



The legal strength of a deed of sale and purchase when a land rights ownership dispute occurs, viewed from the perspective of land administration law

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Abstract

Land sale and purchase is a transaction of transfer of land rights that has experienced extraordinary escalation. This occurs because of the need for infrastructure and economic development that cannot be avoided. To complete and perfect the validity of land sale and purchase transactions, AJB is an important requirement that must be met by the parties. AJB made by PPAT based on positive law will be valid evidence when a dispute occurs over the transfers of land rights. The rules regarding positive law regarding the validity of AJB are specifically regulated in land administration law. So that by fulfilling these rules, the holder of legitimate land rights will find it easier to defend the rights to the land they own.

Keywords: AJB, land sale and purchase, land ownership dispute, land administration law

Introduction

Land is a divine blessing from God Almighty intended for all humanity. In Indonesia, this land serves as a gift from God Almighty specifically for the Indonesian Nation, aiming to be used for the utmost prosperity of its people. By doing so, land can yield remarkable advantages, fulfilling essential life needs while also providing benefits in the realms of politics, law, economics, security, and even national sovereignty. Consequently, to guarantee proper land utilization, the state is empowered by Article 33 paragraph (3) of the 1945 Constitution to: (1) oversee the allocation, usage, and maintenance of land; (2) manage and establish the legal relationships between individuals (legal subjects) and land; and (3) govern and define the legal interactions between individuals and legal actions concerning land.

The aforementioned rights are referred to as the state's authority over land. This implies that the state governs land within Indonesia's territory to ensure the maximum benefit for its citizens^[1].

Grounded in the State's Right to Control, the Indonesian Government has developed a comprehensive strategy addressing the supply, usage, and distribution of land across Indonesia. This plan aims to ensure that agrarian resources, specifically land, are used to their fullest potential, in alignment with the capabilities or carrying capacity of the relevant agrarian resources.

Additionally, land registration is mandated by the government to safeguard and promote the sustainable development interests of the Indonesian populace. By ensuring the registration of the relevant land, it is possible to guarantee legal certainty and protection for land across Indonesia. This is in accordance with the stipulations set forth in the Basic Agrarian Law (UUPA), as outlined in Law No. 5 of 1960.

Moreover, as stated in the Government Regulation (PP) on Land Registration (PP No. 24 of 1997), land registration is conducted to ensure ease and legal assurance for individuals in the use of land. This is explicitly seen in Article 2 of the PP on Land Registration that land administration is carried out based on the principles of simple, up-to-date, safe, affordable and open.

In general, land registration obligations are borne by the state and land owners^[2]. In the sense that the state (in this case the government) is obliged to carry out land registration, while land owners are obliged to register the rights to the land they own or own. Additionally, it is noted that land registration can occur through a government-led initiative known as systematic land registration, while registrations based on individual or collective applications are executed in a more sporadic manner.

Later, land registration will produce a land title certificate as proof of the owner's rights. A land title certificate issued by the Land Office is a proof of title which will later become strong evidence of ownership of land rights^[3]. Apart from that, the certificate is also the basis for the validity of various legal transactions regarding the transfer of land rights, one of which is buying and selling land. Buying and selling land is one of the most frequent transactions in society. This is due to the increasing public interest in land, especially economically. The most important evidence in a certificate is that which relates to the physical data of a plot of land and its juridical data, even though the regulations regarding the sale and purchase of land have been regulated in statutory regulations, in reality there are still legal disputes found in the practice of buying and selling land, one of which is that the seller still controls the land object that the buyer has legally purchased. One of the factors causing this dispute is when the land sale and purchase transaction based on the sale and purchase deed (AJB) is not followed by the handover of physical and juridical control (i.e. carrying out the process of changing the name of the certificate at the BPN office) by the parties. This causes disputes over control of land rights. This is what happened in court decision Number 161/Pdt.G/2014/PN.Kpg.

The current practice of buying and selling land in society, both in rural and urban areas, is land buying and selling where after the AJB is made, the buyer does not register the transfer of rights because the sale and purchase goes to the Land Office. Having AJB is considered sufficient for him to prove that he is the owner of the land. Registration at the Land Office is to change the name or maintain land registration if they need it, such as when they want to apply for a loan from a bank and the land is used as collateral for

the debt. Apart from that, the process of transferring rights to the land was not registered because the sale and purchase went to the Land Office, they considered the costs to be expensive and the process took a long time, so the buyer simply left the land title certificate untitled. Things like this sometimes become problems in the future and can even cause disputes. Therefore, after a transfer of land rights occurs (such as a sale and purchase and an AJB has been made), the name should immediately be changed (registered at the Land Office). So that the transfer of rights has legal certainty and the buyer gets legal protection.

Based on the background above, the author is interested in writing about AJB's strength in buying and selling land when land ownership disputes arise from a land administration law perspective.

Research Methods

This study employs a normative juridical approach to conduct legal research, utilizing both primary and secondary explanatory legal materials. Primary legal materials consist of statutory regulations and judicial decisions. Following this, secondary and tertiary legal materials are examined. Secondary legal materials encompass textbooks, research findings, journals, and similar sources. In contrast, tertiary legal materials may include resources such as the Big Indonesian Dictionary, Legal Dictionary, articles from both print and digital mass media, as well as other materials available online^[4].

The analysis of data gathered from primary, secondary, and tertiary legal sources was conducted using a qualitative methodology.

Results and discussion

1. Buying and selling land

Soil is a part of the earth's layer that has extraordinary benefits for humans. In the upper layer, namely the surface of the earth, humans can use land for various purposes, whether for fisheries, plantations, agriculture, or even for security purposes. Apart from that, in the underground layer, there are various natural resources that can be taken for economic purposes.^[5] Juridically, the UUPA regulates land which covers the surface of the earth as mentioned in Article 4 paragraph (1) of the UUPA.

Furthermore, legal control of land is called control of land rights, namely the right that authorizes the holder of land rights to control, use, exploit or transfer it to another party.^[6]

As one of the authorities given by law to land owners, the transfer of land rights will cause a change in land ownership from the old legal subject to the new legal subject forever. Apart from that, it also causes a transfer of authority from old legal subjects to new legal subjects. The transfer of land rights can occur due to legal events, namely inheritance, or due to legal acts, one example is buying and selling.

Land sale and purchase is an agreement in which one party binds himself based on Articles 1457, 1458, and Article 1459 of the Civil Code. This self-binding must be in accordance with the legal terms of the agreement as regulated in Article 1320 of the Civil Code. Apart from that, the UUPA also regulates the conditions for buying and selling land which includes material conditions (legal conditions) and formal conditions (administrative conditions). The regulations regarding material requirements and formal requirements are adapted from customary law land sale and purchase regulations which are

the basic law of national land law regulations as long as they do not conflict with the interests of the nation and state^[7].

The material conditions for the sale of land are that the seller has the power to sell; the buyer may have rights over the property being purchased and sold; the title can be sold and purchased; the land being sold is not in dispute; i.e. the price is paid and the title is transferred. The formal requirement is that this must be done before a Land Deeds Officer (PPAT) so that the sale can be registered at the Land Office. If the title transaction is not done before the PPAT or a PPAT Deed is not created, the Land Office will refuse to register the property. This is in accordance with Section 37 (1) of PP No. 24 of 1997, which states that the transfer of land rights by sale can only be done if there is a patent application issued by a patentee. This means that the sale of land rights must be done through a PPAT Deed by a PPAT who has the power to do so. The consequence is that if the sale and purchase of land rights is not carried out in front of the PPAT, so that there is no PPAT Deed, then the transfer of rights due to the sale and purchase cannot be registered at the Land Office, and the Land Office will even refuse to register it.

2. Land rights disputes

Along with the times and economic needs, people are increasingly aware of the importance of land in life. Land that has high physical and juridical value results in struggles over control of land rights which are commonly referred to as land disputes. Based on Article 1 Number 1 of ATR/BPN Ministerial Regulation Number 21 of 2020, land cases are divided into light, medium and serious cases that occur between interested legal subjects.

It is not uncommon for land cases to become complex problems and cause extraordinary tension. Even family relationships are damaged due to fighting over property (land). There are several factors that become the background for land disputes, including the unlimited amount of land; inequality in the structure of land control and use; community legal perception and awareness of land control and ownership^[8].

Furthermore, according to Rusmadi Murad, the nature of land disputes consists of^[9]:

“Issues or issues relating to priority in being able to apply as a legal right holder on land that has title status, or on land that does not yet have rights; Denial of a basis of rights/proof of acquisition used as a basis for granting rights (civil); Mistakes or mistakes in granting rights caused by inadequate or incorrect application of regulations; Disputes or other problems that contain practical/strategic social aspects.”

In society, including people in rural areas and urban areas, land is often bought and sold after the AJB is created, the buyer does not register the transfer of rights because the sale and purchase goes to the Land Office. Having AJB is considered sufficient for him to prove that he is the owner of the land. Registration at the Land Office is to change the name or maintain land registration if they need it, such as when they want to apply for a loan from a bank and the land is used as collateral for the debt. Apart from that, the process of transferring rights to the land was not registered because the sale and purchase went to the Land Office, they considered the costs to be expensive and the process took a long time, so the buyer simply left the land title certificate untitled. Things like this sometimes become problems in the

future and can even cause disputes. Therefore, after a transfer of land rights occurs (such as a sale and purchase and an AJB has been made), the name should immediately be changed (registered at the Land Office). So that the transfer of rights has legal certainty and the buyer gets legal protection.

The dispute will ultimately be over land which has rights on it as regulated by the UUPA which can be owned by legal subjects, both individuals and legal entities.

3. Land Administration Law

To achieve state goals, the government has the task of establishing and managing organizational policies along with strategies for achieving them. This discussion will be examined in depth in the field of state administrative law, namely the law that regulates state administrative aspects systematically and thoroughly so that state administrators have guidelines for providing services to the people in a good and authoritative manner in accordance with applicable laws and regulations^[10].

One of the important studies in the study of state administrative law is regarding the administrative regulations that state power organizations must follow in issuing state administration decisions. This regulation aims to ensure that the public interest can be properly maintained. One of the regulations that is discussed specifically in state administrative law is land administration law.

Land administration law is a law that regulates the government's authority in carrying out government affairs in the land sector. This authority is obtained through the legitimacy of state power in Article 33 paragraph (3) of the 1945 Constitution and is described in the UUPA, especially Article 2 paragraph (2) of the UUPA. In Article 2 it is clearly stated that there are 3 (three) state authorities in the field of land administration in order to achieve the welfare and prosperity of the Indonesian nation.

4. AJB's Position in Buying and Selling Land When There is A Dispute Over Ownership of Land Rights in Terms of Land Administration Law

Buying and selling land in a legal context includes the act of transferring land rights, namely the transfer of ownership from an old legal subject to a new legal subject. The sale and purchase of land is carried out referring to the principles of sale and purchase in general as contained in Book III of the Civil Code regarding contracts.

According to Subekti, a sale and purchase agreement includes a reciprocal agreement, where the seller promises to hand over certain objects to the buyer and the buyer hands over money as payment for handing over the object^[11]. Apart from that, the parties must also fulfill the terms of the agreement as regulated in Article 1320 of the Civil Code and fulfill the material and formal requirements in the UUPA and Land Registration Regulations.

In the process of transferring ownership of land rights through buying and selling, the AJB is the most important document that must be considered. AJB can be said to be a document that explains that the sale and purchase of land has occurred between the parties. AJB is included in the category of authentic deeds issued by PPAT to provide legal certainty and legal protection for parties, especially buyers.

Every land sale and purchase transaction must be carried out with a sale and purchase deed (AJB). This requirement can be seen in the legal norm Article 37 PP Land Registration

which states that the transfer of land rights and ownership rights to apartment units (one of which is through sale and purchase) is proven based on the AJB made by the authorized PPAT based on applicable laws and regulations^[12].

The PPAT that has the authority to issue AJB is a professional PPAT. However, in the event that the number of professional PPATs is not sufficient in the area, the Minister of Agrarian Affairs will appoint and inaugurate the sub-district head as a temporary PPAT. This temporary PPAT has the same authority as a professional PPAT, namely that it can issue deeds relating to legal acts regarding the transfer of land rights as referred to in Article 2 paragraph (1) and paragraph (2) of PP 37 of 1998.

5. AJB's Strengths in Buying and Selling Land When Land Ownership Disputes Occur

In transferring land rights through buying and selling, transactions are carried out by adapting the clear and cash principles to land buying and selling according to customary law. This principle was then adapted to the provisions of national land law, where cash means full payment from the buyer to the seller and clear meaning that the transaction is carried out before the PPAT^[13].

When a transaction is carried out before the PPAT, the AJB is an absolute document that must be issued by the PPAT to explain the legal act of buying and selling land between the seller and the buyer. This document is included in the category of authentic deed because it was made by and before the PPAT and its form (format and substance) is determined by law^[14]. If AJB has fulfilled the material and formal requirements, then AJB's existence has the power of proof, especially regarding land disputes.

Land disputes are the result of land problems that are not resolved by the parties^[15]. This dispute will become even more complicated if it is allowed to drag on. In fact, it is not uncommon for this settlement to be carried out by involving a third party (mediator), BPN, or even an authorized court.

Land disputes are one of the most urgent problems to be resolved. Because financially the value of land is always moving up. It is not uncommon for land disputes to be resolved in court, as happened in Court Decision Number 161/Pdt.G/2014/PN.Kpg. This dispute occurred between Benny Daulika (plaintiff) and the heirs of the late Simon Toto (defendant) in a dispute over ownership of a 990 m² plot of land in West Oesapa village, Kupang.

In his lawsuit, the plaintiff stated that he had purchased the plot of land from the late Simon as evidenced by AJB number 18/III/KKTENG/1989 dated 25/3/1989 before PPAT Silvester Josep Mambaitfeto and had handed over the remaining payment from the agreed price. However, unfortunately, even though the AJB has been signed by the parties and payment has been submitted, the defendant still controls the land. This is certainly detrimental to the plaintiff's interests in controlling and exploiting the plot of land he legally owns.

As a result, the plaintiff could not use the land for his own purposes because the land was under the control of someone else. This is what then became the basis for the plaintiff to file a lawsuit in court, because it turned out that the defendant refused to vacate the plaintiff's land.

In fact, land sale and purchase transactions according to customary law occur when the seller transfers the land permanently to the buyer after the buyer makes payment,

even if only partially. From that moment on, land rights pass from the seller to the buyer, indicating that the buyer has obtained ownership rights at the time of the transaction. Therefore, under common law, the act of sale is a transfer of rights between the seller and the buyer. If the full amount is not paid, the unpaid amount will become a debt of the buyer to the seller. If the buyer fails to pay these amounts, the seller reserves the right to take legal action based on the debt, which does not change the situation in which the sale is considered to be completed. Therefore, it is generally believed that a sale under common law is considered to be "cash" and "real" (concrete). In addition to this, the transaction is carried out in the presence of the traditional (village) head. There is no illegality in the sale of land by the traditional (village) head acting as a guarantor. The position of the traditional (village) head in the sale is not just a witness. In this way, the sale is considered "clear" and the public recognizes the validity of the land sale.

This is important to understand, because Indonesian agrarian law is based on customary law. So buying and selling land according to customary law is a legal act in which the seller hands over the land to the buyer in perpetuity when the buyer pays the price of the land to the seller (even if it is half the price that has been determined). act as a witness and guarantee legal buying and selling.

Even though the defendants rejected the plaintiff's statement, the defendant could not prove that the land belonged to them. As is known, land dispute resolution uses a reverse verification system, where the responsibility for proof is handed over to the parties to the dispute. This was then taken into consideration by the judge in deciding the case which stated that the sale and purchase of land was between the plaintiff and the deceased. Simon Toto is valid according to law, and stated that AJB number 18/III/KKTENG/1989 dated 25/3/1989 before PPAT Silvester Josep Mambaitfeto is valid according to law.

In land administration law, AJB's power in buying and selling land is very dependent on the following things, namely the deed which is made in accordance with positive law and made before an authorized public official ^[16]. AJB as an authentic deed will function as the perfection of a legal act and function as evidence ^[17].

The validity of AJB by PPAT also depends on the fulfillment of Article 1320 of the Civil Code; Article 97 paragraph (1), paragraph (3), paragraph (4) and Article 101 paragraph (1), paragraph (2) and paragraph (3) PMNA 3/1997 jo PERKABAN 8/2012; as well as the Law regarding Regional Taxes and the Law regarding BPHTB. If the above legal norms are fulfilled in making the AJB, then the AJB will become valid evidence when proving land ownership transfer disputes.

Conclusions

Land administration law is a law that regulates the authority of government administrators in the land sector, one of which is regarding AJB issued by PPAT. AJB which is made based on positive law will function as strong evidence in resolving disputes over the transfer of ownership of land rights, both in court and outside court.

However, it is important for the author to advise the parties, especially sellers and buyers, to carry out their respective obligations and rights. Moreover, the buyer must immediately upgrade the AJB status to a land title certificate. In this case, by submitting registration of lands

rights to the local Land Office, bringing the AJB as proof that the land rights have been transferred from the seller's property to his. So that by registering the land, a land title certificate (Hak Milik) will be given in the name of the buyer. In agrarian law, the land title certificate is strong evidence regarding ownership of land rights, and with this certificate the owner also gets legal certainty regarding the land, and can also provide legal protection for it.

Suggestion

It is hoped that buyers of land rights who already have an AJB but have not yet registered the transfer of land rights to the Land Office (have not yet had their name changed on their land rights certificate), will immediately register it with the Land Office. So that the transfer of rights has legal certainty and the buyer gets legal protection. If it is not registered, especially for a long period of time, it is feared that there will be disputes with other parties and sometimes even with the previous land owner (when he was the seller) or there could also be problems with his heirs later.

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