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## Legal Protection for Heirs Against the Transfer of Land Ownership Rights Through Underhand Sales and Purchase Agreements Without the knowledge of the heirs (Study Decision Number 41/PDT.G/2020/PN CELL)

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**Abstract:** Referring to Law no. 5 of 1960 concerning Basic Agrarian Principles (UUPA), registration of land rights and the transfer of rights are regulated in Article 19 of the UUPA and its implementing regulations. A land certificate is official evidence that shows ownership status or rights to land. When the name of the land owner is on the land certificate or land deed registered by PPAT changes from seller to buyer, this is referred to as a transfer of property rights. However, it is still common for transfers of land rights to be carried out independently / privately without involving the authorities or without following established procedures. This can lead to legal uncertainty and potential problems regarding land ownership in the future. Normative juridical methods are used as the basis for research, descriptive analytical methods are the specifications in this research. Results: 1) *Preventive* legal protection and repressive legal protection *are* legal protection that can be provided in private land sale and purchase transactions. 2) Based on Articles 1451 and 1452 of the Civil Code, the Panel of Judges decided in Decision Number 41/Pdt.G/2020/PN Sel, that the sale and purchase agreement for the disputed land object dated 5 June 2002 must be cancelled. Through this decision, the Panel of Judges provides legal protection through actual execution. The Defendants or parties who lose in the trial must return and hand over all the land that is the subject of the dispute to the Heirs (Plaintiffs). The land must be handed over in a vacant and free condition voluntarily.

**Keyword:** Buying and Selling Under The Hands, Transfer of Land Rights, Legal Protection.

### INTRODUCTION

The phenomenon of increasing land prices is usually the result of an imbalance between demand and availability of land. This can be influenced by things such as population growth, urbanization, economic development, and development and land use policies that may not always meet community needs. As land prices rise, people are trying to

acquire and own land to invest and live on. Therefore, it is important to have policies that take into account the need for sustainable land. Additionally, it is important to make efforts to increase access and equality of land ownership across society.

Some philosophical and cultural perspectives view land as a resource that must be safeguarded and managed wisely by those who control it. According to this perspective, when someone sells land, they are actually selling the right to manage and utilize it rather than absolute rights to the land itself. In addition, the perspective of social and environmental responsibility in land use is very important in the context of sustainable development. (Soimin, 1993).

In Article 20 paragraph 1 UUPA property rights are defined as hereditary, strongest and fullest rights that can be owned someone on the ground. This means that property rights give the owner full authority and strong legal power over the land he owns. As a hereditary right, property rights can be passed down from generation to generation, so there is continuity in land ownership. In addition, property rights give the owner complete freedom to use, transfer or manage the land according to his wishes and interests, without interference from other parties. Thus, property rights guarantee sovereignty over land and provide high legal certainty for the owner. (Sanjaya & Rahmatiar, 2024).

Ownership rights can be transferred and transferred according to Article 20 paragraph 2 UUPA. The transfer of property rights indicates an intentional transfer of rights, such as when rights are sold or given to another person through valid legal actions, including buying and selling or giving. Transfer of property rights, on the other hand, occurs due to legal events or accidental events, such as a gift or inheritance. Therefore, the difference between assignment and transfer of property rights indicates some process of transferring rights, both intentionally and unintentionally. If someone sells or buys land, it can result in a transfer of ownership rights to the land. (Saleh, 1982).

In civil law, buying and selling land is regulated by the provisions contained in the Civil Code (KUHPerdata) or civil codes that apply in a country. Buying and selling, according to Article 1457 of the Civil Law, is the seller's agreement to give goods to the buyer and the buyer pays and receives the goods. In buying and selling land, the seller is responsible for handing over the land according to the agreement, and the buyer pays and receives the land according to the agreement. The rights and obligations of the parties must be clearly defined and regulated in the agreement or applicable legal provisions. (Hartanto, 2009).

To ensure the implementation of the agreement, the importance of the involvement of the Land Deed Drafting Officer (PPAT) is very significant. One of the functions of PPAT is to guarantee that buying and selling transactions are carried out in compliance with applicable legal provisions. In the transaction process, each party will carry out its responsibilities in accordance with the agreement. The buyer pays an amount of money according to the land price agreed in the agreement, and the seller will give ownership of the land to the buyer.

The transfer of land rights resulting from the sale and purchase can only be recorded /registered with a deed from the PPAT in accordance with applicable laws. This is done to ensure that land buying and selling transactions remain legal and guarantee legal certainty. Thus, to ensure legal validity and legal certainty in land buying and selling transactions, it is very important to pay attention to and comply with the applicable provisions. (Hartanto, Land Law, 2014).

*Preventive* legal protection involves creating regulations to prevent disputes. Registration and transfer of land rights are regulated in accordance with the provisions contained in Article 19 of the UUPA as well as implementing regulations after the UUPA comes into force. A land certificate is proof of land ownership. When the name of the land

owner on the land certificate or land deed registered by PPAT changes from seller to buyer, this is called a transfer of ownership rights.

However, there are still many illegal land buying and selling transactions proven only by payment receipts. Because there is no legal certainty regarding the status of the transfer of rights to the land purchased, this kind of legal action can be very detrimental to the buyer. In addition, if the buyer has received the land without a deed made before the PPAT, the purchased land certificate cannot be accepted as legal proof that the rights to the land have been transferred.

In certain cases, as shown by the decision of the East Lombok Selong District Court Number 41/Pdt.G/2020/PN Sel, it was decided that the Plaintiff's heirs Alm. Ahmad Yamani has legal rights to four plots of rice fields in East Lombok Regency. In accordance with the Land Sale and Purchase Agreement signed on June 5 2002 (under the hand), the late. Ahmad Yamani and Ir. Haswita (Defendant I ) sold the land which was the object of the dispute in 2002. The value of the land was Rp. 240,000,000 (two hundred and forty million rupiah). The Land Sale and Purchase Agreement shows an agreement between the seller (Plaintiff) and the buyer (Defendant I) regarding the payment method in installments or stages. If the second party, Ir. Haswita (Defendant I ), as the buyer, cannot fulfill the conditions stated in the agreement, then the agreement will be declared null and void.

Defendant I made payments starting in January, March, April and September 2002, according to proof of receipt of the money. So if the total is IDR 135,000,000 (one hundred thirty-five million rupiah) of the agreed land price of IDR. 240,000,000,- (two hundred and forty million rupiah). Defendant I borrowed Certificate of Ownership No. 59 and No. 60 in the name of the late Ahmad Yamani around 2002 and promised to return it and settle the remaining payments for the land in dispute. That it was revealed in fact that Defendant I only made a partial payment and the remainder was Rp. 105,000,000 ( one hundred and five million rupiah) has not been repaid until the lawsuit is registered in court.

In June 2006, Defendant I without permission and knowledge of the late. Ahmad Yamani changed the name of the certificate he borrowed at the East Lombok Regency Land Agency office (Defendant III ) to Ir. Haswita (Defendant I ). Since then, Defendant I cannot be contacted or found its existence. At the end of 2016, the heirs of the late Ahmad Yamani sued Ir. Haswita (Defendant I ), Amaq Atun (Defendant II) and BPN East Lombok (Defendant III) at the East Lombok Selong District Court.

The formulation of the research problem is : How is the legal protection for the transfer of land ownership rights through under - hand agreements according to Law Number 5 1960 concerning Basic Regulations on Agrarian Principles ? and What is the judge 's consideration in Decision Number 41 / Pdt.G / 2020 / PN Sel regarding the dispute over the transfer of land ownership rights through a private sale and purchase agreement ?

## **METHOD**

This research uses normative juridical law, which relies on legal materials as the main basis. (Rukmana, Abas, & Ashhadi, 2023) . According to Soerdjino Soekanto, in normative juridical research, researchers look at library materials such as statutory regulations, legal norms, customary law, jurisprudence, treaties, or related research related to issues raised . (Soekanto & Mamudji, 2011) .

This study applies analytical descriptive specifications. Includes a deep understanding of the research object, including its characteristics, attributes and context. It involves careful identification and analysis of various aspects relevant to the object under study. (Abas, Rahmatiar, & Mulyandaru, 2022).

## RESULTS AND DISCUSSION

### **Legal Protection for the Transfer of Land Ownership Rights through Private Agreements According to Law Number 5 1960 concerning Basic Regulations on Agrarian Principles**

Legal protection is an important foundation in every civilized society. It creates a strong foundation for justice, security and national stability besides ensuring recognition and respect for individual rights. Maintaining peace and justice will be difficult if there is no adequate legal protection. Therefore, one of the tasks of the government and legal institutions in every country is to ensure that all people have equal access to the justice system and are protected by the law. (Mertokusumo, 1919) .

The next very important stage after legal protection is effective law enforcement. Without effective enforcement, the rights guaranteed by law will remain just words on paper and will have no meaning in everyday life. Strong and fair law enforcement is essential to prevent violations of the law, provide justice to violators, and give the public confidence that the legal system is working in their interests. To ensure the legal system operates efficiently and fairly for all citizens, the elements of legal certainty, expediency and justice must be seriously considered in law enforcement.

Satjipto Raharjo is a legal expert who is famous for his deep thoughts on the Indonesian legal system and the principles of legal protection. One of the most important ideas he gave was how important it is to combine elements of legal certainty, expediency and justice through law enforcement. To ensure that everyone can enjoy the rights guaranteed by law, legal protection aims to protect human rights that have been harmed by others. This shows how important legal protection is, which is closely related to the principles of justice and equality in the legal system . (Rahardjo, 2020) .

Article 20 paragraph 2 UUPA , land ownership rights can be transferred and transferred or given to another person. This shows that the law recognizes the possibility of transferring land rights in the form of inheritance, sale, or other means regulated by agrarian law. To ensure that the transaction is legal and clear, the transfer of rights is carried out through a process established by law. Recipients of new rights are required to record/ register the transfer of land ownership . This is part of the formal legal process required to ensure transparency and legal certainty in land ownership.

To provide proper legal protection to new land rights holders, this registration is very important. In addition, this registration process maintains orderly land registration administration , ensuring that land ownership data is recorded accurately and legally. Thus, the registration process plays an important role in maintaining land rights and clear ownership .

The land sale and purchase deed must be made and validated by PPAT in accordance with UUPA and Government Regulation Number 24 of 1977 concerning Land Registration . However, informal buying and selling of land rights is still legally recognized as long as the important terms of the agreement are met. The government is responsible for ensuring the land registration process is in accordance with Article 19 of the UUPA throughout Indonesia, in accordance with the regulations regulated by the Government Regulation.

In cases where a private sale and purchase agreement is used to transfer land rights, the agreement remains valid as long as the parties involved in the transaction agree to it. To officially change land ownership data, Government Regulation no. 24 of 1997 concerning Land Registration stipulates that the agreement must be processed in accordance with the requirements mentioned above. The sale and purchase deed must be made by PPAT . (Sakti, 2020) .

Because there is no official document that validates the transaction, private land sale and purchase agreements without the involvement of PPAT are often difficult to prove legally. Without a deed ratified by PPAT, it becomes more difficult to prove that land rights

have been legally transferred . The PPAT deed has strong legal force and is officially recognized by the authorities . Land transactions should be carried out through a process that complies with legal provisions and involves PPAT to ensure the validity and legal clarity of the transaction t.

Land sale and purchase transactions carried out privately without involving PPAT do not have the same evidentiary power as transactions supported by official deeds. However, parties involved in such transactions still have the right to legal protection , this includes various actions and policies aimed at ensuring that everyone has equal access to justice, protection and their rights under the law. Legal protection provides legal subjects, both individuals and legal entities, with confidence that their rights are recognized, protected and enforced in accordance with applicable law through a legal system that is structured and applied consistently. It is very important to carry out careful research to protect all parties involved in a private sale and purchase agreement for land rights, where the transaction does not involve PPAT.

*Preventive* legal protection and *repressive* legal protection *are* legal protections that can be provided in private land sale and purchase transactions . Efforts to avoid future legal disputes / problems by taking preventive measures were previously known as *preventive legal protection*. One important *preventive approach* is to involve the government or competent authority in making decisions that are careful and based on good *discretion* . *Preventive* legal protection is a series of efforts carried out by the government / competent authority before a violation of statutory regulations occurs. By limiting the ability to perform legal acts, the main goal is to prevent future violations of the law. After violations or conflicts related to land buying and selling transactions occur, *repressive legal protection* is provided. The aim of this effort is to resolve the conflict and provide justice to the affected parties. (Mahesa, Setianto, & Dantes, 2023) .

When someone else claims ownership of the land, the holder of land rights who has a land certificate has a guarantee of legal protection. The purpose of a land certificate is to protect the rights of the certificate holder as well have legal certainty that they own the land. A land title certificate is very important to verify land ownership, although it is not a perfect means of proof. These certificates have high evidentiary value and are legally recognized, but their existence is not necessarily sufficient to automatically prove land ownership in all cases . In addition, land ownership becomes clear if the certificate has been passed for more than 5 years. Land title certificates, usually because they have been valid for a certain period of time without successful lawsuits or claims challenging them, can be used by land rights holders as evidence to challenge claims from other parties related to land ownership. (Muljono, 2013) .

### **The Judge's Considerations in Decision Number 41/Pdt.G/2020/PN Cell Regarding the Dispute of Transfer of Ownership Rights to Land Through a Private Sale and Purchase Agreement**

The judge's consideration is very important for the judge to determine justice and legal certainty in a decision. To ensure that the decisions made by the judge are reliable and fair for the litigants , the judge's considerations must be carried out carefully and thoroughly i. The high court or higher judicial institution can cancel the judge's consideration if it does not meet these requirements.

Decisions made by courts must be based on theory and in-depth research findings. A balance between theory and practice is also very important to achieve optimal justice and legal certainty. In a country, legal certainty will be determined by a judge's decision which is based on a solid basis. Therefore, the function of judges as law enforcers through decisions is very important to achieve this goal. (Arto, 2004) .

The considerations made by the Panel of Judges at the Selong District Court in this matter are as follows:



1. Because the Plaintiffs' parents (the late Ahmad Yamani) left assets in the form of 4 (four) plots of rice fields known as "disputed object land", the disputed object land belongs to the Plaintiffs and is the inheritance of the Plaintiffs' parents.
2. The Land Sale and Purchase Agreement was made privately on June 5 2002 between the late. Ahmad Yamani and Ir. Haswita (Defendant 1). However, Defendant I was unable to fulfill the contents of the agreement or pay as promised within the specified time, so Defendant I *was in default* (broke his promise).
3. The Land Sale and Purchase Agreement dated June 5 2002 is legally void because one of the parties, the buyer (Defendant I), was unable to fulfill the obligations/ responsibilities stipulated in the agreement.
4. Defendant I borrowed Certificate of Ownership No. 59 and No. 60 in the name of the late Ahmad Yamani, but there was no payment or repayment of the land which was the object of the dispute. Defendant I turned over the two certificates in his own name, and Defendant 1's actions were clearly immoral /bad intentions.
5. All transfer letters from Defendant I are legally invalid, as well as changing the name of the certificate in the name of the deceased. Ahmad Yamani is an unlawful act.
6. The Panel of Judges considered that it was appropriate to legally cancel the land sale and purchase agreement which was the object of the dispute. Articles 1451 and 1452 of the Civil Code state that canceling an agreement means returning to the original position before the agreement.

Taking into account the above legal considerations, the Plaintiffs' lawsuit is partially granted. Therefore, in accordance with Article 192 Rbg, which stipulates that the losing party is obliged to pay costs related to the case, the Defendants must be sentenced to pay costs related to this case.

The author is of the opinion that the decision of the Panel of Judges at the Selong District Court in case Number 41/Pdt.G/2020/PN Sel, which relates to land sale and purchase transactions, is appropriate in deciding the case. The Panel of Judges made its decision based on the Sale and Purchase Agreement Letter dated June 5 2002, which stipulates that the agreement can be declared null and void if one of the parties fails to fulfill its responsibilities. As a result, the judge's decision is based on the agreement stated in the agreement letter.

In accordance with Article 1320 of the Civil Code, an agreement can be continued until the end as long as the objective and subjective conditions regulated in that article are not violated. In the case mentioned above, one of the parties (the buyer) was Defendant I have broken promises or *default* because they are unable to carry out the agreement or pay according to the promise within the agreed time period. Thus, violation of the subjective terms of the agreement can be considered as a consequence. Therefore, the ruling stated that the agreement was legally invalid because of the provisions, which is the appropriate consequence in this case.

The author believes that the violations occurred in the context of unlawful acts, especially those related to the buyer (Defendant I) who changed the name of the certificate belonging to the seller (the late Ahmad Yamani) to the name of the buyer (Defendant I) without the seller's consent or knowledge is against the law. This action could harm other parties, especially the Plaintiff (heirs of the late Ahmad Yamani). Apart from that, it also has the potential to create new problems if Defendant I intends to sell the land to another party. The author's opinion emphasizes the impact that may be caused by unlawful acts, including the possibility of fatal losses for the parties involved.

In accordance with Article 1365 of the Civil Code, Defendant I's actions in carrying out the process of changing the name of the certificate without the Plaintiff's consent or knowledge can be considered an unlawful act. The plaintiffs, especially the heirs of the late Ahmad Yamani, suffered losses as a result of this action because they lost ownership rights to their land after the certificate was transferred to the name of the buyer (Defendant I), Ir.

Haswita. Thus, this action is clearly contrary to the law and causes losses that must be considered when resolving the case.

## CONCLUSION

The transfer of land rights by the buyer without the knowledge of the heirs in the above case can be considered an unlawful act according to Civil Law. This is because land is a valuable asset and land rights have a significant impact on the interests of the heirs. Therefore, legal protection is needed to ensure that the rights of heirs are protected and not ignored during land buying and selling transactions. The law provides protection to heirs through various rights, including the right to inherit the rights and obligations of a deceased person (Article 833 of the Civil Code) as well as the right to file a lawsuit to defend inheritance rights (right *hereditatis petitio*) as regulated in Article 834 of the Civil Code.

The Selong District Court judge has made a decision in Case Number 41/Pdt.G/2020/PN Sel, which has gone through appropriate legal considerations. The Plaintiff (the heir of the late Ahmad Yamani) succeeded in proving in facts at trial that the land in question belonged to the Plaintiff's parents. The evidence submitted is the Sale and Purchase Agreement which is strong evidence.

Therefore, the judge sentenced the Defendants to return and hand over all the land in question to the Plaintiff because they owned part of the land in question, because they controlled part of the land that was the object of the dispute. The land must be handed over freely and vacantly. Thus, the heir of the late Ahmad Yamani (Plaintiff), has the right to get back all the land that is the object of the dispute, as well as a certificate for said land.

## REFERENCE

- Arto, Mukti. 2004. *Praktek Perkara Perdata Pada Pengadilan Agama; Cet. V*. Yogyakarta: Pustaka Pelajar.
- Hartanto, J. Andy. 2009. *Problematika Hukum Jual Beli Tanah Belum Bersertifikat; Cetakan Pertama*. Yogyakarta: Laksbang Mediatama.
- Hartanto, J. Andy. 2014. *Hukum Pertanahan*. Surabaya: LaksBang Justitia.
- Mertokusumo, Sudikno. 1919. *Mengenal Hukum; Suatu Pengantar*.
- Rahardjo, Satjipto. 2020. *Ilmu Hukum*. Bandung: PT. Citra Aditya Bakti.
- Sanjaya, Suyono, dan Yuniar Rahmatiar. 2024. *Dasar-Dasar Hukum Agraria*. Yogyakarta: K-Media.
- Soekanto, Soerjono dan Sri Mamudji. 2011. *Penelitian Hukum Normatif; Suatu Tinjauan Singkat, Ed.1, Cet.13*. Jakarta: Rajawali Pres.
- Soimin, Soedharyo. 1993. *Hak dan Pembebasan Tanah*. Jakarta: Sinar Grafika.
- Wantjik Saleh, 1982, *Hak Anda Atas Tanah*. Jakarta: Ghalia.
- Undang-Undang Nomor RBg-1927 Tahun 1927 tentang Reglemen Acara Hukum Untuk Daerah Luar Jawa Dan Madura (RBg.)
- Undang-Undang Nomor 23 Tahun 1847 tentang Kitab Undang-Undang Hukum Perdataa.
- Undang-Undang Republik Indonesia Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
- Putusan Pengadilan Negeri Selong Nomor 41/Pdt.G/2020/PN Sel.
- Abas, Muhamad, Yuniar Rahmatiar & Wahyu Mulyandaru. 2022. "Analisis Risalah Perundingan Terhadap Pemutusan Hubungan Kerja (PHK) Akibat Mogok Kerja Tidak Di PT. Sah Adyawinsa Stamping Industries (Studi Putusan Pengadilan Hubungan Industrial Nomor 96/Pdt.Sus-PHI/2015/PN Bdg jo. Putusan Mahkamah Agung Nomor 740K/Pdt.Sus-PHI/2015)". *Jurnal Justisi Hukum*, 7 (2), 55.
- Mahesa, K. Hendra, Muhamad Jodi Setianto dan Komang Febrinayanti Dantes. 2023. "Perlindungan Hukum Dalam Jual Beli Tanah Di Bawah Tangan Berdasarkan

- Undang-Undang Nomor 5 Tahun 1960 Tentang Peraturan Dasar Pokok-Pokok Agraria”. *Jurnal Ilmu Hukum Sui Generis*, 3 (4), 118.
- Muljono, Bambang Eko. 2013. “Pelaksanaan Peralihan Hak Atas Tanah Berdasarkan Perjanjian Pengikatan Jual Beli Dan Kuasa Untuk Menjual Yang Dibuat Oleh Notaris”. *Jurnal Independent*, 1 (2), 60.
- Rukmana, Wawan Indra, Muhamad Abas & Farhan Asyhadi. 2023. “Analisis Permohonan Izin Poligami Karena Istri Pertama Tidak Bisa Memberikan Keturunan Dihubungkan Dengan Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan (Studi Putusan Pengadilan Agama Karawang Nomor 2561/Pdt.G/2020/PA Krw)”. *Jurnal Justisi Hukum*, 8 (1), 87.
- Sakti, Socha Tcefortin Indera. 2020. “Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C Di Bawah Tangan”. *Jurnal Privat Law*, III (1), 148.
- <https://putusan3.mahkamahagung.go.id>.