarantees are needed, namely: 1. Availability of written legal instruments that are clear and complete and implemented consistently; 2. Implementation of effective land registration.

Someone with an interest will find it easier to understand and know what possibilities are available to him, namely to control and also use the land he needs, how to obtain it, the rights, obligations, and prohibitions listed when controlling land with certain rights, then the sanctions that will be faced if the relevant provisions are ignored, as well as other matters relating to the use of the land they own and control because of the availability of written legal instruments.

A set of implementing regulations from the UUPA aims to ensure legal certainty for land rights throughout Indonesia. If it is related to the government's efforts in realigning the use, control, and ownership of land, land registration becomes very important to realize legal certainty.

Buying and selling land is something that often happens in people's daily lives. The term buying and selling is mentioned in Article 26 of the UUPA, which is related to the sale and purchase of property rights over land. In other articles there is no word that mentions buying and selling, but it is only mentioned as being transferred. The definition of being transferred is a deliberate legal act to transfer land rights to another party. So in the article only mentions being transferred, however, including one of them is the legal act of transferring land rights due to buying and selling.

Article 1458 of the Civil Code, hereinafter referred to as the Criminal Code, states that:

"The sale and purchase are considered to have taken place between the two parties, immediately after these people reach an agreement on the object and the price, even though the object has not been handed over, nor has the price been paid."

However, the sale and purchase of land contained in Article 5 of the UUPA is different from Article 1458 of the Criminal Code which states that the agrarian law that applies to the earth and space is customary law. Based on customary law, the land sale and purchase agreement is a "clear" and "cash" agreement. It is called "Light" here because it is carried out in front of the customary head, so that it is known by the public. According to Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, land sale and purchase can be carried out if the deed is made before the Land Deed Making Official, hereinafter referred to as the authorized PPAT. Adopting the customary law, the nature of "Light" here is because it must be carried out before the PPAT, an official specially appointed by the government whose working area is in accordance with the location of the land to be sold. It is called "Cash" here because the act of handing over the land and paying the price of the land is considered to occur simultaneously, which means that the sale and purchase has been fulfilled immediately when the land has been handed over.

The practice of buying and selling land is not directly registered in the name of the buyer even though the price has been paid in full by the buyer. So to guarantee the sale and purchase of land between the seller and the buyer, an agreement called the Sale and Purchase Binding Agreement, hereinafter referred to as PPJB as a preliminary agreement, is carried out even though the PPJB has not been regulated in law, which until now in practice the sale and purchase of land is carried out first to guarantee the rights and obligations between the seller and the buyer whose contents of the PPJB are agreed upon between the parties who must fulfill the conditions for the validity of an agreement. Four conditions are governing the validity of the agreement, namely: 1. There is an agreement of the parties; 2. The ability to perform legal actions; 3. The existence of an object; and 4. There is a lawful cause.

In addition to Article 1320 of the Criminal Code, there are also regulations regarding the binding power of an agreement contained in Article 1338 Paragraph (1) of the Criminal Code, which states that: "All agreements made legally are valid as law for those who make them".

Land registration has the aim of ensuring certainty of land rights and legal certainty. Meanwhile, the explanation of Article 33 paragraph (3) of the 1945 Constitution is described in Law Number 5 of 1960 (UUPA) to realize the guarantee of legal certainty regarding land rights, namely in terms of land tenure. To ensure legal certainty, land registration is necessary. The parties concerned will find it easier to find out the legal status or position of the particular land they are dealing with, its location, area, and boundaries, who owns it, and what burdens are on it when a land registration is held.

Based on Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Regulations, which contains for holding land registration to ensure legal certainty in question, the implementation of land registration is then regulated in Government Regulation Number 24 of 1997 concerning Land Registration.

Each individual can receive a land right by applying for land that can be State Land or Land with Management Rights at the Regency/City Land Office. If the land being applied for is certified, the transfer of land rights can be carried out.

When land registration does not always run smoothly, many other parties object to the land rights that want to be registered, or the blocking of land is also carried out on the process of registering the transfer or imposition of land rights. So that in the implementation of land registration, it cannot be carried out properly following Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration.

Government Regulation Number 24 of 1997 concerning Land Registration regulates registration which is regulated more fully in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 which is the Implementation Provisions of Government Regulation Number 24 of 1997. Article 1 number 1 of PP Number 24 of 1997 determines that land registration is a series of activities carried out by the government continuously, continuously, and regularly, including data collection, data bookkeeping, data processing and presentation and maintenance of data physically and legally, in the form of a list of land parcels and units of flats, as well as the form of maps including the provision of proof of their rights and ownership rights to the apartment units as well as certain rights that encumber them.

According to Article 19 of the UUPA in conjunction with Article 37 paragraph (1) of PP Number 24 of 1997 concerning Land Registration, the sale and purchase of land must be proven by a deed made by and before the PPAT. The process of buying and selling land can only be carried out on land that is owned based on land rights, meaning proof of ownership of land rights to legalized land objects. So that legal certainty and order are guaranteed in land buying and selling.

The birth of these provisions regarding the legal protection of the sale and purchase of land, it is necessary that a transfer of land rights must be registered with the Land Office and by signing the Deed of Land Deed Maker (PPAT) to obtain valid evidence. The transfer of land rights is considered invalid if it does not have a deed made by PPAT because it is not in accordance with the applicable laws and regulations. The regulations made in the context of the community service program for making PPAT Deeds are PP No. 37 of 1998 concerning Regulations on the Position of Land Deed Maker Officials, the implementing regulations are regulated in the Regulation of the Head of the National Land Agency Number 1 of 2006 concerning PPAT Regulations which was later amended by BPN Regulation of the Republic of Indonesia No. 23 of 2009.

This case began in 1999, there was a sale and purchase of land rights belonging to Mr. HINDARTO (the defendant) to Mr. H. ULFANA MURADY (the plaintiff) which was carried out under the hands of only using proof of purchase with a receipt. relinquishment of rights to the Buyer/plaintiff for the Authorization of the Sale and Purchase.

In this case, Mr. H. ULFANA MURADY (plaintiff) has paid in full/cash Rp. 773,500,000,- as in the evidence of the Receipt Letter dated April 15, 1999 as agreed by the HINDARTO (defendant) then after that it was informed to local officials such as the Head of RT, Head of RW, and Kelurahan and HINDARTO (defendant) has submitted a Certificate of Ownership and other important documents to H. ULFANA MURADY (plaintiff) but due to the negligence of the plaintiff/buyer the Property Rights Certificate was lost and the process of name transfer has not been carried out. After that, HINDARTO (the defendant) is still unknown. Therefore H. ULFANA MURADY (plaintiff) filed this lawsuit through the Tangerang District Court.

Based on the problems above, the author conducted research which was outlined in legal writing entitled: "LEGALITY OF TRANSFER OF LAND RIGHTS THROUGH SELLING BUY UNDER HANDS ACCORDING TO LAND LAW (CASE STUDY: DECISION OF THE TANGERANG DISTRICT COURT NUMBER 376/PDT.G/2017/PN.TNG)".

### ***1.1. Related Work***

Based on the above information, the title of the study is titled: "Legality of Transfer of Land Rights Through Selling Buy Under Hands According to Land Law (Case Study: Decision of The Tangerang District Court Number 376/PDT.G/2017/PN.TNG)"

#### ***1.1.1. Legality of Transfer of Land Rights Through Selling Buy Under Hands According to Land Law (Case Study: Decision of The Tangerang District Court Number 376/PDT.G/2017/PN.TNG)***

The term legitimacy is a translation of the Dutch legal term "Recht matig" which can literally be interpreted as "based on the provisions of the applicable legal rules". In English, the term legitimacy is called "legality" which means "lawfulness" or in accordance with the law.

The transfer of land rights must be correct, namely to form a land deed made by PPAT which will later be used as a condition for registering the transfer of land rights to the district/city land office where the land is located in accordance with PP No. 24 of 1997.

Land buying and selling activities carried out between the seller and the buyer carried out under the hands, not before the Land Deed Maker Official (PPAT) are still mostly carried out in daily life, as regulated in Article 19 of the Basic Agrarian Law in conjunction with Article 37 paragraph (1) Government Regulation Number 24 of 1997 concerning Land Registration. Receipts are proof of payment, not evidence under the hand. Buying and selling land under the hands is sometimes only evidenced by a receipt as evidence that a sale and purchase has occurred.

The activity of buying and selling land rights which are proven without a deed of sale and purchase made before the PPAT which is proven only with a receipt, of course, the legal action for the buyer will be very detrimental, because the buyer does not get legal certainty regarding the transfer of rights to the land he bought, despite having paid a certain amount of money to the seller. Normatively, the certificate has been purchased but does not have proof of the transfer of rights to the land in question and the certificate is still in the name of the seller, even though it has been submitted to the buyer.

Based on Article 1457 of the Civil Code, buying and selling are an agreement in which one party binds himself to deliver an object and the other party pays the promised price. Buying and selling under the hands is an act of buying and selling that does not have legal certainty that is carried out not under the provisions that have been regulated in the legislation. The Sale and Purchase Deed (AJB) under the hand is a deed that is intentionally made for proof by the parties without involving the authorized official.

Based on the description of the background above, the problem is the placement of land without rights as happened in the case of land located in Pondok Benda Village, Pamulang District, South Tangerang City occupied by the Buyer even though the land had been previously traded by the seller/Defendant to the buyer. which legally the Buyer/Plaintiff has not fully controlled, because the Certificate of Ownership to the land has not been able to be processed over the name of the Buyer/Plaintiff.

### ***1.2. Our Contributions***

To find out and examine the validity of the transfer of land rights through buying and selling under the hands and land certificates are declared lost according to the Land Law. as well as knowing and reviewing judges' considerations in the transfer of land rights through buying and selling under the hands (Case Study Decision Number 376/PDT.G/2017/PN.Tng).

### ***1.3. Paper Structure***

The method of approach used in this study is the method of normative juridical approach, this research uses research specifications that are descriptive analytical, which in its operation describes or reviews a rule of law and doctrines that are connected. In this study was conducted to obtain primary data by collecting data from the literature.

## **2. BACKGROUND**

### ***2.1. The legitimacy of the transfer of land rights through an underhand sale and purchase and the land certificate is declared lost according to the land law***

The authors raised the issue is the placement of land without rights as happened in the case of land located in Pondok Benda Village, Pamulang District, South Tangerang City occupied by the Buyer even though the land has been previously traded by the seller/Defendant to the buyer who is legally formal The Buyer/Plaintiff has not fully mastered it, because the Certificate of Ownership of the land has not been able to be processed under the name of the Buyer/Plaintiff.

The deed is not made in the presence of an authorized official or a notary. This deed is made and signed by the parties who made it. If a deed is not denied by the parties, it means that they acknowledge and do not deny the truth of what is written on the deed under the hand, so that according to article 1857 of the Civil Code, the deed has the same power of proof as an authentic deed. .

The sale and purchase of land that is carried out without a PPAT deed is legal and results in the transfer of ownership rights to the land as long as the sale and purchase fulfills material requirements regarding the seller, the buyer and the land. This is by the results of the interview stating that the private deed is valid if the parties are capable and there is an object being traded in this case is land that is not in dispute. Proficiency in a private deed is acceptable in the case of the transfer of rights. In addition, in the case of buying and selling land, the principle of *pacta sunt servanda* applies, namely every agreement becomes binding law for the parties to the agreement. But it has no legal force because it is not recognized by law. The sale and purchase of land is legal without involving the Land Deed Making Official (PPAT), it is legal, but the legal action cannot be registered at the Land Office to make changes to ownership data or change names.

Sale and purchase is an agreement in which each party has obligations/achievements that must be fulfilled. Based on Article 1474 jo. Article 1491 of the Criminal Code, the seller should deliver the goods and bear it. The guarantee in this case is to guarantee that the control is safe and secure over the object being sold, and that there are no hidden defects in the goods.

In this regard, the transfer of land rights in the form of buying and selling must meet several conditions that have been determined by the applicable laws and regulations. If the conditions that have been determined are not met, it will have consequences on the legality of buying and selling rights to the land. The terms of sale and purchase of land rights through sale and purchase consist of material terms and formal requirements. The material requirements are focused on the subject and object of the rights to be traded, where the holder of land rights must have the right and authority to sell land rights, the buyer is a person who meets

the requirements as the subject of land rights and the land to be traded is not in dispute.

The formal requirement in terms of buying and selling land rights is the formality of the sale and purchase transaction. The formalities include the deed as proof of the sale and purchase agreement and the official authorized to make the deed. In the case of buying and selling land, the official authorized to make the deed is the Land Deed Making Officer (PPAT) following Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration. Land sale and purchase transactions carried out by meeting material and formal requirements will have juridical consequences in the form of legal certainty and legal protection for owners of land rights.

So far, land sale and purchase transactions carried out by the community have met the material and formal requirements or have not met these requirements. The first practice is buying and selling through a personal deed, the second is buying and selling land which has just reached the stage of making a deed of sale and the third is buying and selling land which has reached the stage of name transition or land registration at the National Land Agency. There is also a tendency that people who buy and sell land through private deeds are caused by the absence of land rights certificates for the land being traded.

Based on interviews that the author conducted with the sample, various factors that caused the sale and purchase of property rights to be carried out through private deeds are as follows:

1. Internal factors, as for the parts that are included in the internal factors are as follows: a. The problem of costs, the process of buying and selling land involving officials requires no small amount of money, where not all people have the same economic situation so that people with weak economic conditions choose not to involve PPAT which leads to not registering the land at BPN. Communities whose economic level is weak in terms of realizing legal certainty of ownership of land rights can be given convenience in terms of costs. This has been regulated in Article 19 paragraph 4 of the UUPA which states that the Government Regulation regulates the costs associated with the registration referred to in paragraph 1 above, provided that people who cannot afford are exempted from paying these fees. As the implementation of this article, it has been regulated in Article 14 of the Regulation of the Minister of Home Affairs (PMDN) Number 2 of 1978. Upon the request in question, the applicant may be exempted from paying part or all of the fees stipulated in this regulation, if he can prove that he is unable to pay it. Cost, which is one of the factors that people buy and sell land through private deed when viewed from the sociology of law, is by Ahmad Rahan Simangunsong's opinion that the most basic obedience so that a person obeys or disobeys the law, is because of interest. This opinion is the influence of the school of economic law, which views that various economic factors greatly affect a person's obedience, including a person's decisions related to costs or sacrifice factors, as well as the benefits if he obeys the law; b. The community does not understand or even does not know the perpetrators of the transaction, both sellers and buyers of the land

regarding the applicable legal provisions; c. The first is based on mutual trust between the seller and the buyer and ignorance of the rights and obligations as the seller and buyer of land.; d. The land that is the object of the transfer of land rights has not yet been converted; e. The type of land is still a type of agricultural land (paddy field), while the purchased land is only partially, so it must be requested to change the status of the land first to residential land/yard; f. The type of land is still agricultural, while the buyer resides outside the sub-district area where the land is the object of sale and purchase or even outside the district or province so that the buyer is still waiting for the process of population transfer so as not to violate the provisions regarding absenteeism, or in that case, the road is requested. / Process the application for change of land type into residential land first.; g. To facilitate the process of transferring their rights because the landowner has died, while the heirs are quite large. Most of them are elderly and live far from the location of the land being sold.

2. External factors as for the parts that are included from external factors are as follows: Community motivation, Another factor that causes people to prefer to buy and sell with an underhand deed is because of the community's motivation. The community considers that involving authorized officials until the certificate of land rights does not affect the buying and selling they do. The effect in question is that with the high level of mutual trust between the people who buy and sell land, they believe that one day there will be no conflict over land as the object being traded. The community already knows the procedures for buying and selling land and land registration. However, in reality, people still choose not to follow these provisions as a whole due to various factors. The community has made a sale and purchase of land before PPAT as an authorized official, either at the temporary PPAT or PPAT, namely the Camat, but after the sale and purchase deed process made by PPAT then it is not registered with the BPN to change the name; b. The fact that happened in the community, some of them in the case of submitting the deed of sale and purchase to BPN for transfer of name took more time, even one respondent stated that he had only submitted his deed of sale and purchase for transfer of name after 3 years from the signing of the deed. However, BPN Padang Pulau still accepts people who are just about to certify their land even though the signing of the sale and purchase deed has passed 7 days. Land registration 7 days after signing the deed is a must. But if more is the negligence of the community itself. The community has been advised, however, when the community arrives after 7 days have passed, they are still accepted to register their land.

Related to the above provisions, the Governor has the authority to recommend the release of land registration for the poor, with the consideration that to realize legal certainty and certainty of rights for the underprivileged people to their land rights. Even though there is the National Agrarian Operations Project (PRONA) which is the first land registration activity and is intended for economically weak communities, this remains an obstacle for the community regarding costs. The community considers the sale and purchase deed made by the PPAT or the sub-district

head as a temporary PPAT enough to prove their ownership so that there is no need to change the name, secondly because the funds they have are not sufficient to continue at the transfer of name stage so that the making of the sale and purchase deed and transfer of name gradually adjust financial condition. The gradual management of the deed of sale and purchase and transfer of name does provide convenience to the public regarding the cost factor, but this method violates the land registration procedure where the submission of the deed of sale and purchase must be submitted no later than 7 (seven) working days after the signing of the deed of sale and purchase under Article 40 of Government Regulation Number 24 of 1997 concerning Land Registration.

People who are still buying and selling land through private deeds are indicated to feel that the applicable legal rules by involving land deed officials are not in accordance with social norms that are not legal which they understand, namely high trust in others in terms of buying and selling. This causes people to feel alien to the rules. Because people feel foreign, they don't feel bound by the law so they don't obey it. Non-compliance with the law with people still buying and selling land with an underhand deed has juridical consequences for the ownership status of the land being traded.

The function of the land certificate is to prove the existence of land rights and the subjects who are entitled to the land. Proof of juridical data and physical data is contained in the certificate of land rights. Physical data is information regarding the location, boundaries and area of the registered land plot as well as information regarding the building and parts thereof. Meanwhile, juridical data is information regarding the legal status of registered land parcels, their rights holders and other parties as well as other rights that burden them.

The existence of land rights certificates will provide legal certainty and legal protection to the holders of land rights in question. Legal certainty means that it can be known with certainty and clearly who is the holder of land rights and what the object of land rights is. Legal protection guarantees are given to holders of land rights that have been certified if other parties file a lawsuit or claim from other parties for the ownership of the land rights.

If the certificate has been traded and has been paid for but has not been transferred, then the police must report the loss to the police for the lost certificate by bringing proof of the purchase receipt that has been paid in full. After that the owner must report to the National Land Agency (BPN) to report the loss. The original land certificate that you hold is a copy of the land book kept at the Land Office or the National Land Agency (BPN) in the area where the land is located.

According to Article 57 of Government Regulation No. 24 of 1997 concerning Land Registration, it is stated that at the request of the holder of the land a new certificate can be issued as a replacement for the lost certificate. So, if the land certificate is lost, then you can apply to the Land Office or the BPN Office in charge of the land to issue a replacement certificate. Management of the replacement of lost land certificates must be carried out as soon as possible.

People who carry out the process of buying and selling land under their hands among the people of Pondok Benda so far, the community has carried out the process safely and there have been no disputes so far. According to the interview, he prefers to sell his land with a receipt because the cost is cheap, the process is fast and does not take a long time. Because he sold the land, because he needed money for the cost of the pilgrimage, so that it was considered sufficient through a receipt. The Buyer also stated that he did not mind buying and selling land with a receipt. The important thing is that the process is fast and the family members already know and the important thing is that the process is fast and the family members already know. Because in general, the buying and selling process that occurs in this village when an agreement is reached between the seller and the buyer, all heirs also sign a statement. So this is done to strengthen that there has been a transfer of rights to the land being sold. The legal consequences of this process of buying and selling land are legal because there has been an agreement between the two parties so that it is also legal to exercise their rights. However, from a legal point of view, it is not legal because there is no certificate. As if the certificate is lost, the management must be carried out by the name of the owner listed on the name of the old certificate.

## ***2.2. Legal Validity***

In the Oxford dictionary, Legal Validity is defined as follows: For a rule to become a legal rule, it has to be legally valid. For a law to become a legal law, it has to be legally valid. Similarly, a valid rule is a rule and an invalid rule is not a rule. This chapter discusses the legal validity of rules. The first section explains the nature of legal validity and the validity of rules. The chapter also discusses systemic validity, wherein it is shown that the justification view of legal validity is compatible with the dependence on factual sources. It further examines the other difficulties of the justification view found in the interpretation of detached legal systems, and includes a discussion of legal validity within the context of positivism.

Legal legitimacy places more emphasis on public trust in real sources, which can be seen and proven by the naked eye. This, it can be concluded that validity is something that has existed and is valid. While the validity of the law is the rule of law that has been in effect, real and definite. Legal validity in Indonesia means that it has been stated in a written rule such as legislation, government regulations, circulars, and several other written legal rules.

## ***2.3. Transfer of Land Rights***

The transfer of land rights is a legal act of transferring land rights which is carried out intentionally so that the right is separated from the original holder and becomes the right of another party. the other party, and vice versa for the other party. The land becomes the property of another person so that the transfer of land rights is known or expected by the parties carrying out the legal act of transferring land rights.

According to the provisions of Article 37 of PP No. 24 of 1997 that the transfer of land rights and ownership rights to the apartment unit is transferred through legal actions such as buying and selling, exchanging, grants, income in the company, and other legal acts of transferring rights, except for the transfer of rights through auctions. can only be registered if it can be proven by a deed made by the authorized PPAT by the provisions of the applicable laws and regulations.

The transfer of land rights is a legal act of transferring land rights from the previous owner to another party which is then deliberately carried out to relinquish these rights. The transfer of rights indicates the existence of a legal act that is intentionally carried out by one party with the intention that the rights to the land belong to the other party and vice versa so that the transfer of rights is known or desired by the parties who carry out the legal act of transferring land rights.

#### **2.4. Underhand Agreement**

*An agreement is an event where a person promises to someone with a person or two or more people who agree to do or carry out something that has been agreed upon. In addition, the agreement is also a source of engagement other than the law, engagement is also an abstract understanding because the parties are said to do or carry out certain things, while the agreement is also a concrete understanding, because the parties are said to carry out a certain event.*

*The agreement is a translation of the word *overeenkomst* (Dutch) which means agreement or agreement. Book III Article 1313 of the Civil Code explains that an agreement is an act by which one or more parties bind themselves to one or more persons. According to Subekti, an agreement is an event where one person promises to another person, or where two people promise each other to do something.*

#### **2.5. Legal Protection for good-intentioned Buyers**

*Law Number 5 of 1960 explains, in general, the purpose of holding land registration in Article 19 paragraph (1) Number 5 of 1960 explaining that to provide legal certainty by the Government, land registration is held throughout the territory of the Republic of Indonesia (RI) according to the provisions stipulated with Government Regulation. Here it is clear that the land registration held by the Government is nothing but to provide legal certainty and legal protection to the wider community for the land rights that exist in them through a certificate of land rights or it can be known as a land certificate. The guarantees of legal certainty and protection referred to here are as follows:*

*1. Certainty according to the subject is certainty regarding a person or legal entity who is the holder of land rights. All actions related to land will have legal consequences if they are carried out by the party entitled to the land under what is stated in the proof of their rights.*

*2. Certainty regarding the object, namely certainty covering the land consisting of its location, boundaries, and area of the land.*

*3. Certainty regarding the rights, including the right to cultivate, the right to build, property rights, or other rights*

*4. Certainty regarding the law, i.e. if the status of the land is known, the authority and obligations of the party entitled to the land can know.*

*Apart from being a guarantee of legal certainty and protection according to Sri Soedewi Masjchoen Sofwan, it can also be used for trade or business interests, for example, such as land certificates that can be used as collateral for money loans to banks. The rights to land that have certificates that can be used as debt loans to the bank are building rights, business use rights, property rights. However, it is very unfortunate that public awareness, especially people in rural areas, to register land, especially customary rights files, is generally still relatively small.*

*One of the contributing factors is the lack of public legal awareness of the importance of land certificates and the absence of a regulation containing sanctions that require or oblige the community to register the land they own. To seek and increase public awareness of the importance and benefits of land registration (land certificates), the government takes policy actions to overcome obstacles in an effort to overcome public awareness to register land that belongs to them.*

*One example of the steps taken is by conducting outreach to the community about the importance of land registration, especially the use of land certificates. With this counseling, it is hoped that public awareness will arise so that they voluntarily register their land rights. And if the land he owns has been registered, it will make it easier for all interests related to problems regarding the land.*

*While the transfer of land rights that do not have a certificate is the transfer of land rights from the owner of the original land to the recipient of the transferred land rights, so that the recipient can register the land transferred to him at the Land Registration Office so that a certificate can be issued after the land registration is carried out. . Thus, that a strong means of proof is a certificate and the purpose of the land registration being held is to guarantee legal certainty in the land sector.*

#### **2.6. Judges' Considerations in the Transfer of Land Rights Through Underhand Sale and Purchase Against Decision Case Number 376/PDT.G/2017/PN.Tng.**

The judge's considerations in Decision Number 376/PDT.G/2017/PN.Tng are following the judge's considerations, namely:

The Plaintiff has made a purchase in full for a plot of land located in Pondok Benda Village. Ciputat District, South Tangerang City to the Defendant in the amount of Rp. 726 The Pondok Benda has disappeared, and the Plaintiff has reported the certificate to the Police. Considering, based on

the testimony of Witness Agus Rokhmat and Witness Ade Putria, SE MBA which was revealed in the final trial.

The Plaintiff stated that the decision in this case could be executed first. Even though there was a *verzet*, appeal or cassation (*ut voerbaar bij vorrand*, because the evidence submitted by the Plaintiff did not meet the requirements set out in Article 180 paragraph (1) HIR and SEMA No. 3 of 2000 and SEMA No. 4 of 2001 which states that there is a guarantor whose value is equal to the value of the goods or objects of execution.

According to the author, the judge's consideration is appropriate because the plaintiff has paid in full on the land with proof of receipt but does not yet have an authentic deed made before a notary. Therefore, the plaintiff should make a sale and purchase before a notary to have legal force. As stipulated in Government Regulation No. 24/1997, agreements concerning the transfer of land rights, including the sale and purchase of land, should be made before the Land Deed Making Official (PPAT). Therefore, in carrying out a sale and purchase transaction, the seller and the buyer must come together to the PPAT office, to then make a Land Sale and Purchase Deed. PPAT is a public official who is considered by the Head of the National Land Agency (BPN), who has the authority to make a deed of transfer of land rights, including a deed of sale and purchase of land. If the land sale and purchase transaction occur in an area where there is no Land Deed Making Official (PPAT), then it can appear before the Camat in his position and capacity as a temporary PPAT. The thing that needs to be considered by the seller and the buyer of the land is that the PPAT who will be asked to make the deed of the land sale and purchase agreement is the PPAT which is in the area of his domicile and authority which includes the area where the land is used as the object of the sale and purchase transaction.

The process of buying and selling land if made before a notary has legal force, then the process of buying and selling land under the hand does not need to be carried out, because if you see the legal consequences in the future. It could be that by carrying out the process of buying and selling land under the hands, if it is not carried out at PPAT then later it will be difficult to get legal evidence, as in the case of the plaintiff who lost the certificate but not yet in the name of the plaintiff.

Therefore, every sale and purchase of land should be carried out before a notary. When facing PPAT to make a deed of land sale and purchase agreement, several things need to be prepared by the parties concerned, namely: 1. The seller is expected to bring: a. Original certificate of land rights to be sold.; b. KTP (Resident Identity Card); c. Proof of payment of PBB (Earth Building Tax); d. Letter of Approval from husband or wife, for those who are married.; e. KK (Family Card). 2. The Buyer is expected to bring: a. KTP (Resident Identity Card); b. KK (Family Card); c. Payments that can be made in cash before the PPAT, or an order to issue money to the bank, which has been agreed between the seller and the relevant buyer.

To make a Deed of Sale and Purchase of land at PPAT, you must check the authenticity of the certificate to the relevant land office. The seller must pay income tax (PPH) if the selling price of land is above Rp. 60,000,000.00 (sixty

million rupiahs) at the relevant bank or post office. The prospective buyer can make a statement that by buying the land he does not become the holder of land rights that exceed the maximum limit. A statement from the seller that the land ownership is not in dispute. After the requirements have been prepared, the process of making a land sale and purchase deed is carried out at a local notary.

### 3. CONCLUSION

1. The practice of buying and selling land that is carried out under the hands is not in accordance with Government Regulation Number 24 of 1997 concerning Land Registration, which requires that the sale and purchase be made with an authentic deed, not under the hand. However, the process of buying and selling land carried out in Benda Village is still legal, because the legal conditions for buying and selling according to the UUPA have been fulfilled, namely material and formal requirements that are cash, clear and real, only do not have legal force because there is no authentic deed. In addition, the sale and purchase have fulfilled the terms of sale and purchase according to Article 1320 of the legal requirements of the agreement. To obtain the transfer of land rights and transfer of name, they must have a deed made by PPAT because the transfer of land rights through a land sale and purchase must be proven by a deed made by PPAT. So, the sale and purchase of the land should be carried out and before the PPAT so that it can be registered.

2. The judge's consideration is appropriate because the plaintiff has paid in full on the land with proof of receipt but does not yet have an authentic deed made before a notary. Therefore, the plaintiff should make a sale and purchase before a notary to have legal force. As stipulated in Government Regulation No. 24/1997, agreements concerning the transfer of land rights, including the sale and purchase of land, should be made before the Land Deed Making Official (PPAT). Therefore, in carrying out a sale and purchase transaction, the seller and the buyer must come together to the PPAT office, to then make a Land Sale and Purchase Deed.

The sale and purchase of land should not be carried out under the hands, because if it is under the hands, it does not have an authentic deed, and cannot be transferred. It is better if the legal act of buying and selling land carried out before the PPAT can be proven by the Deed of Sale and Purchase (AJB) of the land made by the PPAT.

The Camat or Village Head as the official should provide counseling related to the sale and purchase of land in accordance with the applicable laws and regulations with an authentic deed so that no more parties are harmed and there is no risk of a dispute.

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## REFERENCES

- [1] Effendi, Bachtiar. *Pendaftaran Tanah di Indonesia*, (Banjarmasin: PT. Alumni Bandung, 1993).
- [2] Harsono, Boedi. *Hukum Agraria Indonesia Sejarah: Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Djambatan, 2008).
- [3] Hartanto, J. Andy. *Hukum Pertanahan*, (Surabaya: LaksBang Justitia, 2014).
- [4] HS, Salim. *Perkembangan Hukum Kontrak diluar KUH Perdata* (a), (Jakarta: Raja Grafindo Persada, 2007).
- [5] Marzuki, Peter Mahmud. *Penelitian Hukum*, Cetakan ke-11, (Jakarta: Kencana Prenada Media Group, 2011).
- [6] Saleh, Wantjik. *Hak Anda Atas Tanah*, (Jakarta: Ghalia Indonesia, 1982).
- [7] Supriyadi, Bambang Eko. *Hukum Agraria Kehutanan*, (Jakarta: PT Raja Grafindo Persada, 2013).
- [8] Sutedi, Adrian. *Peralihan Hak Atas Tanah Dan Pendaftarannya*, (Jakarta: Sinar Grafika, 2008).
- [9] *Indonesia. Putusan Pengadilan Negeri Nomor 376/PDT.G/2017/PN.TNG.*
- [10] <https://jogja.tribunnews.com/2017/09/29/ini-yang-harus-dilakukan-ketika-sertifikat-tanah-yang-belum-balik-nama-hilang?page=all>, [Accessed 25 Juni 2021].