

IMPLEMENTATION OF THE PRINCIPLES OF INTERNAL BALANCE BUYING AND BUYING LAND

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ABSTRAC

Land is an asset that is really needed by society, where human needs for land will continue to increase, and accessibility to land is increasingly limited. The need for land is monetary, social and mechanical. Land registration is a prerequisite in efforts to organize and regulate the allocation, control, ownership and use of land, including to resolve various land problems. Land registration is intended to provide certainty of rights and legal protection for holders of land rights by proving a land certificate, as a controlling instrument in the use and benefits of land. The transfer of land rights due to sale and purchase should be carried out before the PPAT by making a binding sale and purchase agreement in accordance with Government Regulations. Number 24 of 1997 concerning Land Registration in the practice of buying and selling land, buying and selling is based on the power contained in the land sale and purchase agreement, so the researcher wrote about "Implementation of the Principle of Balance in Land Buying and Selling". The formulation of the main problem in this research is about how the principle of balance in the sale and purchase of land is implemented and what is the legal position of sellers and buyers in the sale and purchase of land with the research objective being to analyze the implementation of the principle of balance to what extent it is applied in making land sale and purchase agreements. As well as to analyze the legal position of the Seller and Buyer in the Sale and Purchase of Land to prevent violations of the implementation of the principle of balance in the sale and purchase of land. This research is normative legal research, or a literature review of legal provisions. Secondary Legal Materials, specifically provide explanations of primary legal materials such as research results, the work of the legal community, and so on. It is a scientific method for determining truth based on normative logic and using law as its object. The absence of norms, unclear norms, and conflicting norms are the forerunners of normative legal research. By looking for the benefits of implementing the Principle of Balance in buying and selling land, it provides legal protection for the rights and responsibilities of executors, namely sellers and buyers, in carrying out land buying and selling transactions by binding themselves to each other. Apart from that, the application of the principle of balance is explained in the formulation of the rights and obligations of the parties, as a

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determining indicator of the explanation it appears in the balanced position between the rights and obligations of each party in the land sale and purchase agreement and the implementation of the Principle of Balance in the Sale and Purchase of Land is a form of giving each other their rights. each buyer-seller and the responsibility of each buyer-seller in carrying out and implementing the Land Sale and Purchase Agreement in the hope that there will be no disputes in the future.

Keywords: Land, Buying and Selling, Balance, Seller, Buyer

1. Introduction

Land is an asset that is really needed by society, where human needs for land will continue to increase, and accessibility to land is increasingly limited. The need for land is monetary, social and mechanical. Land is also a place to live and create, and is the center of human life's needs as a whole. Due to the increasing need for land for the construction of public facilities and limited land availability, land has a higher selling value. Artificial intelligence as a form of technological development that we can see is the emergence of Artificial Intelligence or artificial intelligence which is basically a simulation of human intelligence that is modeled in a machine and programmed to imitate how humans react. In other words, artificial intelligence is a computer system that can do jobs that usually require human labor. According to the Big Indonesian Dictionary, artificial intelligence is "a computer program that imitates human intelligence, such as decision making, providing a basis for reasoning, and other human characteristics."¹

Land is also one of the ongoing investments chosen by the local community due to the increasing need for accommodation in the local area so that land prices continue to increase. The PPAT Deed is proof that the transfer of land rights, such as buying and selling, must be registered. This is proven by the PPAT deed. transfer of freedom of land due to legal demonstration through trade and one of the circumstances for registering the exchange of privileges over land through buying and selling trade.

Articles 1457-1540 of the Civil Code regulate sales and purchase agreements. An agreement called "sale and purchase" according to Article 1457 of the Civil Code is defined as an agreement in which one party promises to deliver an item and the other party promises to pay the agreed price. The reason for the sale and purchase agreement itself is as an obligation that underlies the reality of meetings on the stock exchange. In this underlying understanding, most buyers who will immediately purchase have already made the principal or initial installments, so assuming the planned buyer cancels the exchange, the result is that he will lose the initial installments/initial installments. Therefore, the parties to a sale and purchase are obliged to treat each other with the same seriousness in carrying out the sale and purchase, which will ultimately result in the signing of the sale and purchase deed and settlement. Land buyers usually expect a guarantee of legal certainty, so that legal arrangements regarding land ownership must be clear

¹ Arba, M. 2021. "Hukum Agraria Indonesia". Jakarta: Sinar Grafika, Burhan, halaman 22

and in trading there must be a guarantee of legal certainty that protects the buyer if the trader defaults.²

A land sale and purchase agreement also requires trustworthiness and pure intentions in implementing the agreement as regulated in Article 1338 paragraph (3) of the Civil Code, which states "arrangements should be carried out sincerely". In an agreement, the individual must complete the presentation sincerely, the buyer follows through on the price of the land according to the framework set out in the agreement and the seller hands over the land for use by the buyer. From the definition of trading above, there are important commitments in trading, including:

1. The seller's obligation is to hand over the goods sold to the buyer. As Article 1474 of the Civil Code states: "the seller has two main obligations, namely to deliver the goods and bear them".
2. The buyer's obligation is to pay the price of the goods purchased to the seller. As Article 1513 of the Civil Code states, "the main obligation of the buyer is to pay the purchase price at the time and place as determined according to the agreement."³

A secret agreement and land acquisition is a sale and purchase agreement between the seller and the buyer which is carried out based on a separate agreement without involving the Land Deed Drafting Officer (PPAT). In general, this exchange occurred in the presence of the town or hamlet head at any time according to standard regulations. According to customary law, belief in the validity of a sale and purchase requires the participation of the village head. This is based on the 1958 Supreme Court decision Number 4/K/RUP/1958. "Buying and selling according to customary law is valid if it is done in real terms and in cash and is known to the village head," according to the Supreme Court decision dated 12 June 1975, Number 952/K/SIP/1975."

However, laws or government regulations can be used to test the validity of buying and selling. Before the PPAT or with an original deed ratified by an authorized official, the sale and purchase of land is considered valid. This is in accordance with PP no. 24 of 1997 concerning Regional Registration. Land rights must be transferred through PPAT and cannot be done privately as required by law. As a result, personal deeds are still accepted as evidence that can be used in court in a dispute. However, the strength of the evidence is not as strong as the actual deed. This means that this will endanger legal certainty.

Land registration is a very important thing in efforts to coordinate and direct the allocation, control, ownership and use of land, including determining various land issues. By proving land certificates which function as a means of controlling the use and utilization of land, land registration is intended to provide certainty to land rights holders regarding their rights and legal protection.⁴

The exchange of special rights over land due to sale and purchase must be completed before the PPAT by making a sale and purchase deed in accordance with Unofficial Law Number

² Giovanni Rondonuwu, "Kepastian Hukum Peralihan Hak Atas Tanah Melalui Jual Beli Berdasarkan Pp Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah", Lex Privatum Journal, Vol. V, No. 4, 2017.

³ Rajagukguk, J. P., Zuliah, A., & Dewi, A. T. 2021. "Akibat Hukum Jual Beli Atas Tanah Dengan Sertifikat Hak Milik Dalam Akta Di Bawah Tangan". Warta Dharmawangsa, 15(2), 200- 208.

⁴ Pulungan, M. T., & Muazzul, M. 2017. "Tinjauan Hukum tentang Peralihan Hak Atas Tanah melalui Perjanjian Gadai di Bawah Tangan". Jurnal Ilmiah Penegakan Hukum, 4(2), 60- 71.

24 of 1997 concerning Regional Registration in land sale and purchase deeds which depend on the sale and purchase deed. on the authority contained in the Deed of Sale and Purchase Understanding (PJB). This is because the object of sale and purchase, namely land, remains the object of Mortgage Rights at the time of the sale and purchase transaction, thus preventing PPAT from executing the sale and purchase deed. Because the land title certificate which is the object of the sale and purchase remains with the creditor as collateral for the debtor's debt, this sale and purchase is only based on trust between the seller, who is also the debtor in this case, and the buyer.

This does not seem to be a problem for creators, but if the current Copyright Law in Indonesia is harmonized with the artificial intelligence that is being used massively today, there will be several problems with the protection system. This is because the copyright law only stipulates copyright for works created by one or more people, whereas Indonesia does not yet have regulations to protect works that are the result of artificial intelligence or collaboration as contained in the Indonesian copyright law. The use of artificial intelligence in the production of creations in the fields of science, art and literature is becoming increasingly common, which usually complicates matters. Even as time goes by, artificial intelligence is getting better at producing creations, blurring the distinction between human-made and artificial intelligence-made works of art. In addition, there is concern in society that artificial intelligence will one day rule the world and replace the jobs done by humans. This continues to create ambiguity for works created with artificial intelligence, as to whether it is possible to deny copyright protection to works created with artificial intelligence, or whether works created with artificial intelligence can be attributed to the creator of the program. Of course, with today's increasingly rapid technological developments affecting creations produced by artificial intelligence, Indonesian law is far behind because it has not yet considered the regulation of creations produced by artificial intelligence.

Considering the basis of the problem above, the creator led a legitimate exploration with the title "Implementation of the Principle of Balance in Buying and Selling Land." From the above background, the problem can be formulated as follows: 1. How is the Principle of Balancing Land Buying and Selling Implemented? 2. What is the legal position of sellers and buyers in buying and selling land?

2. Method

2.1. Research Typology and Approach Methods

This research is normative legal research, or a literature review of legal provisions. Secondary Legal Materials, specifically provide explanations of primary legal materials such as research results, the work of the legal community, and so on. It is a scientific method for determining truth based on normative logic and using law as its object. The absence of norms, unclear norms, and conflicting norms are the forerunners of normative legal research.

2.2. Methods for Collecting Legal Materials

The scope and objectives of a research project largely determine the data collection methods used. The data collection method used was a literature review in accordance with the scope, objectives and approach of this research. The statutory regulatory approach was used in

this research. By looking at the statutory regulations relating to the legal issues being handled, a legislative and regulatory approach is taken under Law No. 05 of 1960, Regulation of the Minister of Agrarian Affairs and Spatial Planning/Head of the National Land Agency No. 14 of 2024.

2.3. Analysis of Legal Materials

Collect legal documents from secondary and tertiary sources that are relevant to the problems studied in this research. Then at that point the important legal materials are prepared to suit each issue being discussed. The next step is to process and interpret the data in order to draw conclusions about the problem and explain these conclusions. The analysis in this case is called deductive analysis, based on norms, legal principles and values that have been recognized and then interpreted in different legal systems to relate to the problems in this research.

3. Implementation Of The Principle Of Balance In Selling Buy Land

3.1. The Principle of Balance in Buying and Selling Land

The concept of balance, also called evenwicht or evenwichting in Dutch and equality, equal, or balance in English, comes from the lexical meaning "equal, comparable" and can be used to describe a condition, position, degree, weight, etc.a. For reasons of justice, the author is the creator or creator of a work that expresses his individuality. He can instead decide whether his work is published and prevent loss or destruction of his intellectual work (intellectual spring). As an author, you receive compensation for your intellectual work in the form of royalties.

Considering the consequences of research directed by Agus Yudho Hernoko on balance standards in business contracts, it can be reasoned for the time being that balance applies throughout the cycle of making an agreement to implementing the contract. This is on the grounds that it guarantees a fair discussion process, equality of freedom, reliable delivery of trade privileges and commitments within their limits, and as part of the seriousness of the obligation to prove any claim. The principle of balance states that existing legal procedures must maintain public order and uphold human rights. In accordance with this balance standard, the Criminal Code focuses on harmony between: ensuring human respect and ensuring the interests and demands of society. The principle of equality continues with this principle of balance. However, it is the creditor's responsibility to carry out the agreement in good faith so that the positions of the creditor and debtor are balanced. Creditors have the power to demand performance, and if necessary can demand repayment of performance through the debtor's assets.⁵

The Basic Agrarian Law (UUPA) states that the act of buying and selling property can be proof of the seller's rights to the buyer. An important standard is clear and money, especially exchanges made before an approved public office and exchanges made with real money. This means that the buying and selling process cannot be carried out if the price is not paid in full. Meanwhile, according to Article 1457 of the Civil Code, a sale and purchase agreement is a party that has bound itself to hand over property rights and the other party is willing to pay the agreed price. The result is that the seller's guarantee is given to the buyer that the product being sold truly belongs to him and is free from any burden or demand from any party. In addition, unless it has been previously agreed that the seller is not obliged to bear anything, the seller will bear

⁵ Mariam Darus Badruzaman. "Hukum Perikatan dalam KUH Perdata Buku Ketiga, Yurisprudensi, Doktrin, serta Penjelasan", Penerbit PT. Citra Aditya Bakti, Bandung, 2015, halaman 89

hidden defects in the goods he sells even though the seller is not aware of any hidden defects in the goods sold. The term "hidden" refers to defects that are difficult for ordinary consumers to recognize.

The agreements and purchases adopted in the general rules are only obligatory, and this means that the new agreement and purchase arrangements place appropriate freedom and commitment between the two players, the seller and the buyer, in particular providing a commitment to the trader to do so, relinquishing privileges over the merchandise he sells, as well as giving his right to request installments of the agreed costs, and once again giving a commitment to the buyer to follow up on the cost price of the product as an imbalance in his rights to expectations. exchange of freedom for the products he buys. In other words, if buying and selling is regulated according to civil law, then property rights do not transfer.⁶

According to Article 1459 of the Civil Code, the transfer of rights to an item from the seller to the buyer must occur legally (juridisch leverage). "The ownership rights to goods sold do not transfer to the buyer as long as the goods have not been delivered according to Articles 612, 613 and 616," reads Article 1459 of the Civil Code.

Based on the explanation above, it can be concluded that according to western law, in order for the rights to an object to pass from the seller to the buyer, 2 (two) different legal acts must be carried out, namely:

1. Sale and purchase agreement (according to contract law).
2. Juridical handover (according to property law or agrarian law in the case that the object of the agreement is land).

Based on Article 1457 of the Civil Code which states that "an agreement where one party binds himself to hand over an object, and the other party pays the agreed price". The rule of balance is reflected when meetings that will seek an arrangement are given the opportunity based on Article 1338 of the Civil Code. Article 1338 of the Civil Code states that freedom is not absolute. On the other hand, it must be balanced with rules that state that this freedom is permissible as long as it does not conflict with the law, right and wrong, morality or public order when exercised. As a cycle, an ideal agreement must be able to fulfill group interests in a fair and balanced manner, and be of mutual benefit. In order not to cause harm to one of the parties or, even worse, to the parties making the agreement, in order to achieve a fair and reasonable distribution of the rights and responsibilities of the parties, there must be a balance.⁷

Article 1320 of the Civil Code reflects the application of the principle of balance in land sale and purchase agreements, paragraph (1). According to Article 1320 paragraph (1) of the Civil Code, the agreement clause requires that both parties stating the agreement must agree or agree regarding the main points of the agreement made by the parties. This means that the relationship formed by the parties must have a balance of will.

As stated in Article 1313 of the Civil Code which defines an agreement as follows: "an agreement is an act by which one or more people bind themselves to one or more other people" Indirectly, it is stated in Article 1320 of the Civil Code. The emphasis on "agreement",

⁶ Sudaryo Soimin, "*Status Hak dan Pembebasan Tanah*", Sinar Grafika, Jakarta, 1994, halaman 94.

⁷ Agus Yudho Hernoko, "*Hukum Perjanjian : Asas Proporsionalitas dalam Kontrak Komersial*", Kencana, Jakarta, 2010, halaman. 26.

"implementation in good faith" and binding the agreement to "decency, custom and law" shows that in an agreement there should be a balance between the parties so as to create a sense of justice. An unbalanced agreement has no binding force because it is contrary to good faith, a sense of justice and propriety. As a result, an unbalanced agreement can be requested to cancel the agreement.

Article 1243 of the Civil Code defines default in civil law. According to Article 1883 of the Civil Code, a person is said to be in default if he does not carry out his obligations. However, for someone to be declared in default, they must go through a court decision which has very strong legal force. Several sanctions or penalties are threatened for violations of negligence or neglect of termination (actions or debtors as parties who are obliged to do something). There are four types of valid agreements against parties in default, to be precise:

1. pay losses suffered by creditors or in short, compensation;
2. cancellation of the agreement or also called breaking the agreement;
3. risk transfer;
4. Pay the court costs, if the case goes before a judge.

Sanctions for default depend on Article 1243 and Article 1244 of the Civil Code as follows: Article 1243 reads: "Compensation for costs, losses and interest due to non-fulfillment of an obligation begins to be required, if the debt holder, despite the fact that he is declared in default, actually fails to fulfill the commitment, or vice versa there is a possibility that something should be given or carried out must be given or carried out within the specified time period." past the appointed time."

"Buyers must be punished to compensate costs, losses and interest. if it cannot be proven that the non-implementation of the agreement or the discrepancy in the implementation time was caused by something unexpected, which cannot be accounted for. even though he has no bad intentions," reads Article 1244.

"Compensation for costs, losses and interest resulting from non-fulfillment of an obligation will only begin to be obligatory if the perpetrator, after being declared negligent in fulfilling the obligation, continues to neglect it, or if something must be given or done. , can only be given or carried out within the period that has passed," reads article 1243 of the Civil Code which explains about default.

An event or situation where one party fails to fulfill its obligations or carry out its obligations properly is known as a default or breach of promise. A person is said to be in default based on Civil Code Article 1883 if:

1. Not doing what he said he would do.
2. Carrying out what he promised, but not as he promised (carrying it out but doing it wrong).
3. Did what he promised, but was late.

Doing something that according to the agreement you are not allowed to do.

"The person in debt must be punished to compensate costs, losses and interest." It must first be determined whether the debtor is in default or negligent, and if he denies this, then he must be proven before a judge because default (negligence) has very important consequences. It is also difficult to determine whether someone is negligent because it is often unclear when a party is required to carry out the promised action. If the above situation occurs, the buyer has the right to

demand that the seller immediately hand over the certificate of ownership of the land he purchased, as the injured party, then the buyer has the option to file a lawsuit with the local government Court to try to resolve the dispute.

3.2. Buying and selling land

In carrying out a land sale and purchase transaction, there will be a binding agreement between the Seller and the Buyer, namely the first is the Sale and Purchase Agreement (PPJB), the second is the making of the Land Sale and Purchase Deed (AJB), the third is the transfer of rights to a Certificate of Ownership (SHM). Here's the explanation:

A. Pre-Transaction Making PPJB

PPJB is an agreement made by prospective sellers and prospective buyers of land as an initial binding before the parties make an AJB before the Land Deed Making Officer (PPAT). PPJB can be made before a Notary/PPAT or made by the parties without making it in the form of a deed and both remain legally binding on the parties as long as the PPJB is made in accordance with the legal requirements for the agreement referred to in Article 1320 of the Civil Code (KUHPer). In PPJB, things that are generally regulated are the amount of the agreed price, method of payment, when to pay, and the time agreed by the parties to make the AJB. In statutory regulations, PPJB is not specifically regulated and PPJB is not a requirement when carrying out land sale and purchase transactions.

B. AJB Creation Transaction

AJB is an authentic deed in land sale and purchase transactions made by PPAT. Land is an immovable object so the transfer of ownership of land refers to Article 616 and Article 620 of the Civil Code where the transfer of ownership is carried out by announcing an authentic deed and recording it in the register. However, currently, this has been specifically regulated in Article 19 paragraph (2) of Law no. 5/1960 concerning Basic Regulations on Agrarian Principles (UUPA) jo. Article 37 paragraph (1) Government Regulation no. 24/1997 concerning Land Registration (PP 24/1997) where the transfer of land rights that occurs due to buying and selling needs to be registered using a deed made before the PPAT. AJB is legal proof that land rights have been transferred to another party.

Before signing the AJB, there is an important thing that you must also pay attention to, namely the consent of the seller's husband or wife if the seller is married and the land was acquired during the marriage. This is done because land rights are joint assets in marriage, so the sale requires approval from the husband or wife as proven by a signature also carried out by the husband or wife concerned. Unless there is a property separation agreement or pre-nuptial agreement between husband and wife, then such approval is not required.

Apart from that, the making of the AJB must also be attended by the parties, namely the seller and the buyer or a person authorized by a written power of attorney, and must also be attended by two witnesses, as regulated in Article 38 paragraph (1) PP 24/1997. Before signing, PPAT will first carry out an inspection of the land title certificate and Land and Building Tax (PBB). After the inspection is complete, PPAT will make an AJB and explain the contents of the deed to the parties. If the seller and buyer have agreed on the contents of the deed, the parties will sign the deed or AJB that has been made by PPAT. Then this AJB will be used as proof of the

transfer of land rights through buying and selling for land registration purposes at the National Defense Agency that a sale and purchase has occurred so that a "change of name" will be carried out from being in the seller's name to being in the buyer's name.

C. Easter SHM Creation Transaction

The next stage, after the AJB is signed by the parties, is to register the transfer of rights. Even though the sale and purchase transaction has occurred when the AJB is signed, ownership of land rights can only be proven by registering the transfer of land rights. From the registration of the transfer of land rights, the buyer will receive a certificate with a name behind it, that is, the buyer's name will be registered as the legal owner of the land.

Based on Article 32 paragraph (1) PP 24/1997, the function of the certificate is as proof of rights which acts as a strong means of proof regarding the physical data and juridical data contained therein. Furthermore, if the land certificate has been issued in the name of the person who acquired the land in good faith and actually controls the land, then other parties cannot claim their rights to the land if within 5 (five) years of the issuance of the certificate there has been no objection. submitted to the certificate holder. In this way, the buyer as the certificate holder for the land under control has strong proof of ownership if in the future another party makes a claim on someone's land. The stages in carrying out a land sale and purchase transaction until obtaining a certificate are a long process and take quite a lot of time and energy. Therefore, before buying and selling land, you must first understand the process and requirements. Just a land sale and purchase agreement or even a receipt cannot make the land legal ownership. Thus, it is hoped that after understanding this stage, you must be able to fulfill these requirements so that land sales and purchases are carried out in accordance with applicable law and are free from disputes.

Problems that often occur among traders and buyers in implementing sales and purchase agreements are often encountered in the field because buyers are generally unable to make repayment installments. Or it could also happen to the seller because they don't understand how willing the buyer is to be constructed and placed or the availability of the units promised by the developer. Examples of problems is default. One of the parties may fail to carry out or be negligent in carrying out the agreement. Because each party has rights and responsibilities, of course there must be a solution from both parties if this happens. Issues related to land can occur between people or between people and legal elements. Debates go up and down, whether regarding actual land information, juridical information, or because of legal activities carried out on the land.⁸ Default is not satisfying or neglecting to complete commitments as specified in the understanding made between the lender and the debt holder. Non-fulfillment of promises or default can occur with or without your knowledge. Debt holders are considered negligent if they do not fulfill their commitments or are late in fulfilling them but not according to the agreement.

⁸ Elza Syarif, *"Menuntaskan Sengketa Tanah Melalui Pengadilan Khusus Pertanahan"*, PT.Gramedia, Jakarta, 2012, halaman. 8.

4. Legal Position Of Sellers And Buyers In Buying And Buying Land

4.1. A Brief Overview of Soil

Land in the sense of Agrarian law is the surface layer of the earth that is used for business use. Nowadays, land is not only needed simply for residence or as the main natural capital in agricultural and livestock activities. Along with the rapid population growth and the relatively small amount of land area, this actually causes the need for land to increase, thus causing land and various agrarian problems to arise. Based on Law Number 39 of 2014 concerning Agriculture, Plantation and Animal Husbandry, land is the surface of the earth, whether in the form of land or covered by water to a certain extent as long as its use and utilization is directly related to the earth's surface, including the space above and within the body of the earth.

In the agrarian scope, land is part of the earth, which is called the surface of the earth. Land referred to here does not regulate land in all its aspects, but only regulates one aspect, namely land in the juridical sense, which is called rights. Land as part of the earth is mentioned in Article 4 paragraph (1) of the UUPA, namely "On the basis of the state's right to control as intended in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, either alone or together with other people and legal entities." Thus, it is clear that land in the juridical sense is the surface of the earth, while land rights are rights to a certain portion of the earth's surface, which is limited, has two dimensions with length and width.⁹

Registration of land is something that must be done by anyone carrying out buying and selling transactions, leasing or other things. Land registration must be carried out in accordance with the procedures as stipulated in statutory regulations. Ownership rights to land or buildings standing on land will receive legal and juridical protection to obtain recognition from the state if registration has been carried out or in other words, land registration is proof of rights.¹⁰

Based on the Basic Agrarian Law, Article 5, the applicable Agrarian law is Customary Law. This means that Agrarian Law according to the UUPA is based on Customary Law. That in the applicable Customary Law regarding the Transfer of Rights in cash there is no institution called "Juridische Levering". Thus, a transfer of land rights has been transferred since the sale and purchase/auction was carried out, which of course was carried out by taking into account material conditions. Effendi Wargan stated that Land Law is the totality of written and unwritten legal regulations that regulate land control rights which constitute legal institutions and concrete legal relationships.

The object of land law is the right of control over land. What is meant by the right of control over land is a right that contains a series of authorities, obligations and/or prohibitions for the holder of the right to do something regarding the land in possession. Something that is permissible, obligatory or prohibited to do, which It is the content of tenure rights that is the criterion or benchmark for differentiating between tenure rights over land regulated in the Land Law. Land Law is the totality of legal provisions, both written and unwritten, all of which have the same regulatory object, namely land control rights as legal institutions and as concrete legal

⁹ Urip Santoso, *Hukum Agraria*, (Jakarta: Kencana, 2013), halaman. 9-10

¹⁰ Jimmy Joses Sembiring, *Panduan Mengurus Sertifikat Tanah*, (Jakarta Selatan: Visimedia, 2010), halaman. 21

relations, with public and private aspects, which can be compiled and studied systematically, until the whole becomes one unit which constitutes one system.

The object of Land Law is the right to control land which is divided into 2 (two), namely:

- a. Land control rights as a legal institution; And
- b. Land control rights as a concrete legal relationship.

Written Land Law provisions are sourced from the UUPA and its implementing regulations which specifically relate to land as the main source of law, while unwritten Land Law provisions are sourced from Customary Law regarding land and jurisprudence regarding land as a complementary legal source.

Ali Achmad Chomzah briefly stated, based on Article 20 UUPA, states that the characteristics of property rights are as follows:

1. Hereditary, meaning that ownership rights to the land in question can be transferred by law from a land owner who dies to his heirs.
2. Strongest, meaning that the ownership rights to the land are the strongest among other rights to the land.
3. Full, meaning that the ownership rights to the land can be used for agricultural businesses and also for building buildings.

When using land ownership rights, you must pay attention to the social function of land, namely when using land you must not cause harm to other people, the use of land must be adapted to the circumstances and nature of the rights, there is a balance between personal interests and the public interest, and the land must be well maintained. to increase fertility and prevent damage.

Ownership rights to land arise due to the provisions of the Law, meaning the Law that determines these ownership rights. For example, ownership rights to land originate from the conversion of former customary land. Customary land is essentially proprietary land, however, according to the national land law that came into effect in Indonesia on 24 September 1960, customary land can become proprietary land if it has been converted. Conversion is the adjustment of land rights according to the old law into land rights according to the new law. This adjustment of rights also occurs with land rights which are subject to Western law (*eigendom*, *Erfpacht*, and *opstal*). The conversion of these Western rights can become property rights, business use rights, building use rights and use rights based on the provisions of the UUPA conversion. The law ordered here has not yet been formed. For this reason, Article 56 of the UUPA is enforced, namely "As long as the Law on Property Rights has not yet been formed, then what applies are the provisions of local customary law and other regulations regarding land rights which give authority, as long as they do not conflict with the UUPA".

Unbalanced land buying and selling in implementing the Principle of Balance

That in carrying out land sale and purchase transactions, sometimes it is not as smooth as desired by both parties, this happens due to several things, such as failure to fulfill the requirements set by law for formal types of agreements, which results in the agreement being null and void, failure to fulfill the legal conditions of the agreement, factors -The factors behind the cancellation of agreements issued by PPAT can be grouped as follows:

- a. The agreement is void because it does not fulfill the subjective requirements for the validity of the agreement, namely the agreement of the parties as regulated in Article 1320 of the Civil Code;
- b. The agreement is void because it does not fulfill the objective requirements for the validity of the agreement, namely lawful reasons as regulated in article 1320 of the Civil Code;
- c. Invalidity of the agreement due to elements of document falsification;
- d. invalidity of the agreement due to ownership rights;

If it is proven that the building being sold belongs to a third party, then one of the material requirements is not fulfilled, because the seller is not the person who has the right to sell the building, then the sale and purchase of the building is invalid. In accordance with the provisions of Article 1471 of the Civil Code, buying and selling other people's goods is void and can provide a basis for the buyer to demand compensation for costs, losses and interest, if he does not know that the goods belong to someone else. It should be noted, because it is only the building that does not belong to the seller, what is invalid is only the sale and purchase of the building, while the sale and purchase of the land is still valid.

When buying and selling land which turns out to be a dispute, the buyer must pay attention to the following matters:

- a. Ensure land ownership by finding out details about the ownership status of the land in dispute so that you can understand the risks that occur.
- b. Seek information about the validity of the disputed land ownership status by going to the land office
- c. Ensure the origin/history of the disputed land
- d. Reporting to the land office
- e. Complete all required documents.

4.2. Legal Protection of Land Buying and Selling

A sale and purchase agreement according to Article 1457 of the Civil Code (hereinafter referred to as the Civil Code) is a party promising to deliver an item and the other party will pay the agreed price. There are two conditions behind the demonstration of land buying and selling, namely material conditions and formal conditions. Material circumstances in land transactions and acquisitions are circumstances or decisions that regulate the freedom and commitment of the parties (traders and buyers) through the completion of a legal demonstration of the right to move to a region where the seller hands over the land and the buyer follows up. land price, then the privilege of the land is transferred to the buyer.¹¹

In the presence of an authorized official (PPAT), land sales and purchases must be carried out. Based on the UUPA, freedom over land that can be used as an object of transfer of rights is: Freedom of Ownership (article 20 UUPA), Special Rights to Use Business (article 28 UUPA), Freedom to Use Buildings (Article Rights to Use (Article 41 UUPA). UUPA UUPA), If one of these material conditions is not met, then the land being traded becomes invalid, the buyer does not qualify as the owner of the land rights, or the seller is not the owner of the rights.

¹¹ Effendi Perangin, 1994, "*Praktik Jual Beli Tanah*", Raja Grafindo Persada, Jakarta, Halaman 2

PPJB, AJB are legal documents made by prospective buyers and sellers. Before the prospective buyer and seller submit the PPJB, AJB to the Land Deed Making Officer (PPAT), this agreement takes effect immediately. PPJB, AJB can be made by one of the parties without a deed, but it is still legally binding on both parties. In fact, keep in mind, this can happen if the PPJB, AJB are made by fulfilling the legal understanding requirements according to law. This legal obligation is directed in Article 1320 of the Civil Code (KUHPer). Article 1868 of the Civil Code recognizes PPJB as an authentic deed made before a Notary.

In the context of national land law, buying and selling land rights is a legal transaction where the seller gives ownership rights to the buyer (forever), and the buyer also gives the price to the seller, thereby transferring ownership rights to the buyer. A legal act intended to transfer land rights from the seller (right holder) to the buyer by paying a sum of money in cash and this is clearly known as buying and selling land according to customary law.¹²

The transfer of land rights is recorded at the Land Office in accordance with Article 616 and Article 620 of the Civil Code, where the transfer of immovable objects is carried out by means of an announcement. the relevant deed by submitting an authentic copy complete with the relevant authentic deed or decision to the mortgage depository and by recording it in the register. the agreement is made privately or with a Sale and Purchase Agreement. - other parties who expect something in certain circumstances so that they can provide a sense of justice and not cause unrest by transferring rights through PPAT and recording land rights at the Land Office. This can provide benefits for the parties involved and provide legal certainty to the parties who make the agreement themselves to prevent arbitrary actions or defaults from one of the parties.¹³

The activity of buying and selling land rights carried out privately if it refers to Article 1320 of the Civil Code fulfills the material and formal requirements regarding the validity of an agreement. Based on the provisions contained in Article 1320 of the Civil Code which reads: "In order for a valid agreement to occur, four conditions need to be fulfilled;

1. their agreement that binds them;
2. the ability to create an agreement;
3. a particular subject matter;
4. a cause that is not prohibited."

Law Number 5 of 1960 concerning Basic Agrarian Principles and Government Regulation Number 24 of 1977 concerning land registration mandates that to validate land sale and purchase transactions, a land sale and purchase deed is required which must be drawn up by and before the Land Deed Official. Even though the sale and purchase of land rights is carried out informally, it is still legally recognized as long as the substantial terms of the agreement are fulfilled. Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations also outlines that the government is responsible for providing legal certainty in the land registration process throughout Indonesia in accordance with the regulations regulated by Government Regulations. The process of registering land rights includes several aspects, including:

1. Carry out the process of measuring, mapping and recording land data.

¹² Boedi Harsono, *"Menuju Penyempurnaan Hukum Tanah Nasional"*, Universitas Tri Sakti, Jakarta, 2002, halaman. 134

¹³ Bachrudin, *Hukum Kenotariatan, "Perlindungan Hukum dan Jaminan Bgi Notaris Sebagai Pejabat Umum Dan Warga Negara"*, Yogyakarta: Thema Publishing, halaman.33.

2. Carry out the process of registering land rights and transferring these rights.
3. Provide documents proving legal rights as strong evidence in the agreement.

Article 19 of Law Number 5 of 1960 concerning Basic Agrarian Principles Regulations mandates the public to carry out the land registration process with the aim of providing guarantees of legal certainty in buying and selling transactions of land rights. In carrying out land registration, this process must refer to the deed prepared by the Land Deed Making Official in accordance with the provisions of Article 37 paragraph (1) in Government Regulation Number 24 of 1997 concerning Land Registration:

"Transfer of rights to land and ownership of apartment units through sale and purchase, exchange, grants, entry of company data and legal acts related to the transfer of rights due to auctions can only be registered if proven by a deed made by the authorized PPAT according to the provisions of statutory regulations. applicable"

This legal provision emphasizes that to strengthen the sale and purchase transaction of land rights, valid and strong evidence must be obtained through the preparation of a deed by the Land Deed Official. The act of buying and selling land rights that occurs informally can be used as evidence in a legal transaction. However, this cannot provide sufficient legal guarantees to buyers unless the land sale and purchase transaction is made and supported by a deed made by the Land Deed Official.

Unofficial buying and selling of land rights can be used as evidence, but this evidence does not have sufficient strength to prove the transfer of land rights. This is in accordance with Article 37 in Government Regulation Number 24 of 1997 concerning Land Registration which requires the transfer of land rights to be supported by a deed drawn up by the Land Deed Making Officer. Therefore, sales and purchase transactions of land rights that are not officially valid cannot be registered at the Land Office.

4.3. Legal Position of Seller and Buyer

Buyer's Legal Position

The buyer can be considered to have good intentions if he has carefully examined the material facts (physical data) and the validity of the transfer of rights (juridical data) on the land he purchased, before and during the process of transferring land rights. If the buyer knows or can be considered to have known about defects in the process of transferring land rights (for example, the seller's lack of authority), but he still continues the sale and purchase, the buyer cannot be considered to be acting in good faith. In the literature studied, the principle of duty of care in buying and selling land is rarely discussed, because good faith in material law is interpreted as subjective good faith based on the honesty (inner attitude) of the buyer. Initially, Indonesian legal literature did not mention the need for an obligation for a buyer to apply the precautionary principle (for example the views of Subekti and Boedi Harsono), but later the precautionary principle was discussed by Ridwan Khairandy in the context of land sale and purchase agreements which emphasizes the buyer's obligation to research material facts before and when the sale and purchase is carried out.¹⁴

¹⁴ Adrian Sutedi, *Hak Peralihan Hak Atas Tanah dan Pendaftarannya*, Edisi 1, Cet. Keenam, Jakarta: Sinar Grafika, 2014, halaman. 65.

The good faith of the parties in the context of implementing the agreement (sale and purchase) according to Article 1338 paragraph (3) of the Civil Code was also later relied upon by the Supreme Court in formulating the agreement at the Plenary Meeting of the Civil Chamber in 2014. According to statutory regulations, the buyer's obligations in A sale and purchase agreement is regulated in Article 1513 and Article 1514 of the Civil Code. The buyer's obligations here are related to the context of the agreement, and there are no regulations that require the buyer to research material facts before and when the land sale and purchase is carried out. Existing regulations place greater emphasis on sellers to provide honest information about the goods that are the object of sale and purchase (Article 1473 of the Civil Code).

This article imposes an obligation on the seller to provide information to the buyer about the goods to be purchased. Assumptions from legislators and also according to opinions developed in the literature, the validity of buying and selling can be ensured by the role of PPAT and the required land registration mechanisms. Article 39 and Article 45 PP no. 24/1997 regulates that the PPAT and (later) the Head of the Land Office (KKP) must check or ensure that the following things are fulfilled:

- 1) for registered land or ownership rights to apartment units, an original certificate of title must be submitted with the name which is in accordance with the list at the Land Office;
- 2) for unregistered land, evidence must be submitted as determined by the PP;
- 3) the skills/authority of the (parties) carrying out the relevant legal action;
- 4) fulfillment of permits from authorized officials or agencies, if necessary;
- 5) the object is free of dispute; and
- 6) there is no violation of statutory provisions.

The buyer's obligation to check the validity of the sale and purchase seems to have been borne by PPAT and KKP. Compared to regulations which only regulate PPAT and KKP obligations regarding this matter, the court's decision seems to have adopted the fulfillment of the principles of accuracy and prudence by the buyers themselves. Several Supreme Court decisions emphasize that buyers should also act responsively (responsibly) by finding out and researching the validity of the land sale and purchase first, before and when the sale and purchase is carried out. According to the judge, the buyer cannot be qualified as a buyer in good faith and therefore does not receive protection, if at the time of purchase he does not at all carefully research and investigate the rights and status of the seller(s) of the land subject to dispute. 9 In its development, to assess whether or not the buyer has good faith, the Supreme Court examines whether the buyer has fulfilled his obligation to find out.

In the agreement at the Plenary Meeting of the Civil Chamber which was attached to the Supreme Court Circular Letter (SEMA) No. 5/2014 has also emphasized that the criteria for a buyer in good faith are (1) carrying out sales and purchases based on statutory regulations, and (2) exercising caution by researching matters relating to the object of agreement. The statement from the Supreme Court above gives an indication that although in buying and selling, the legal category pays more attention to the seller's honesty, but according to the principle of prudence, the buyer should pay more attention to the object of the dispute before the agreement is carried

out. This refers to the importance of the principle of prudence in the form of examining the object to be traded.¹⁵

Seller's Legal Position

The responsibility or obligation of the seller in carrying out the sale and purchase is regulated by Article 1458 of the Civil Code, in principle the seller has the obligation to:

- 1) Maintain and care for the objects that will be handed over to the buyer until the time of delivery;
- 2) Hand over the goods being sold at the specified time or if the time is not specified at the buyer's request;
- 3) Cover the goods sold.

The seller's obligations are also regulated in Article 7 of the Consumer Protection Law which explains the obligations of business actors:

- 1) Have good faith in carrying out their business activities;
- 2) Provide correct, clear and honest information regarding the condition and guarantee of goods and/or services as well as providing explanations of use, repair and maintenance;
- 3) Treating consumers correctly and honestly and not discriminating;
- 4) Guarantee the quality of goods and/or services produced and/or traded. Based on the applicable standard quality provisions for goods and services;
- 5) Provide opportunities for consumers to test certain goods and/or services and provide guarantees and/or guarantees for goods made and/or traded;
- 6) Provide compensation if goods or services do not comply with what was agreed.

5. Conclusion

Based on the research results as explained above, in this research there are conclusions as answers to the problems formulated into 2 (two) problem formulations, namely:

1. The application of the Principle of Balance in buying and selling land is to provide legal protection for the rights and responsibilities of executors, namely sellers and buyers, in carrying out land buying and selling transactions by binding themselves to each other. Apart from that, the application of the principle of balance which is explained in the formulation of the rights and obligations of the parties, as a determining indicator of the explanation is seen in the balanced position between the rights and obligations of each party in the land sale and purchase agreement. Balance in a land sale and purchase agreement can be achieved by increasing protection for the seller and buyer, in this case the position of the buyer because the seller is stronger than the buyer, namely by guaranteeing the buyer's rights.
2. The legal position of the seller and buyer is that they have good intentions to carry out the sale and purchase transaction by carrying out the rights and responsibilities of the Buyer and Seller who bind each other in the land sale and purchase agreement with the hope that no party will be harmed and the principle of balance is that the seller and buyer carry out their rights and responsibility in carrying out land sales and purchases, there will be no default and settlement will occur at a later date

¹⁵ Salim H.S., Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak, Jakarta: Sinar Grafika, 2003, hlm. 96

Suggestions

Based on the research results as described above in this study, the suggestions that can be put forward are:

1. The implementation of the Principle of Balance in the Sale and Purchase of Land is a form of giving the rights of each buyer-seller and the responsibilities of each buyer-seller in carrying out and applying the Land Sale and Purchase Agreement with the hope that there will be no disputes and even if there is a dispute such as default, one The seller or buyer will be facilitated by mediation or a settlement will be carried out in the relevant court.
2. So that the legal position between the seller and the buyer is not contradictory, they must know what agreement they are entering into, whether it is a sale and purchase agreement, lease agreement and what the articles in the sale and purchase agreement deed contain. Balance in the sense of justice is an important goal in carrying out the land buying and selling process carried out by the Seller and Buyer.

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