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## Implementation of Sale and Purchase of Land Rights Under Hand and Its Legal Effects (Case Study in X Koto District, Tanah Datar Regency, West Sumatra Province)

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**Abstract:** According to UUPA and Article 37 paragraph (1) of Government Regulation Number 24 of 1997, every sale and purchase transaction of land rights is required to register the transfer of land rights to the Land Office, with evidence of authentic deeds. In fact, there is still a process of buying and selling land rights under the hands of people based on mutual trust between the seller and the buyer. The proof of the transaction used is only an underhand deed, signed by two witnesses and acknowledged by the local KAN and the Wali Nagari. The phenomenon of the practice of buying and selling land like that, still frequently occurs in X Koto District, Tanah Datar Regency.

**Key Words:** Buying and Selling, Under Hand, Legal Consequences.

### 1. INTRODUCTION:

To own land, it can be done in various ways, among others, by inheriting, giving, exchanging, as well as by way of buying and selling. Acquisition of land is more often done, namely through buying and selling. The word buying and selling everyday terms can be interpreted, where a person releases his money to get the goods he wants voluntarily. Then according to Article 1457 of the Civil Code, it states that the sale and purchase of land is an agreement. [1]

Based on information from Wali Nagari Koto Laweh and Wali Nagari Pandai Sikek, X Koto Subdistrict, information was obtained that indeed in the Nagari they lead, there are still frequent buying and selling of land rights between buyers and sellers which are carried out underhand. In one year, on average, there are about 5-8 cases of illegal sale and purchase of land carried out at the Nagari Adat density office.

This shows that the legal action process of buying and selling land rights under the hands of the community is still carried out simply, namely mutual trust between the seller and the buyer. Not compatible with Article 37 paragraph (1) Government Regulation Number 24 of 1997, which requires registration of transfer of land rights, as evidenced by an authentic deed, while the evidence used by some of the community is only in the form of an underhanded deed (receipt, a sheet of seal paper or a certificate of sale and purchase signed by both parties and also signed by several witnesses and acknowledged by the Chairman of the Nagari Adat Adat (KAN) and the local Walinagari. Even though the sale and purchase have met the above requirements, the problem that arises is what is the legal effect on buyers whose land acquired through the sale and purchase of land under the hands, which is still rife with the community? In the event that it is clearly regulated in Article 37 of Government Regulation Number 24 of 1997, that the transfer of land rights must be proven by an authentic deed made by Land Titles Registrar (PPAT). This is important, meaning that on the one hand, it is a means of evidence that it is true that there has been a transfer / transfer of property rights over land from one person to another (sale and purchase, exchange, grant) and other important meanings, namely in the framework of implementing the provisions of laws and regulations, so that an order and legal certainty can be achieved which provides legal protection for both parties transferring ownership rights over the land. Apart from that, can the letter of sale and purchase of land rights under this hand be used as the basis for carrying out land registration with the Land Office?

### 2. CONCEPTUAL FRAMEWORK:

#### a. Sale and Purchase of Land

According to customary law, the definition of buying and selling land, namely: "is a legal act in the form of handing over land by the seller to the buyer, at which time the buyer also hands over the money to the seller". [2]

- b. Underhand Deed Underhanded Deed Underhanded  
Deed in general are deeds made and prepared by the parties individually, and not in the presence of a notary or authorized official.
- c. Legal Consequences<sup>1</sup>  
Namely the result of an act of buying and selling under the hands of the buyer to acquire a piece of land, while the legal provisions stipulate that the acquisition of that piece of land (Article 37 paragraph (1) PP No. before the PPAT, so even though the sale and purchase is legal, the power of proof of the sale and purchase certificate under the hand is weak, because there is an opportunity to be denied and cannot be used as a basis for obtaining a certificate.

### 3. THEORITICAL FRAMEWORK:

- a. Agreement Theory<sup>2</sup>  
The definition of an agreement according to Article 1313 of the Civil Code is: "An agreement is an act whereby one or more people bind themselves to one or more other people." Furthermore, in Article 1338 of the Civil Code, it is determined that: "All agreements that are made legally, shall be valid as law for those who make them".
- b. Legal Consequences  
Soeroso defines legal consequences, namely: "as a result of an action taken to obtain the result desired by the perpetrator and which is regulated by law. This action is called a legal action. So in other words, legal consequences are the result of a legal action. Example: making a will, a statement to stop renting ". [3]

### 4. LITERATURE REVIEW:

<sup>1</sup> The term sale and purchase of land rights, is only mentioned in Article 26 of the UUPA, which refers to the sale and purchase of property rights over land, while in other articles there is no word that says "sale and purchase", but it is mentioned as transferred, with the explanation that the meaning is transferred, indicates a deliberate legal act to transfer land rights to another party through sale and purchase, grants, exchange and will grants. So, although the article only states that it was transferred, this includes the legal act of transferring land rights due to sale and purchase. [4]

Since the enactment of the UUPA on September 24, 1960, the LoGA has revoked: "Book II of the Indonesian Civil Code, as long as it concerns Earth, water, and natural resources contained therein, except for the provisions regarding the hypothek which are still in effect at the entry into force of this UUPA". This means that the definition of buying and selling land according to the UUPA is no longer the same as the meaning of buying and selling land as referred to in Article 1457 and Article 1458 of the Civil Code, because it has been revoked by the UUPA.

Etimologically, the word land registration comes from the word Cadastre (Dutch Cadastre), a technical term for a record, indicating the area, value and ownership (or other reasons for rights) to a land parcel. This word comes from the Latin "capitastrum" which means a register or capita or unit made for Roman land tax (Capotatio Torrens). In a strict sense cadastre is a record (records of lands, values of land and rights holders and for tax purposes) [5].

### 5. METHOD:

<sup>2</sup> The approach method used in this research is the combined approach method, namely the Normative Juridical approach supported by the Juridical Empirical approach. Research using the Normative Juridical Approach was carried out on the rules regarding the implementation of the sale and purchase of land rights under the hands and its legal consequences, while the Empirical Juridical Approach regarding the implementation of the sale and purchase of land rights under the hands.

### 6. DISCUSSION:

Land has an important role in human life, because it has a dual function, namely a social asset and a capital asset. As a social asset, land is a means of binding unity among the Indonesian people in the life of the community, nation and state, while as a capital asset land is a capital factor in development and land must be used and utilized maximally for the welfare of the people fairly and evenly while maintaining its sustainability.[6]

Given the importance of land in human life, everyone tries to own and utilize the land as much as possible for its survival. The more land that is owned, it also shows that the person is increasingly wealthy and respected by others. As a result of land as a status symbol, everyone always wants large areas of land, more land parcels and located in strategic areas. This status symbol encourages people to own more land.[7]

<sup>1</sup> Every transfer of land rights as a result of a sale and purchase transaction of land rights, in the UUPA and Article 37 paragraph (1) of Government Regulation Number 24 of 1997, it is mandatory to register the transfer of

rights to land through sale and purchase with authentic deed evidence, meanwhile In fact, the practice of buying and selling of land rights is still mostly done under the hands, in the preliminary research that the author has conducted in X Koto District, Tanah Datar Regency, preliminary information was obtained from the Head of Sub-District X Koto. According to Camat X Koto, in each Nagari there is still a sale and purchase of land rights between the buyer and the seller which is carried out underhandedly, but the data is not available at the Camat Office, because the sale and purchase only reaches the Nagari level and the Head of KAN. We recommend that you trace it to the Nagari-nagari.

## 7. ANALYSIS:

Article 20 of the Regulation of the Nagari Pandai Sikek Number 02 of 2013, stipulates that the sale and purchase of land can only be carried out between children of the Nagari Pandai Sikek, and must be carried out before the KAN Session. Those who violate will be subject to sanctions as stipulated in Article 30 of the Regulation of Nagari Pandai Sikek Number 02 of 2013, including: not serving the person concerned to deal with the Head of Jorong Office and the Office of Wali Nagari Pandai Sikek.

According to the head of the Nagari Pandai Sikek Customary Community, the reason the community is still selling and buying land under their hands is because the community still adheres to the salingka nagari custom, which has been regulated in the Nagari Pandai Sikek Regulation Number 02 of 2013 concerning the Implementation of the Customs of the Nagari Pandai Sikek.

As a legal consequence for the buyer whose land acquisition is done under hand, if a dispute arises between the seller and the buyer or other party, then legally the sale and purchase letter under hand will have perfect binding power like an authentic deed, if the signature and contents are recognized by the parties. However, if the contents and signature are denied by one of the parties, then the legal force is only as "preliminary evidence" (imperfect evidence).

Buying and selling under the hands of respondents in Nagari Koto Laweh and Nagari Pandai Sikek, X Koto District, Tanah Datar Regency, is legal according to law.

Even though the sale and purchase under the hands is legal, to transfer the right to land from the seller to the buyer's name at the Land Office cannot be carried out, because it does not fulfill the purpose of Article 37 paragraph (1) PP No. 24 of 1997, which must have an authentic deed made by and before the PPAT. The stipulation is that the transfer of rights to land through sale and purchase of land must be proven by deed drawn up by PPAT.

To obtain a certificate as strong evidence, it is constrained by the sale and purchase letter under the hand, because it does not fulfill the purpose of Article 37 paragraph (1) PP No. 24 of 1997. Thus, of course the underhand sale and purchase certificate cannot be used as a basis for the right to register for the first time in the framework of making the certificate of the land parcel and cannot be used to process the transfer of the land ownership name to the buyer's name. This will clearly harm the buyer. Although in certain circumstances as stipulated in Article 37 paragraph (2) Government Regulation Number 24 of 1997 concerning Land Registration, the Head of the Land Office can register the transfer of rights over land parcels which are privately owned, which is carried out between individual Indonesian citizens as evidenced by deeds that are not made by PPAT but according to the head of the land office, the correctness is deemed sufficient to register the transfer of rights concerned.

## 8. CONCLUSION:

From the discussion as explained earlier, several conclusions can be drawn, including:

- The community is still carrying out the sale and purchase of land rights under their hands, after the enactment of Government Regulation Number 24 of 1997.
- The process of carrying out the sale and purchase of land rights under their hands in X Koto Subdistrict, Tanah Datar Regency, was apparently carried out in stages.

## 9. SUGGESTIONS:

The suggestions given by researchers are as follows:

- To cope with the increasing number of underhand land buying and selling, required *socialization* periodicto the community is, in relation to the UUPA and Government Regulation No.24 of 1997 as well as other related regulations, including buying and selling through authentic deeds for land registration.
- In order to obtain legal certainty, perfect evidentiary power and minimize legal consequences that are detrimental to the buyer for the sale and purchase of land under the hands, every buyer is advised to carry out land sale and purchase transactions with an authentic deed before the authorized PPAT. To make an authentic AJB before PPAT, of course, the cost is less than the value of the land purchased.

- It is recommended for the next researcher, that Aghar can research and discuss the registration process where the acquisition of land comes from the underhand sale and purchase until the completion of the certificate on behalf of the Buyer.

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