

The Validity of Receipts as Transactions for the Transfer of Land Rights Before the Law

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Abstract

The large number of people who do not understand the law on land transfer rights has become a problem for the legal compliance of land rights owners. People who occupy or own land whose ownership is based only on receipts and private deeds become a problem that arises in the future. Legal certainty regarding the sale and purchase transaction in the transfer of land rights agreed between the seller and buyer based on a receipt without a Sale and Purchase Deed made by a PPAT or PPATS has not been registered at the Land Office, but many buyers still carry out sales and purchases without using a Sale and Purchase Deed made by a PPAT or PPATS. Buyers of sales and purchases carried out without using a Sale and Purchase Deed made by a PPAT and/or PPATS may face legal consequences, such as being unable to register the transfer of land rights at the local land office or not being able to have the land rights transferred to their name. Buyers who carry out sales and purchases that do not comply with procedures will be subject to legal sanctions for committing a violation of the law, either intentionally or due to carelessness in fulfilling their legal responsibilities. Negligent or wrongful acts result in the creation of incorrect legal certificate products, including errors in the legal subject or object of the certificate. As a result, the certificate becomes invalid at the time of its creation or cannot be processed. Legal protection for buyers in good faith can be done through special efforts by filing a lawsuit with the District Court to obtain legal certainty regarding ownership of land rights, then submitting a name change at the National Land Agency, then being able to record the transfer of rights to land ownership based on the decision taken in the lawsuit and used as support for the name change application.

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1. INTRODUCTION

Land is a means to fulfill basic human needs for food and shelter, and is a natural resource that is often contested by various parties. Rapid economic growth has resulted in increasing demand for land, leading to many conflicts caused by social differences between those who desperately need land and those who try to obtain it through unfair means. This condition has the potential to trigger various conflicts or disputes in the land sector. (Yotrimis Maklon Zaid, Ismail, Dewi Iryani, 2023).

Land is the surface of the earth that forms a single unit of land with clear boundaries. Land rights exist on this piece of land, whether owned by an individual or a legal entity.

Land rights are rights regulated in Article 16 of the Basic Agrarian Law (UUPA). Land rights, as stated in Article 16 paragraph (1) of the UUPA, include ownership rights, control rights, building construction rights, utilization rights, lease rights, land clearing rights, forest product collection rights, and other rights that are not included in the legal categories above. In addition, there are temporary rights referred to in Article 53 paragraph (1) of the UUPA, namely mortgage rights, profit-sharing business rights, road rights, and agricultural land lease rights. Actions are being taken to eliminate these rights as quickly as possible. (Herman, 2009)

Article 26 paragraph (1) of the UUPA regulates "the transfer of ownership rights to land, namely through sale and purchase, exchange, grant, gift by will, gift according to custom and other acts which are intended to transfer ownership rights". One way to obtain land rights is through the sale and purchase process. Property rights are hereditary, the strongest and most complete rights that a person can have to land, taking into account that these rights have a social function. If the transfer of land rights has been carried out, the land must be immediately registered at the Land Office. (Nur Azizah, Anggraeni Endah Kusumaningrum, Benny Bambang Irawan Nitinegoro, 2023).

One way to acquire land rights is through a sale and purchase process. Property rights are hereditary, the strongest and most comprehensive rights a person can have over land, taking into account that these rights have a social function. If land rights have been transferred, the land must be immediately registered at the Land Office. In everyday terms, a sale and purchase agreement can be understood as an act in which a person voluntarily hands over money to obtain the goods they desire. (Soedharyo Soimin, 2014)

According to Article 1457 of the Civil Code, a sales and purchase agreement is an agreement in which one party promises to deliver an item, and the other party agrees to pay a mutually agreed-upon sum. Generally, negotiations take place before the agreement is finalized, which determines when a binding agreement is formed. Once a definitive agreement is reached, the sales and purchase agreement is considered valid and enforceable, so both the seller and the buyer are obliged to comply with its terms. Sales and purchase agreements are the most common type of agreement encountered in everyday life. (Abdulkadir Muhammad, 2014).

Indonesia faces various land issues, which result in various types of disputes. Therefore, the author will discuss land conflicts between two entities involved in a land sale and purchase agreement that was carried out incorrectly or did not follow applicable regulations. Land sale and purchase agreements must comply with Government Regulation Number 24 of 1997 concerning land registration. Article 37 paragraph (1) explains that "The transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, income in a company, and legal acts of transfer of rights through auction, can only be registered, if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations." Therefore, the only acceptable way to transfer land rights is through a formal document. This document needs to be made by an authorized official in the land sector, acting in their official capacity. Once made, the document is officially recorded, which then provides legal recognition to the person or entity as the legal owner of the land.

Despite clear regulations governing the transfer of land rights, private land transactions are still common. Fraudulent practices include land sale and purchase agreements that only include a receipt, where the legal transfer of rights is affected through cash payment, either in full or in part, as agreed upon by the seller and buyer.

Under-the-table real estate transactions are often conducted due to their simplicity and reduced financial burden. The procedure involves only basic agreements, receipts, and a

few witnesses, so costs are minimal. Transferring land ownership is very easy and less expensive than formal channels like the National Land Agency.

Using official channels can have significant financial implications for both sellers and buyers, and the process can be time-consuming. Therefore, some individuals are reluctant to follow proper legal procedures when buying or selling real estate. Law Number 24 of 1997 regulates formal guidelines for land registration (Wahyu Kuncoro, 2015). According to Soetjipto Rahardjo, providing legal protection represents a dedicated effort to protect individual rights by assigning authority to individuals, empowering them to carry out essential tasks. Furthermore, important characteristics are highlighted, while the law strives to ensure public safety. Therefore, providing legal protection for the public requires concrete legal certainty (Soetjipto Rahardjo, 1983). In this study, the author is interested in examining how legal certainty is achieved for sales and purchase transactions based on receipts in transferring the name of a certificate, and the legal impacts that may arise if the sale and purchase transaction does not use a sales deed issued by a PPAT and/or PPATS.

2. PROBLEM

1. How is the Certificate Name Change Process based on the receipt evidence for underhanded sales and purchases according to UUPA?
2. Legal Impacts That Will Occur If a Sale and Purchase Transaction Does Not Use a Sale and Purchase Deed Issued by a PPAT and/or PPATS.

3. RESEARCH METHOD

The normative and empirical juridical method, namely by focusing on secondary data through examination and analysis of the principles of positive law obtained from the comparison of law and library data, as well as components or characteristics related to the research subject during field research. Because the subject matter being studied is centered on the interaction between one regulation and another and its implementation in society, this study emphasizes library research (library study), meaning that more secondary data will be analyzed and studied using the normative juridical method. This study emphasizes secondary information sources in the form of regulations, considering that applied research uses research with a normative juridical approach, namely research that refers to legal norms included in applicable laws and regulations as a normative basis. To uncover the legal principles that will answer the main problem in this study, namely, regarding the legal aspects of the sale and purchase of land rights based on receipts as the basis for transactions without using a Deed of Sale and Purchase.

4. DISCUSSION

1. The certificate name change process is based on proof of receipt for underhand sales and purchases according to UUPA.

The legal principle regarding commitment is outlined in Book III of the Civil Code, defining commitment as an official relationship established through understanding and regulations. Commitment can originate from an agreement, or Arrangement, often referred to as Overeenkomst and Contract, in Book III and Chapter II of the Civil Code. (Yahman. 2014). As regulated in the Civil Code, there are three sources of obligations: first, obligations originating from a contract (agreement), as regulated in Article 1313 of the Civil Code, which explains that a contract is an act carried out by one or more people who bind themselves to one or more people. Second, obligations arising from legal provisions, as detailed in Article 1233 of the Civil Code, which states that obligations arise either through a contract or through a statutory order. This obligation

is realized either through giving something, doing something, or not doing something. The last or third obligation occurs due to an unlawful act as stated in Article 1352 of the Civil Code, which states that an obligation that arises due to law arises from law or from law as a result of the actions of another person.

Article 1233 of the Civil Code stipulates that an obligation can occur either because of an agreement or because of a law; in other words, the source of the obligation is an agreement or a law. So, in the process of the obligation, both parties must bind themselves to each other and have rights and obligations that are fulfilled. Based on this, in the process of the sale and purchase agreement, there must be elements that are fulfilled, such as the subject, object, purpose, and authority to act. The sale and purchase agreement will be valid if the four valid conditions contained in Article 1320 of the Civil Code have been fulfilled. Firstly, both parties must agree to bind themselves in a sale and purchase agreement, then both parties must be legally competent to make an agreement, must be adults, and able to act legally. Thirdly, there is something that is agreed upon in Article 1330 paragraph (1) of the Civil Code, which states that: "an agreement must have a principal part of an item whose type is at least determined," so an agreement must have an object of the agreement. The fourth is a lawful cause, which is the content of an agreement, because that cause is what causes someone to make an agreement.

Based on the explanation of the four valid conditions regarding the basis of the rules and agreements of the sale and purchase agreement and there has been an agreement regarding the price of the land between the seller and the prospective buyer where the valid conditions have been fulfilled, both parties must bind themselves to the agreed sale and purchase agreement by conducting the sale and purchase before a Notary. This is regulated based on Article 1868 of the Civil Code regarding an authentic deed, one of which is a sale and purchase agreement declared valid by the state, namely a deed made in a form determined by law by or before an authorized public official for that, such as a Notary and/or PPAT, Judge, Clerk, civil registrar employee at the place where the deed was made. After the sale and purchase before a Notary, the seller is obliged to hand over the goods agreed upon in a sale and purchase agreement to the new owner of the land rights. Handover is the act of transferring ownership of the object of the sale and purchase from the seller to the new owner, namely the buyer. The sale and purchase agreement is basically inseparable from the subject matter contained in the agreement. The subject of a sale and purchase agreement is one of the elements that must be fulfilled to create an agreement. Based on Article 1457 of the Civil Code, a sale and purchase agreement is an agreement between one party and another to hand over something and pay based on a pre-existing agreement. Based on the explanation of the Article, there must be something that guarantees both parties in the form of the position of the seller and the buyer in a sale and purchase agreement. According to Philipus M. Hadjon, the State of Indonesia, as a state based on the rule of law based on Pancasila, must provide legal protection to its citizens in accordance with Pancasila. Therefore, legal protection based on Pancasila means the recognition and legal protection of human dignity and worth based on the values of the One Almighty God, humanity, unity, deliberation, and social justice. These values give rise to the recognition and protection of human rights within the framework of a unitary state that upholds the spirit of family in achieving shared prosperity. Legal protection in a state based on Pancasila, the important principle is the principle of harmony based on the family.

Legal protection in general is a form of service that must be carried out by law enforcement officers or security forces to provide a sense of security, both physical and

mental, to victims and witnesses from threats, disturbances, terror, and violence. While legal protection in the perspective based on the sale and purchase agreement, both for a buyer who has good intentions and every party who has good intentions, is a principle in the legal system in Indonesia, which is based on customary law, which is highly respected. Good intentions in a sale and purchase agreement process have value in consideration if a dispute occurs in the future. A buyer who has good intentions is a buyer who does not know and cannot be considered to have known about any defects in the process of transferring rights to the land he purchased; From the results of the literature review, it can be seen that there is an agreement among the authors that "a buyer who has good intentions" should be interpreted as: "an honest buyer, not knowing the defects in the goods purchased".

The meaning of good faith in the literature is then divided into two categories, namely subjective good faith and objective good faith, although in the case of buyers in good faith, the literature in Indonesia only refers to the subjective meaning. Subjective good faith is defined as the honesty of the buyer who is not aware of any defects in the transfer of rights, while objective good faith is defined as propriety, where a person's actions (for example, the Buyer) must also be in accordance with the general view of society. The measure of propriety, in this case, is the obligations that must be fulfilled by the buyer.

According to the Civil Code, however, the element of knowing whether the acquired ownership rights are valid or not is mentioned as the main element that distinguishes between *bezit* (powerful position) in good faith and *bezit* (powerful position) in bad faith. Article 531 of the Civil Code states: "Besit in good faith occurs when the owner obtains the goods by obtaining ownership rights without knowing that there are defects in them." While Article 532 of the Civil Code states: "Besit in bad faith occurs when the owner knows that the goods he holds are not his property. If the owner is sued before a judge and, in this case, loses, then he is considered to have acted in bad faith from the time the case was filed." After the enactment of the UUPA, all matters governing land objects no longer refer to the Civil Code, although the UUPA does not contain the definition of good faith regarding control or acquisition of land rights. Furthermore, PP No. 24/1997 mentions the term good faith in relation to physical control over land (Article 24) and holders of land title certificates (Article 32). Article 24 paragraph (2) letter a states: "control over the land is carried out in good faith and openly by the person concerned as the person entitled to the land, and is supported by the testimony of a trustworthy person", while Article 32 paragraph (2) states: "If a certificate has been legally issued for a plot of land in the name of a person or legal entity who obtained the land in good faith and actually controls it, then other parties who feel they have rights to the land can no longer demand the implementation of these rights if within 5 (five) years from the issuance of the certificate they have not submitted a written objection to the certificate holder and the Head of the Land Office concerned or have not filed a lawsuit with the Court regarding control of the land or the issuance of the certificate".

A Good Faith Buyer is defined as a buyer who does not suspect that the person selling an item is (not the only) person entitled to the item being sold. The Indonesian National Armed Forces (MARI) has also stated in its decision that a Buyer who is unaware of any legal defects (in the sale and purchase they have made) is a Buyer in Good Faith. After the enactment of the UUPA, the MARI actually still defines a good faith buyer as a buyer who is unaware of any errors in the sale and purchase process (transfer of rights), such as the revocation of the Seller's Power of Attorney by the

Original Land Owner. However, good faith has also begun to acquire another meaning, namely that the Buyer has been deemed to be in good faith if the sale and purchase have fulfilled the conditions stipulated by the Law.

Based on the provisions of the legislation, in reality, it may contain legal defects. However, this does not mean that the definition of a buyer in good faith as a buyer who is not (should) be aware of any legal defects is completely abandoned by the addition of the aforementioned meaning. A buyer can be considered to be in good faith if he has carefully checked the material facts (physical data) and the validity of the transfer of rights (legal data) for the land he purchased before and during the process of transferring rights to the land. If the buyer knows or can be considered to have known about defects in the process of transferring rights to the land (for example, the seller's lack of authority), but he continues with the sale and purchase, then the buyer cannot be considered to be in good faith.

According to statutory regulations, the Buyer's obligations in a sales and purchase agreement are regulated in Articles 1513 and 1514 of the Civil Code. However, the Buyer's obligations here are related to the context of the agreement, and there are no regulations requiring the Buyer to examine material facts before and during the land sale and purchase. Existing regulations place more emphasis on the Seller providing honest information about the goods being sold (Article 1473 of the Civil Code). This article imposes an obligation on the Seller to provide information to the Buyer about the goods to be purchased. According to the assumptions of the legislators and also according to opinions developing in the literature, the validity of the sale and purchase can be ensured by the role of the Land Deed Official (PPAT) and the required land registration mechanisms. Articles 39 and 45 of PP No. 24/1997 stipulate that the PPAT and (later) the Head of the Land Office (KKP) must examine or ensure that the following matters are met:

1. For registered land or ownership rights to apartment units, the original certificate of title must be submitted with the name that matches the list at the Land Office.
2. For unregistered land, evidence must be submitted as determined by the PP.
3. the competence/authority of the parties carrying out the relevant legal acts
4. fulfillment of permits from authorized officials or agencies, if required
5. The object is free from dispute, and
6. There is no violation of statutory provisions.

A material requirement for a land seller is that the seller be the legal holder (landowner) of the land rights. If there is only one person who owns a plot of land, then they have the right to sell the land themselves. However, if there are two landowners, then the two people have the right to sell the land together, and no one person can act as the seller. Meanwhile, a material requirement for a land buyer (the recipient of the rights) is that they must meet the requirements to own the land they are buying, depending on what rights exist on the land, whether ownership rights, building use rights, or use rights.

The underhand sale and purchase transactions in the cases studied, although incomplete in accordance with the provisions of the UUPA, most of these legal acts have fulfilled the requirements, namely, clear, cash, and real. Legal acts of sale and purchase that are clear, cash and real in accordance with the provisions of the UUPA are not declared void, even though an authentic deed is not made before the PPAT, so that the legal act is not void by law, but it needs to be completed with an authentic deed if you want to transfer land rights, namely changing the name on the certificate. In other words, the legal act of sale and purchase that is clear, certain, and real as known in customary law can be said to be materially complete (valid).

Based on the above, in this case, when the Buyer, in good faith, wanted to transfer the title to the certificate by completing it with an authentic sale and purchase deed before the PPAT (PPAT), the Seller could no longer be found. This resulted in a deadlock due to the inability to produce the required authentic deed. This Buyer, in good faith, needs legal protection. This legal protection involves requesting the court to protect the Buyer's rights. In this case, the Buyer can file a lawsuit.

The validity of a private sale and purchase of land under the law for a certified land title can be categorized as materially valid by the discovery of two documents owned by the Buyer, namely a certificate and a payment receipt. This material validity is further strengthened by the fact that the land referred to in the private sale and purchase object has been truly controlled by the buyer, and there has been no objection or resistance from any party. However, this material validity needs to be strengthened through a public trial examination and concluded with a decision of the panel of judges that strengthens the material validity of the sale and purchase case. The decision of the panel of judges in this decision serves as a way out for the Land Office to carry out the name change process. Considering that an authentic deed is a formal requirement for the sale and purchase of fixed assets, namely certified land, it cannot be attached as a requirement for the name change process to be carried out.

A sale and purchase agreement with good faith based on legal norms must be considered valid even if the sale and purchase is not carried out in accordance with the regulations applied by law, or customary law (Supreme Court of the Republic of Indonesia Decision No. 242 K/Sip/1958). Based on an analysis of Decision No.: 328/Pdt. G/2021/PN.TNG, which has been handled by the Usman & Rekan law firm, in which the main case is a dispute between the seller and the buyer, where one of the parties (the Plaintiff) is the buyer of the object which is the subject of the dispute, in decision Number: 328/Pdt. G/2021/PN.TNGunilaterally harmed, in the main case, the buyer has proof of receipt in a sales-purchase agreement. It can be seen in the main case of the buyer (plaintiff) from the perspective of the sales-purchase process that was carried out based on legal regulations in Indonesia or positive law in Indonesia.

2. Legal Impacts That Will Occur If a Sale and Purchase Transaction Does Not Use a Sale and Purchase Deed Issued by a PPAT and/or PPATS.

That is based on decision number: 328/Pdt. G/2021/PN.TNG, Since the sale and purchase transaction mentioned above, the said plot of land has been controlled by the Plaintiff until now, and during the Plaintiff's control, no party has filed any objections or disputed it. That, due to the Plaintiff's ignorance since the Plaintiff purchased the said plot of land, the Plaintiff has never taken care of changing the name of the Certificate of Ownership No. 52 from the name of Defendant I to the name of the Plaintiff. That is when the Plaintiff just submitted and or took care of changing the name of the Certificate of Ownership No. 52 from the name of Defendant I to the name of the Plaintiff to Defendant V; however, Defendant V requested a Determination and/or decision regarding the ratification of the sale and purchase of a plot of land currently located in Banten Province. The evidence held by the Plaintiff is a receipt from the Defendant.

Based on Court Decision Number: 328/Pdt. G/2021/PN.TNG, a Buyer in good faith, requested the ratification of the sale and purchase of a plot of land located in Banten Province, South Tangerang City, because a Buyer in good faith must always be protected. Consequently, the sales and purchase agreement in the form of a receipt made by the buyer with the seller must be considered valid. If anyone is harmed as a result of the transaction, then the rights of the buyer in good faith must be protected by law, this

is as per the decision of the Supreme Court of the Republic of Indonesia. No. 1267 K/Pdt/2012 and as regulated in Supreme Court Circular Letter (SEMA) No. 7 of 2012. In point IX, it is formulated that:

"Protection must be given to buyers who act in good faith, even if it is later discovered that the seller is not entitled to the (object of the land sale and purchase)."

"The original owner can only file a claim for damages against the undeserving Seller."

The ideal concept of legal protection for buyers in good faith who have proof of sales transaction receipts to be taken into consideration by the judge in deciding the case if a dispute arises related to the decisions of the Supreme Court. The legal protection given to buyers in good faith is where the buyer has the right to sue the seller for a refund of the purchase price if it turns out that the seller is not the original owner of the land. The ideal concept of legal protection for buyers in good faith is the existence of breakthrough court decisions that do not only depend on the buyer's own ignorance of the existence of legal defects in the transfer of his rights, but also emphasize the buyer's obligation to properly examine and research the validity of the land he bought before and when the sale and purchase is carried out. The lesson that can be learned from the above decisions is that legal protection given to buyers, (should) not only depend on the buyer's ignorance of the defects in the transfer of rights to the land he bought, but also consider the buyer's efforts to properly find out and examine the physical data and legal data before and when the sale and purchase is carried out. The development of jurisprudence regarding Buyers acting in good faith by adopting the principle of due care and caution should be a guide for judges in similar cases.

5. CLOSURE

1. Conclusion

Based on Article 531 of the Civil Code, legal protection for buyers with proof of receipt as the basis of the sale and purchase agreement is basically legal protection given to the buyer because he obtained the property rights based on good faith. This means that he is not aware of any defects or defects. However, a new buyer can be considered to have good faith if he has also checked the validity of the acquisition of the object he purchased in accordance with the application of the principle of a buyer in good faith as regulated in Circular Letter Number 4 of 2016 as a guideline for the Implementation of Duties for the Court regarding the Definition of a Buyer in good faith as stated in the civil chamber agreement in letter a is refined as the Criteria for a Buyer in good faith who needs to be protected based on Article 1338 paragraph (3) of the Civil Code if the sale and purchase of the land object is carried out with valid procedures and documents as determined in the laws and regulations and carries out caution by examining matters relating to the agreed land object.

In the case being studied, even though there is no authentic PPAT deed, after obtaining a court decision with permanent legal force, the certificate name change process desired by the buyer can certainly be continued. This is stated in Article 37 paragraph (2) of PP 24/1997, which states that the certificate name change can be based on an authentic letter made by someone other than a PPAT, in this case, a Court Decision with permanent legal force, including an authentic letter or deed. The certificate name change can be carried out after the decision is in force or has permanent legal force. The BPN, based on the court decision, is obliged to process it to protect the interests of the Buyer in good faith, even though the sale and purchase were not carried out before a Notary/PPAT. The judge's decision is a way out to protect the Buyer's rights because the process is not fully in accordance with the UUPA.

2. Suggestion

The public should be more careful, thorough and cautious before regarding the land object that will be purchased because sometimes the seller is not honest in providing information about the object of sale and purchase, therefore it is better to check the history of the land at the BPN or through the PPAT first, this is also related to the requirements for legal protection for buyers later when a dispute occurs in court.

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