



## Register (Waarmerking) on sale and purchase agreements in transfer of land rights: A study in the city of Bengkulu, Indonesia

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### Abstract

This study aims to find out why private sale and purchase agreements on land rights are often carried out by people in the Bentiring Village, Muara Bangkahulu District and what efforts must be made so that people in the Bentiring Village, Bengkulu City, buy and sell land rights in accordance with Government Regulation No. 24 of 1997 in order to obtain permanent legal force and also the validity of the sale and purchase of land rights which were only carried out privately. This research is a type of empirical legal research with a qualitative approach. The data sources used are primary and secondary data sources using data collection techniques that are used, namely through interviews and literature studies, then the data obtained is analyzed using qualitative analysis techniques with interactive models. From the results of research and studies it is known that private sale and purchase agreements on land rights are often carried out by the Bentiring Village community because the costs are not too much and the process is very easy. Then efforts are made so that the people in the Bentiring sub-district obtain permanent legal force in buying and selling land rights, which must comply with Government Regulations at the land office, and there must be certainty that the seller must really be the owner. Meanwhile, the validity of the sale and purchase of land rights under the hands that have not been or have not been implemented before the Land Deed Making Officer does not automatically become invalid according to law.

**Keywords:** legitimacy; buying and selling; land rights

### Introduction

Land has developed into a symbol of wealth or power. By owning a large area of land, a person is sociologically placed in a certain social status in the strata of society. Because of the importance of this immovable object, the state government tries to regulate the allotment and use of land. The Constitution of the Republic of Indonesia Gives this authority to the state as the highest authority organization to carry it out. (Joseph, 2021)

The importance of land in everyday life is not only felt by humans, but for all creatures on earth who need land as a foothold. No one sees that land is not important, so that's why problems often arise due to land issues regarding boundaries or land areas that have been controlled by living things (Amin & Isrok, 2021) <sup>[1]</sup>

In everyday life there are so many problems that arise in terms of land. An example is buying and selling that is carried out underhand on the basis of trust, and when you want to transfer the name of the seller who has died or his whereabouts are no longer known, this will cause problems for the buyer who will register his rights at the local Land Office. (Gide, 2012) <sup>[4]</sup>

For example, in the Bentiring sub-district, at that time the consultancy and legal aid agencies of Muhammadiyah Bengkulu University. was carrying out community empowerment in the Bentiring sub-district, Bengkulu city, and it was found that several members of the community had problems when they wanted to apply for certificates of ownership of land that they bought on credit (in installments), based on the results of discussions The community leaders and residents found that the transfer of status to the land currently occupied by some of the

residents could not be carried out because the ownership status of a piece of land was unclear.

The seller is deemed not to have the authority to sell the land because there is no power to sell the plot of land, so that the sale and purchase transaction and sale and purchase agreement as evidenced by the agreement letter and receipt are considered unable to fulfill the legal sale and purchase requirements by the Bengkulu city land office.

It is known that some of these community members are economically disadvantaged citizens, because there are those who work as daily unskilled laborers, farmers and traders, more or less some of these people lack knowledge of the law, especially regarding sale and purchase agreements. Based on the background of the problems above, the focus and formulation of the problem that will be studied is, how is the form of assistance and protection of legal protection in the sale and purchase agreement of a plot of land privately for the poor.

### Method

Empirical Legal Research is a legal research method that uses empirical facts taken from human behavior, both verbal behaviors obtained from interviews and real behavior carried out through direct observation. Empirical research is also used to observe the results of human behavior in the form of physical remains and archives (Mukti Fajar ND and Yulianto Achmad, 2010) <sup>[5]</sup>. This research activity will be carried out in Bengkulu City, Bengkulu Province, in the Bentiring Village, Bengkulu City, according to the case to be studied. However, it is possible to carry out research in accordance with the development in the discussion of the problem.

## Result and Discussion

The community carries out legal relations, one of which is by means of an agreement. An agreement is a legal action that creates, changes, abolishes rights, or creates a legal relationship and in this way, the agreement creates legal consequences which is the aim of the parties.

Buying and selling in the everyday sense can be interpreted, where a person releases money to get the desired item voluntarily. According to Boedi Harsono, "In customary law the act of transferring rights (buying and selling, grants, exchange) is a legal act that is cash in nature". Sale and purchase in land law with the payment of the price at the same time in cash (Fatmie Utaria, 2020) <sup>[3]</sup>.

Disputes or conflicts over land have become a chronic and classic problem and have lasted for years or even decades and are always present everywhere. Land disputes and conflicts are complex and multi-dimensional forms of problems. (Sumarto, 2012) <sup>[9]</sup>

Furthermore, according to Rusmadi Murad, there are several types of land dispute problems, namely:

- a. Issues or issues related to priorities to be implemented as legal rights holders on land with title status, or on land with no rights yet.
- b. Objection to a basis for rights/proof of acquisition used as a basis for granting rights (civil).
- c. Errors or errors in the granting of rights caused by the application of regulations that are lacking or incorrect.
- d. Disputes or other issues that contain practical/strategic social aspects. (Murad, 1999) <sup>[6]</sup>

## Land and Land Rights

The relationship between humans and land is very close, namely land as a place for humans to live and continue their lives. Land has played a vital role in the life and livelihood of the nation, as well as being a supporter of a country, especially where an agrarian pattern predominates. In a country whose people desire to implement a socially just democracy, the maximum use of land is aimed at the prosperity of the people (Sutedi, 2018, p. 31) <sup>[10]</sup>.

According to the Big Indonesian Dictionary, land can be interpreted: 1) The surface of the earth or the top layer of the earth; 2) The state of the earth in a place; 3) The surface of the earth that is given a boundary; 4) Materials from the earth, the earth as a material (sand, rock, etc.)

The conception of land according to the Basic Agrarian Law (*Undang-Undang Pokok Agraria*) article 4 is the surface of the earth whose use authority includes the body of the earth, water and the space above it. In this sense land includes land that already has a right that exists on it or that is attached to a right according to regulations.

Meanwhile, according to Budi Harsono, he gives a limitation on the definition of land based on what is meant in Article 4 of the UUPA, that in land law, the word land is used in a juridical sense as a meaning that has been given official boundaries by the *Undang-Undang Pokok Agraria* as stated in Article 4 that the right to control from the state is determined by kinds of rights over the surface of the earth called land (Deputy for Measurement and Mapping Survey BPN RI, 20017, p. 6) <sup>[2]</sup>.

Land rights are tenure rights over land which contain a series of authorities, obligations and/or prohibitions for the right holders to do something about the land being claimed. Something that is permissible, obligatory or prohibited to do, which is the content of tenure rights, is the criterion or

distinguishing point between tenure rights over land regulated in land law. 70 With the right to control from the state as stated in Article 2 paragraph (1) Basic Agrarian Law, namely that: "On the basis of the provisions of Article 33 paragraph (3) of the 1945 Constitution and the matters referred to in Article 1, earth, water and space, including the natural wealth contained therein, at the highest level is controlled by the state as the organization of the power of the whole society. On the basis of these provisions, the state has the authority to determine land rights that can be owned by and or granted to individuals and legal entities that meet the specified requirements. This authority is regulated in Article 4 paragraph (1) of the Basic Agrarian Law, which states that: "On the basis of the state's right to control as referred to in Article 2 it is determined that there are various rights over the surface of the earth called land, which can be given to and owned by people.

Thus, land in a juridical sense can be interpreted as the surface of the earth. In the opinion of Jhon Salindeho stated that land is an object of economic value in the eyes of the Indonesian people, it is also the one that often gives vibrations in peace and often causes shocks in society, then it is also the one that often causes delays in the implementation of development. Based on the understanding of land stated above, it can provide an understanding that land has a very high economic value so that it is everyone's obligation to maintain and maintain its existence as an object of economic value because besides that land is also useful for the implementation of development, land also often causes various kinds of problems. for humans so that its use needs to be controlled as well as possible so that

The rights to land regulated in Article 16 of the Basic Agrarian Law that can be granted to the people by the state are: "Right of ownership (*hak milik*)". Property rights are hereditary rights, the strongest and most fulfilled that can be found by people over land by remembering Article 6 of the Basic Agrarian Law. The strongest and most complete that is meant here is that the right of ownership does not mean that it is an absolute, unlimited and inviolable right, besides that the words "strongest" and "full" are meant to distinguish it from usufructuary rights, building usufructuary rights, usufructuary rights and so on. Even though the most powerful nature is owned by someone, they are still bound by the provisions of Article 6 of the Basic Agrarian Law, namely land must have a social function, meaning that if the public interest requires it, then personal interests must be sacrificed (of course by way of proper compensation). b. Cultivation Rights. This right is a newly created right in the Basic Agrarian Law, so it is not like property rights which have been known since ancient times because of the original right to cultivate and the right to use a building.

Unknown to our society because there is no equality in customary law and the two rights above to meet the needs of today's modern society. What is meant by usufructuary rights is stated in article 28 paragraph (1) of the Basic Agrarian Law which reads: "Utilization rights are rights to cultivate land controlled by the state within the period referred to in article 29, and used by agricultural companies, fisheries or livestock c. Building use rights What is meant by building use rights is stated in Article 35 paragraph (1) and paragraph (2) of the Basic Agrarian Law which reads: (1) Building use rights are rights to construct and own

buildings - building on land that is not owned by the owner, with a maximum period of 30 years (2) Upon request of the right holder and taking into account the needs and condition of the buildings, the period referred to in paragraph (1) can be extended for another 20 years.Usufructuary rights are rights to use and/or collect produce from land directly controlled by the state or land belonging to other people, which gives authority and obligations all that is determined in the decision to give it by the official who is authorized to give it or in an agreement with the owner of the land that is not a lease agreement or a land processing agreement, everything as long as it does not conflict with the spirit and provisions of this Law (Article 41 of the Basic Agrarian Law )

### Scope of Agreement

Understanding the Agreement, the meaning of the word agreement is explained in Article 1313 of the Civil Code (*Burgerlijk Wetboek*) that: "An agreement is an act in which one person or more binds himself to one or more people." an agreement which is made to bind oneself to one person or more than one person to perform an act or not to commit the act. While the agreement was born based on the existence of an agreement and the provisions of the applicable law and the agreement is the closing of negotiations between parties that bind the offer and acceptance submitted by both parties.

1. Agreement according to Sudikno, legal relations owned by both parties or more on the basis of the agreement and give rise to legal consequences.
2. Agreement according to R. Subekti is an event in which one party makes an agreement with another party to carry out certain actions or things.
3. Agreement according to R. Wirjono prodjodikoro, Bachelor of Laws is a legal relationship which means that a person is obliged to do a certain thing and the other party has the right to demand this obligation in the agreement.
4. Agreement according to R. Setiawan is an act to make an agreement between himself and one or more people.
5. Agreement according to Abdulkadir, an agreement made between two or more people to bind themselves in carrying out a matter related to assets.
6. An agreement according to the KMRT Tirtodiningrat is a legal action based on an agreement between two or more parties whose legal consequences can be enforced by the provisions of the applicable law.

Based on several definitions of the agreement/agreement, the elements contained in the engagement can be drawn, including: a. Legal Relationship Legal relationship is a relationship that is regulated and recognized by law. In a legal relationship, a relationship between two parties in which rights are attached to one party and obligations to the other party. This relationship is regulated and has certain legal consequences. The rights and obligations of these parties can be defended before the court. If the debtor does not fulfill his obligations voluntarily, properly and properly, then the creditor can ask for legal assistance so that there is pressure on the debtor so that he fulfills his obligations. In the Field of Wealth Law Wealth law (*vermogensrecht*) is a legal provision relating to rights and obligations that can be assessed by wealth. This wealth is the totality of rights and obligations of people. The relationship between the parties in the engagement must be a legal relationship in the field of

property law. The legal relationship that arises from the agreement in the form of rights and obligations must have a monetary value or at least can be translated into a certain amount of money. So, to determine whether the legal relationship is in the field of property law, the yardstick used is that the legal relationship must be assessed by.

### Restrictions on Buying and Selling

Buying and selling according to Article 1457 of the Civil Code is an agreement in which one party binds itself to surrender an object and the other party pays an agreed price. A sale and purchase agreement are a reciprocal bond in which one party (the seller) promises to hand over the ownership of an item, while the other party (the buyer) promises to pay a price consisting of an amount in return for the acquisition of said property. The term which includes two reciprocal actions is in accordance with the Dutch term *koop en verkoop* which also implies that one party *verkoop* (sells) while the other *koopt* (buys ) (Subekti, 1991, p. 2)<sup>[8]</sup>. The object of the sale and purchase agreement is certain goods whose form and quantity can at least be determined when the ownership rights will be handed over to the buyer, so that they become valid in the sale and purchase agreement. The main elements of the sale and purchase agreement are the goods and the price. In accordance with the consensual principle that animates the law of civil law agreements, the sale and purchase agreement was created when an agreement was reached regarding the goods and price, then a sale and purchase agreement was reached. Contract law from civil law adheres to the principle of consensualism. That is, in order to make an agreement, it is enough just to agree and that the agreement has been made at the time or the consensus is created as referred to above. At that time the agreement was made and binding.

### Chronology of Problems in the Field

The conception of national land law is based on customary law and its implementation, bearing in mind that current agrarian law uses the customary law system and principles, the sale and purchase of land rights now must also be interpreted as a legal act in the form of surrendering property rights or surrendering land forever. By the seller to the buyer who at that time also handed over the price to the seller.

The people in the Bentiring sub-district, Muara Bangkahulu Subdistrict, Bengkulu City, are one of the residents in the *kelurahan*, where one of the residents still practices buying and selling land rights under their hands. payment is made in cash, what is meant by cash is that the transfer of rights by the seller is carried out simultaneously with payment by the buyer and immediately the right has been transferred. The price paid does not have to be paid off, the difference in price is considered as the buyer's debt to the seller which is included in the scope of debt law and not land law.

The results of research in the field, that the characteristics of respondents (informants) are women with the category of having parents who are still alive (father and mother) in accordance with the criteria obtained during field observations.

Based on the results of interviews with Mrs. Wisda, she still prefers to use the practice of buying and selling land rights under the hands because the process is easy, quick to complete, practical and costs less than buying and selling land rights that are carried out in front of the official

certifier of title deeds (*Pejabat Pembuat Akta Tanah-PPAT*). In fact, Mr. Sumardi has suggested to the public that buying and selling land rights should be carried out at the official certifier of title deeds (*Pejabat Pembuat Akta Tanah-PPAT*) in accordance with applicable regulations. However, the community still prefers to buy and sell land rights underhand.

According to the author, the efforts that must be made by most people in the Bentiring Village, Muara Bangkahulu District, Bengkulu City, are to buy and sell land rights in accordance with Government Regulation Number 24.

1997 concerning Land Registration. That is to provide a form of guarantee that there will be legal certainty over land ownership. In government regulation No. 24 of 1997 it is stipulated that land registration is held to provide guarantees of legal certainty in the land sector and that the publication system is negative but contains positive elements.

Based on the results of the author's research, many people carry out buying and selling underhanded, namely buying and selling carried out in front of officials in the local village, but if there are people who want to get a land certificate in their name or by turning the name of the certificate on behalf of the seller to be on behalf of the buyer at the Land Office. Based on the provisions of Article 37 paragraph 1 of Government Regulation Number 24 of 1997 concerning Land Registration, it is emphasized that the transfer of land rights through buying and selling, exchange, grants and other legal acts of transferring rights except auctions can only be registered if proven by a deed made by the official making the deed authorized land according to the applicable laws and regulations. The sale and purchase of land rights is legally valid by making a sale and purchase deed which is proof that there has been a sale and purchase of land rights, namely the buyer has become the owner. Registration of transfer of land rights due to sale and purchase at the Land Office is not a legal requirement for the sale and purchase that has been carried out but only to strengthen evidence against third parties. The implementation of the sale and purchase deed in the presence of the official making the land deed must be attended by the parties who carry out the legal action concerned or by a person authorized by a written power of attorney in accordance with applicable regulations. The sale and purchase deed must also be attended by at least 2 (two) witnesses who meet the requirements.

### **Sale Purchase Deed and Agreement**

Deed made not in the presence of an authorized official or notary. This deed was made and signed by the parties who made it. If an underhanded deed is not denied by the Parties, it means that they acknowledge and do not deny the truth of what is written on the underhanded deed, so that according to Article 1857 of the Civil Code the underhanded deed has the same evidentiary power as an Authentic Deed.

Sale and purchase of land carried out without an official certifier of title deeds (*Pejabat Pembuat Akta Tanah-PPAT*) deed is valid and results in the transfer of ownership rights to the land as long as the sale and purchase fulfills the material requirements both regarding the seller, the buyer and the land. that a private deed is valid if the parties are competent and there is an object being traded, in this case land that is not in dispute. The ability in private deed is acceptable in terms of transfer of rights. In addition, in terms of selling. Buying land applies the principle of *pacta*

*sunt servanda*, that is, every agreement becomes legally binding for the parties to the agreement.

In this regard, the transfer of land rights in the form of buying and selling must fulfill several conditions determined by the applicable laws and regulations. If the predetermined conditions are not met, it will have consequences for the legality of buying and selling land rights. Terms of buying and selling land rights through buying and selling consist of material terms and formal conditions. 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 fulfills the requirements as the subject of land rights and the land to be traded is not in dispute.

In Article 15 paragraph (2) letter a of the Notary Office Law, a Notary, in his position, has the authority to validate signatures and determine the certainty of the date of private documents, by registering them in a special book. This provision constitutes the legalization of a private deed made by an individual or by the parties on sufficiently stamped paper by way of registration in a special book provided by a Notary. In short, the point of this legalization is, the parties make the letter, bring it to the Notary, then sign it before the Notary, then record it in the Legalization Book. It is the date at the time of signing before the Notary, as the date of the legal action, which gives birth to the rights and obligations between the parties.

Ratification of signatures and determination of date certainty, is recorded in a special book, namely the Legalization Book. The notary who witnesses and certifies the signature, determines the date certainty, as an official authorized by law to explain/confirm/ensure that it is correct on the date as written in the Legalization Book, the parties make a private agreement and appear before him to sign the letter. The editorial written on the legalization sheet is limited to the responsibility of the Notary.

In Article 15 paragraph (2) letter b of the Notary Office Law, a Notary, in his position, also has the authority to record private documents, by registering them in a special book. The book in particular is called the Book of Registration of Letters Under the Hand. In daily life, this authority is also known as Registration of private letters with the code: "Register" or *Waarmerking* or *Waarmerk*.

Regarding the strength of proof of underhanded deeds in civil cases, as long as the underhanded deed is not denied or denied by the parties, the underhanded deed has the same legal force as an authentic deed, whereas if the signature in the underhanded deed is denied it will the truth of the deed must be proven true by using other evidence such as witnesses, presumptions and confessions. Private deed is a deed made without the help of a public official, but only made and signed by the parties (Palit, 2015).

The formal requirement in terms of buying and selling land rights is the formality of the sale and purchase transaction. These formalities include the deed which is 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 deeds is the official certifier of title deeds (*Pejabat Pembuat Akta Tanah-PPAT*) in accordance with Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration. Land sale and purchase transactions that are carried out by fulfilling the material and formal requirements will have juridical consequences in the

form of legal certainty and legal protection for owners of land rights.

Based on the description above, it can be seen that any form of buying and selling land under the hands which is carried out on the basis of mutual trust will eventually result in losses for the parties concerned, as these parties do not have evidence that is legally binding in the form of land certificates. Seeing the practice of buying and selling land privately in the Bentiring Village area which is still commonly done. In fact, the village apparatus has made an appeal to the community when buying and selling land, so that it is carried out in accordance with applicable regulations, even though they have to wait for the fee to certify the land.

According to the provisions of Government Regulation Number 24 of 1997, agreements concerning the transfer of land rights, including the sale and purchase of land, should be made before the official certifier of title deeds (*Pejabat Pembuat Akta Tanah-PPAT*). Therefore, in carrying out a sale and purchase transaction, the seller and the buyer must come face to face together at the official certifier of title deeds office, to then draw up a Deed of Sale and Purchase of Land. Official certifier of title deeds is a public official who is considered by the Head of the National Land Agency (*Badan Pertanahan Nasional-BPN*), who has the authority to make deed of transfer of land rights, including the deed of sale and purchase of land. If a land sale and purchase transaction occur in an area where there is not yet/there is rarely an official certifier of title deeds (*Pejabat Pembuat Akta Tanah-PPAT*), then you can appear before the *Camat* in his position and capacity as a temporary official certifier of title deeds. The thing that needs to be considered by the seller and the land buyer is that the official certifier of title deeds who will be asked to make a deed of the land sale and purchase agreement is the official certifier of title deeds who is in the territory of his position and authority which includes the area where the land is used as the object of the sale and purchase transaction. The process for making the Deed of Sale and Purchase of Land at the official certifier of title deeds Office.

### Conclusion

In the Bentiring sub-district, where there is still the practice of buying and selling land under the hands of the people in the kelurahan, they still buy and sell land under the hands. This is due to limited costs; faster time and the process does not take a long time. The legal consequences of buying and selling land privately in the kelurahan are still valid, while the legality is not yet valid because there is no certificate. Regarding the registration of agreements/agreements that have been agreed upon and signed in the letter, apart from the parties, there are other parties who are aware of the agreement/agreement. This is done, one of which is to eliminate or at least minimize denial from one of the parties. The rights and obligations between the parties are born at the time of signing the letter that has been carried out by the parties, not at the time of registration with the Notary.

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