



Dispute Resolution of Double Land Sale and Purchase Deed

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ABSTRAK

Akta Pejabat Pembuat Akta Tanah (PPAT) berfungsi sebagai alat pembuktian mengenai benar sudah dilakukannya jual beli, tanpa dibuktikan dengan akta Pejabat Pembuat Akta Tanah (PPAT) tidak akan dapat memperoleh sertifikat, biarpun jual belinya sah menurut hukum. Tujuan dari dilakukannya penelitian ini, untuk mengetahui kekuatan hukum hak milik atas tanah yang dibuat dihadapan PPAT dan untuk mengetahui penyelesaian terhadap akta jual beli tanah yang dibuat dihadapan PPAT berakta jual beli ganda. Jenis penelitian ini *yuridis empiris*, dengan cara meneliti bahan pustaka yang merupakan data sekunder dan penelitian hukum empiris yaitu penelitian yang dilakukan dengan cara meneliti data primer. Hasil penelitian ini menunjukkan bahwa kekuatan hukum hak milik atas tanah berdasarkan akta jual beli yang dibuat dihadapan PPAT merupakan akta otentik yang dapat digunakan sebagai alat bukti yang sah terhadap adanya transaksi jual beli tanah hak milik. Namun, untuk pembuktian yang kuat mengenai kepemilikan atas tanah hanya dapat dibuktikan oleh adanya sertipikat tanah. Penyelesaian terhadap akta jual beli tanah yang dibuat dihadapan PPAT berakta jual beli ganda dapat ditempuh dengan 2 (dua) cara, yaitu yang pertama ditempuh dengan menyelesaikan sengketa melalui mediasi di Kantor Pertanahan dan dengan menyelesaikan sengketa melalui Peradilan.

Kata Kunci : Sengketa; Akta; Jual Beli; Ganda.

ABSTRACT

The Deed of Land Deed Making Officer (PPAT) serves as a means of proving the truth of the sale and purchase, without being proven by the deed of the Land Deed Making Officer (PPAT) will not be able to obtain a certificate, even if the sale and purchase is valid according to law. The purpose of this research is to determine the legal strength of land ownership rights made before the PPAT and to find out the settlement of the land sale and purchase deed made before the PPAT with a double sale and purchase deed. This type of research is empirical juridical, by examining library materials which are secondary data and empirical legal research, namely research conducted by examining primary data. The results of this study show that the legal force of land ownership rights based on the sale and purchase deed made before the PPAT is an authentic deed that can be used as valid evidence of the existence of a sale and purchase transaction of freehold land. However, for strong proof of ownership of land can only be proven by the existence of a land certificate. Settlement of land sale and purchase deeds made before the PPAT with a double sale and purchase deed can be taken in 2 (two) ways, namely the first is taken by resolving disputes through mediation at the Land Office and by resolving disputes through the Court.

Keywords: Dispute; Akta; Selling; Double.



I. Introduction

Article 33 paragraph (3) of the 1945 Constitution expressly states that the Earth and water and the natural resources contained therein are controlled by the state and used for the greatest prosperity of the people. As a follow-up to Article 33 paragraph (3) of the 1945 Constitution relating to earth and land, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles was issued, hereinafter better known as UUPA. The main objectives of the Basic Agrarian Law are (Harsono, 2005):

1. Laying the foundations for the drafting of national agrarian law, which is a tool to bring prosperity, happiness, and justice to the country and the people, especially the people in the framework of a just and prosperous society
2. Laying the foundations for unity and simplicity in land law.
3. Lay the foundations for providing legal certainty regarding land rights for the people as a whole.

In Article 9 paragraph (2) of Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA) actually contained a provision for guarantees for every citizen to own land and benefit from the results. Land has an important meaning in human life because land has a dual function, namely as a social asset and as a capital asset. As a social asset, land is a means of binding social unity among the people of Indonesia. As a capital asset, land has grown as a very important economic object, not only as a commercial material but also as an object of speculation. "On the one hand the land must be used and utilized as much as possible for the welfare and prosperity of the people and on the other hand it must be preserved" (Rubaie, 2007).

Land ownership rights are very important for the state, nation and people of Indonesia as a society that is developing towards industrial development. Land which is a basic need for humans will be faced with



various things such as limited land both in quantity and quality compared to the needs that must be met. "Land on the one hand has grown as a very important economic property and has grown as a commercial material and an object of speculation, on the other hand it must be used and utilized for the greatest welfare of the people" (Sutedi, 2009).

One of the ways used to obtain ownership rights to land today is by making buying and selling transactions. In carrying out the process of buying and selling land title transactions, before the fulfillment of the clear and full conditions of a payment for the purchase of a land title object, the parties in this case the seller and the buyer carry out a legal action by making a sale and purchase agreement for title to land before a Notary. The legal act of buying and selling ownership rights to land is carried out with a sale and purchase agreement before a Notary which then if the clear and cash conditions are met, it is followed by the signing of the sale and purchase deed made before the Land Deed Making Officer (PPAT) as well as the transfer of title to the land from the seller to the buyer.

The sale and purchase of title to land and the transfer of title to land from the seller to the buyer must be in accordance with the provisions of the applicable laws and regulations as stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, stating that: "Transfer of land rights and property rights to apartment units through sale and purchase, exchange, grant, property entry to the company and other legal acts of transfer of rights, except transfer of rights through auction can only be registered if proven by a deed made by the authorized PPAT according to applicable laws and regulations".

Based on the description above, it can be seen that, the transfer of ownership rights to land cannot be done just like that without meeting the requirements set by applicable laws and regulations. The legal act of sale and purchase is completed or completed when the seller receives payment and at



the same time delivers an item he sells to the buyer. Buying and selling that is done in real or concrete is known as "light and cash". Land registration is carried out on the basis of simple, safe, affordable, up-to-date and open principles (Sangsun, 1998). In Indonesian land law, it is known that the sale and purchase of land is carried out clearly and in cash in the sense that the transfer and payment of the sale and purchase of ownership rights over land is carried out at the same time (cash) before a Land Deed Making Officer (PPAT) (Sangsun, 1998).

In every deed making before the Land Deed Making Officer (PPAT), it is mandatory to use printed blangko and distribute it through the City/Regency Land Office. The Deed of Land Deed Making Officer (PPAT) is one of the data sources for the maintenance of land registration data, so it must be made in such a way that it can be used as a strong basis for registration of the transfer and encumbrance of the rights concerned. Therefore, PPAT is responsible for checking the requirements for the validity of the legal act concerned. Among others, by checking the certificate clean or matching the data contained in the certificate with the lists in the Land Office (Harsono, 2005).

The procedures and formalities for making authentic deeds are coercive legal provisions, meaning that the procedures and procedures for making them must be followed precisely without the slightest confusion. Deviation from the procedures and procedures for making an authentic deed will have legal consequences on the evidentiary power of the deed. The Deed of Land Deed Making Officer (PPAT) serves as a means of proving the truth of the sale and purchase. People who make a sale without being proven by a PPAT deed will not be able to obtain a certificate, even if the sale and purchase is legal according to the law. "The deed of sale and purchase of land is a very important thing that functions for the transfer of ownership rights to land and the occurrence of land ownership" (Al-Rasyid, 1987).



Departing from the description above, there was a land dispute that occurred in Kenyeren Village, Pegasing District, Central Aceh Regency That on September 7, 1992 there was a sale and purchase transaction of a piece of garden land with a size of $\pm 2,500 \text{ M}^2$ (1/4 Ha) at a price of Rp. 500,000, - (Five Hundred Thousand Rupiah) between M. Jenen Amin (Seller) and Suhatta (Buyer) witnessed by Ibrahim Aman Pirak in this case acting as Head of Kenyeren Village Hamlet, Pegasing District. The land sale and purchase transaction is only proven based on the Receipt and made before the Village Head. From 1992 to 2012, after the transfer of ownership rights to the land, Mr. Suhatta (buyer) fully controlled the plantation land and continuously with various agricultural products such as pineapples, corn, sweet potatoes for additional sources of income in financing the consumption and education needs of family members.

On August 3, 2012, Mr. Suhatta and Suhadi visited the Notary Office/PPAT Cendri Nafis to make a Deed of Sale and Purchase between Mr. Suhatta and Suhadi with Deed of Sale and Purchase No. 670/AJB/2012 witnessed by Asmikar (Village Head) and Mr. Duski, S.H,. After returning from the Notary Office/PPAT Cendri Nafis, Mr. Suhatta and his family received information from the Pegasing Police Chief that Ibrahim Aman Pirak also had a Deed of Sale and Purchase of the Land signed by the Notary Office/PPAT Budiharto, S.H, with Number 479/PGS/2012.

Based on the background description above, there can be some formulations of the problems to be discussed in this writing: First, how is the legal force of ownership of land made before the land act maker's office (PPAT). Second, how is the settlement of the sale and purchase of land act made in front of the land maker's office (PPAT) with the double sale and purchase act?

II. Methode

This type of research is *empirical legal* research and this research is descriptive analysis, which describes and explains the facts obtained by researchers related to the object of research in the form of settlement of land



sale and purchase disputes carried out before land deed making officials (PPAT) with double sale and purchase deeds. The data sources used in this study are field research and library *research*. Data collection techniques are carried out by means of interviews and document studies. The data analysis technique used in this study is qualitative analysis because the research conducted is descriptive.

III. Discussion and Analysis

The Legal Force of Title to Land Based on The Sale and Purchase Deed Made Before the Land Deed Making Officer (PPAT)

Land ownership is a human right of every Indonesian citizen as stipulated in Article 28H of the 1945 Constitution, which states that everyone has the right to have private property rights and these property rights must not be arbitrarily taken over by anyone. The state guarantees the right of its citizens to own a right of private property including land. With the enactment of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA), land rights since September 24, 1960 were changed (converted) to the National Land Law.

These rights according to the Basic Agrarian Law must be registered in accordance with Government Regulation Number 24 of 1997 concerning Land Registration, this Government Regulation is an implementation of the provisions of Article 19 of Law Number 5 of 1960 concerning the Basic Agrarian Law. In carrying out land registration, it must be proven by a deed called a land deed. This deed proves the legal act of transferring land rights and encumbrance of land rights with dependent rights.

Land Deed Making Officer as a general official, the deed he makes is given the position of an authentic deed, which is a deed made to prove the existence of certain legal acts that result in the transfer of rights to land and buildings. With regard to the certainty of ownership of land and building rights, every acquisition of rights that occurs from a legal act must be made



by an authentic deed. This is important to provide legal certainty for the party who obtained the right so that it can defend its rights from any party's lawsuit. Without an authentic deed, legally the acquisition of these rights has not been recognized and in fact the rights to land and buildings still exist with the party who transferred the rights. To protect the party who acquires the right, the authentic deed made at the time of acquisition of rights is a strong evidentiary tool that states the existence of a legal act of transferring rights to the land and building in question to the party who is declared to have obtained the right.

According to Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration, every agreement that intends to transfer land rights must be proven by the deed of the Land Deed Making Officer (PPAT). So the sale and purchase of land rights must be carried out before the Land Deed Making Officer (PPAT). while as evidence that there has been a legal act of buying and selling land belonging to the Land Deed Making Officer (PPAT) made the deed of sale and purchase of the land. The form of this deed is determined based on Article 96 of the Regulation of the National Land Agency Number 12 of 2012 concerning Amendments to the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 3 of 1997 concerning Provisions for the Implementation of Government Regulation Number 24 of 1997 concerning Land Registration, in making the deed must be done using the form in accordance with the form provided.

Sale and purchase of property rights over land in practice is often made in the form of an authentic deed made before the Land Deed Making Officer (PPAT) which results in the sale and purchase of land into an authentic deed that has perfect evidentiary power so that the parties bound therein get legal protection and certainty.

"The Land Deed Making Officer (PPAT) in making a deed must be neutral, impartial and safeguard the interests of the parties objectively". The sale and purchase deed made before the Land Deed Making Office serves as a



means of proving the truth of the sale and purchase. The sale and purchase can still be proven by other evidentiary tools. However, in the land registration system according to Government Regulation Number 24 of 1997 concerning Land Registration, registration of the sale and purchase of land can only be done with a PPAT deed as proof. "A person who buys and sells land without being proven by the deed of the Land Deed Making Officer will not be able to obtain a certificate, even if the sale and purchase is legal according to law".

The Deed of Land Deed Making Officer (PPAT) is an authentic deed, this is confirmed by Article 1 paragraph (1) and Article 3 paragraph (1) of Government Regulation Number 37 of 1998 concerning the Regulation of the Position of Land Deed Making Officer. As an authentic deed, the Land Deed Making Officer (PPAT) applies provisions on the terms and procedures for making authentic deeds. The form of an authentic deed is determined by law, while the official who can make it inevitable to have the same weight must also be determined by laws and regulations at the same level as the law, the Deed of Land Deed Making Officer (PPAT) as well as the Notary Deed, both as authentic deeds.

The functions of the land sale and purchase deed made before the Land Deed Making Officer (PPAT) for interested parties are:

1. As a condition for declaring the existence of a legal act;
2. As a means of proof
3. As the only means of proof.

In relation to the duties of the position of Land Deed Making Officer (PPAT), the deed he made has an important function as stipulated in the provisions of Government Regulation Number 37 of 1998 concerning Land Deed Making Officials (PPAT), Article 2 paragraph (1) states that the deed of Land Deed Making Officer (PPAT) as an authentic deed has 2 (two) functions, namely:



1. As evidence of certain legal acts regarding land rights or property rights to apartment units and;
2. As a basis for registration, changes in land registration data resulting from the legal act.

As an authentic deed, the deed of the Land Deed Making Officer (PPAT) as evidence that has perfect evidentiary power can be degraded to the power of proof to be like a deed under hand and the juridical defect of an authentic deed which results in an authentic deed can be canceled or null and void, if there is a violation of statutory provisions, namely Article 1869 and Article 1320 of the Civil Code.

The Deed of Land Deed Making Officer (PPAT) serves as a means of proving the truth of the land sale and purchase transaction. The sale and purchase can still be proven by other evidentiary tools. However, in the land registration system according to Government Regulation Number 24 of 1997 concerning Land Registration, the sale and purchase registration can only be carried out with the deed of the Land Deed Making Officer (PPAT) as evidence.

The transfer of land rights that is not carried out before the Land Deed Making Officer (PPAT) does not have sanctions for the parties, but the parties will encounter practical difficulties, namely that the recipient of the right will not be able to register the transfer of rights at the Land Office of Central Aceh Regency so that they will not get a certificate on his behalf. Therefore, the way that can be taken is to transfer land rights before the Land Deed Making Officer, but this method depends on the will of the parties.

Based on Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land and objects on it is carried out by deed of Land Deed Making Officer (PPAT). The transfer of land from the owner to the recipient is accompanied by *juridical submission (juridische levering)*, which is a submission that must meet legal formalities including fulfillment



of conditions carried out through a predetermined procedure using documents made before the Land Deed Making Officer (PPAT). The procedure for issuing a deed of Land Deed Making Officer (PPAT) as an authentic deed is very decisive, therefore if the interested party can prove a defect in its form due to an error or discrepancy in the procedure for making it, it will result in a risk for the certainty of rights arising or recorded on the basis of the deed.

"The conditions to be met in the making of an authentic deed, i.e. that the deed must be made in the form prescribed by law, the deed must be made before the competent Officer".

Thus, it becomes clear that the Deed of Land Deed Making Officer is an authentic deed that can be used as valid evidence of the existence of a sale and purchase transaction of freehold land. However, for strong proof of ownership of land, it can only be proven by the existence of a land certificate as a certificate of proof of land rights.

A certificate is a letter of proof of rights that applies as a strong proof of physical data and juridical data contained therein, as long as the physical data and juridical data are in accordance with the data contained in the relevant letter of measurement and land rights book. Therefore, other parties who feel they have rights to the land can no longer claim the exercise of these rights if within 5 (five) years from the issuance of the certificate do not file a written objection to the certificate holder and the Head of the Land Office concerned or do not file a lawsuit with the Court regarding the control of the land or the issuance of the certificate.

Based on the explanation above, the deed of sale and purchase of land has no legal force as proof of ownership of land rights. But the problem among the community in general, including government agencies still considers the land sale and purchase deed as proof of ownership of land rights, thus the land sale and purchase deed cannot be used as proof of ownership of land rights. Therefore, the ownership of this land certificate is



very important, because it is a guarantee of strong legal certainty for owners of their land rights. And such ownership can only be obtained through land registration. Meanwhile, the sale and purchase deed in the land registration is a source of juridical data only.

Settlement of The Sale and Purchase of Land Act Made Before the Land Act Maker's Office (PPAT) With the Double Sale and Purchase Act

Guarantee of legal protection in terms of land which is currently regulated in the Basic Agrarian Law (UUPA). The purpose of land registration is to provide legal certainty and legal protection to holders of rights to a plot of land, units of flats and other registered rights in order to easily prove themselves as holders of the rights concerned and for the orderly implementation of land administration.

To provide legal certainty and protection to the rights holders concerned, a certificate of land rights is given. A certificate is a sign of land rights. However, in reality there are still many people who occupy or build houses on land that does not belong to them or on disputed land without having a certificate of ownership of land rights even those who make certificates on certified land.

The settlement of the dispute over the double sale and purchase deed has been attempted through the village apparatus, we have shown evidence of the sale and purchase, but Ibrahim Aman Pirak insisted on the evidence of a 1928 letter belonging to his parents, namely the late Sakam. Since the meeting facilitated by the Village Head, there has been no solution to the land problem until now.

In the event of a dispute over ownership of land, the party who feels he owns the land will try hard to fight for his rights. In such cases, disputes cannot be avoided without being handled seriously, if left unchecked, it will endanger the lives of the community.



Settlement of land disputes with double sale and purchase deeds can be achieved in two ways, namely:

1. Dispute Resolution Through the Land Office

Based on the Regulation of the Minister of Agrarian State/Head of the National Land Agency Number 1 of 1999 concerning Procedures for Handling Land Disputes, the National Land Agency is functionally tasked with assisting in handling land disputes. This provision applies *mutatis-mutandis* to the Land Office of Central Aceh District. Land rights disputes arise because of complaints or objections from the decision of the Officer are considered detrimental to their rights to a particular piece of land. Land rights disputes include several types, including regarding the status of land, who is entitled, objections to evidence of acquisition that is the basis for granting rights or registration in the land book. The complaint contains matters and events that illustrate that the complainant is the party entitled to the disputed land or conflict land with evidence attached and ask for settlement with the hope that the land can be prevented from mutation so as not to harm the complainant.

Land disputes with the status of land with a double land sale and purchase deed made before the Land Deed Making Officer (PPAT) rarely occur based on the number of complaints or lawsuits entered". Settlement through deliberation is a step of approach to the parties to the dispute, often placing the agency/Land Office as a mediator in this familial settlement, so that an impartial attitude is needed and does not exert pressures, instead proposing a way of resolution. If the land dispute with the Double Sale and Purchase Deed is still in the mediation stage, this is where the Land Office has the authority. Become a mediator for both parties to the dispute, then the expected result of mediation is a *win-win solution* or in the form of an agreement that is beneficial to both parties. If the land dispute with the object of the land dispute is a double sale and



purchase up to the court level (resolved by litigation) the Land Office no longer has authority.

In resolving disputes through mediation, both parties agree to seek advice from third parties. Dispute resolution through this form is carried out on the basis of the agreement of both parties to the dispute that their problems will be resolved through the assistance of one or several expert advisors or through a mediator. Third parties who provide this assistance are neutral (impartial) and independent, in the sense that they cannot be intervened by other parties. If an agreement is reached by the parties in the deliberation, a collective agreement is made to be registered in the Court. But if it fails, the mediator submits written advice to both parties. If the written recommendation given by the mediator does not get a response or is rejected by the disputing party, it can file a lawsuit with the Court. The implementation of mediation at the Land Office refers to Technical Guidelines Number 05/Juknis/d.v/2007 concerning the mechanism for implementing mediation contained in the Decree of the Head of the National Land Agency Number 34 of 2007 concerning Technical Guidelines for Handling and Resolving Land Problems. Procedures for handling and resolving disputes at the Land office are carried out if there are objections/claims.

2. Dispute Resolution Through the Judiciary

This settlement is carried out if deliberative efforts are not achieved, as well as if the unilateral settlement of the Head of the Land Office for conducting a review of the State Administrative Decision that has been issued cannot be accepted by the disputing party, then the settlement must go through the Court. In the settlement of land dispute cases in the Court often takes a long time. The length of this litigation is largely due to the possibility of litigation at least 3 (three) to 4 (four) levels.



Settlement through the judiciary takes a very long time and dispute resolution in court is predicted to have to sacrifice many things such as:

- 1) A relatively long time, if the losing party is not satisfied with the court decision, in this case it can take legal remedies to appeal to the High Court (PT), file cassation to the Supreme Court (MA), Review (PK);
- 2) Immeasurable costs, because dispute resolution through the courts is bound by complicated and time-consuming settlement procedures so that costs become unpredictable;
- 3) Court rulings are often not immediately executed;
- 4) Often court decisions are colored by interference from other parties of a non-juridical nature which results in the court sometimes being doubted as the last bastion to find justice, and in decision making sometimes non-juridical considerations become dominant.

While waiting for the court decision, until a decision with permanent legal force, it is prohibited for the Central Aceh District Land Office to make mutations on the land concerned/the litigants. This is intended to avoid future problems that cause losses to litigants, as well as third parties. For this reason, the Land Office of Central Aceh District must apply the general principles of good governance, namely to protect all interested parties while waiting for a decision that has permanent legal force.

IV. Conclusion

1. The legal force of title to land based on a sale and purchase deed made before a land deed making official (PPAT) is given the position of an authentic deed that can be used as valid evidence of the existence of a sale and purchase transaction of freehold land. However, for strong proof of ownership of land, it can only be proven by the existence of a land certificate as a certificate of proof of land rights.
2. Settlement of land sale and purchase deeds made before the Land Deed Making Officer (PPAT) with a double sale and purchase deed can be



taken in 2 (two) ways, the first of which is taken by resolving disputes through the Central Aceh Regency Land Office by mediation (non-litigation). In its efforts to resolve land disputes through mediation, the Land Office of Central Aceh Regency is guided by the Decree of the Head of the Indonesian National Land Agency Number 34 of 2007 concerning Technical Guidelines for Handling and Resolving Land Problems. And the last way that must be taken if deliberation between the parties is not achieved, namely by resolving disputes through the Court.



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