

PROSIDING INTERNASIONAL 13

by PENGECEKAN TURNITIN

Submission date: 06-Jan-2024 03:43PM (UTC+0700)

Submission ID: 2267230275

File name: PROSIDING_INTERNASIONAL_13.pdf (153.8K)

Word count: 3697

Character count: 17578



Legal Consequences in Buy and Sell of the Land Which is Not Transfer of Title Yet in Simpang Perak Jaya Village (Case Study of Freehold Title Number 733)

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Abstract. Based on The Constitution Number 5 Year 1960 About Agraria Basic Regulation and The Government Regulation Number 24 Year 1997 about Land Registration, land rights buy and sell must be conducted in front of Land Titles Registrar. The shift of land right can move through land buy and sell between the seller and the buyer. In its process, there are (2) obligations that must be done, namely economic obligation and administrative obligation. Economic obligation occurs if the seller party and the buyer have agreed to sell and buy the land, then the buyer must pay certain amount of money approved. Then, after doing the payment, then the administrative obligation is working on the documents related to land right transfer, which is transfer of title. However in the case study investigated, the practice of land buy and sell did not administer the administrative obligation and caused legal consequences in the future such as the uncertainty of right owner on the land.

Keywords: Legal Consequences · Buy and Sell · Land Rights Transfer

1 Introduction

Land is one of need sources in human life. It occurs because land has the function, either the supporting function in making a daily living, or used as the place to build residence. The size of population level in human's life, then in the future there will be many needs of land to be used as the source of living itself.

The growth of human population continues to increase rapidly, making the existed land really influential in supporting daily life, certainly the need on the land is getting higher, until the demand on the land in the market becomes more valuable. Certainly this will be highly profitable, however it will cause problems in the future if the process is not right.

Based on the Constitution of 1945, Indonesia is a state law. This state law gives guarantee and protection on the right of each citizen of Indonesia, such as the right to obtain, the right to own and the right to enjoy the right of ownership [1]. In the ownership

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S. Februanty et al. (Eds.): MICon 2021, ASSEHR 708, pp. 754–760, 2023.

https://doi.org/10.2991/978-2-38476-022-0_82

of property right, usually it occurs because of buy and sell, this buy and sell process is a legal action [2].

Land buy and sell done by certain parties, actually replaces the position of the owner from the the ownership right of the land. The term ownership right obtained in land buy and sell has pivotal meaning in which there is evidence of right ownership on certain land, in the transaction it causes the transfer of land ownership right from the owner to other people or the buyer on the land [3]. In other words the land object passed must be with the evidence of ownership right of the land [4].

This transfer is the transfer of right from the previous owner to the new owner. In its process, there are some problems obtained such as under hand land buy and sell, buy and sell of the land which has no certificate, and even land buy and sell in which the first owner never administer administratively the process of transfer of title from the previous owner to the new owner.

Land buy and sell is generally conducted between person to person, person to corporation, and corporation to corporation. Buy and sell itself has large meaning. It can be buy and sell of moving object and non moving object such as land or building buy and sell either in the form of Ownership Right, Cultivation Rights, or Building Rights.

In accordance with applicable constitution regulation, the transfer of land title must be conducted in front of Land Titles Registrar. However it is undeniable that there are still many land transfer of title that is not conducted in front of Land Titles Registrar. This certainly makes confusion concerning the legal act of the parties that did not do it in front of the authorized official.

The involvement of Land Titles Registrar in land buy and sell is to avoid the problem which probably will occur caused by the process of land buy and sell itself until if it is in front of the authorized official, then the requirements of land buy and sell will prevail, and if it has been done then land certificate will be published as the authentic and official evidence as the legal act itself.

However nowadays, there are still many land buy and sell practices that are not conducted in front of Land Titles Registrar, and this causes legal problems. The legal problems appearing are such as there is no legal certainty on the official ownership right of the land, until when it comes to inheritance distribution if one time the buyer did not do transfer of title on the ownership right, passes away.

Based on the explanation above, then the author is interested to conduct the research concerning "The Legal Consequences in Buy and Sell of The Land Which is Not Transfer of Title Yet in Simpang Perak Jaya Village (Case Study of Freehold Title Number 733)".

2 Method

The method used in conducting this research was Sociological Legal Methods. The researcher directly came to the research objects. This legal research supposes to be capable of seeing the correlation between the law and the community. Data used in this research were primary data which were the main data obtained directly by coming to respondents for the sake of data accuracy needed for the research that is directly related to The Legal Consequences in Buy and Sell of The Land Which is Not Transfer of Title Yet. This research was descriptive aimed to find out something with high accuracy,

to describe the condition traits and the symptoms of certain individual or to determine certain symptom distribution, or to determine there is or there is no correlation between certain symptom and other ones in the community [5].

3 Results

The transfer of land ownership in the community habit occurs caused by the presence of legal action namely buy and sell [6]. The transfer of land ownership occurred has its own reasons until that legal action is done. Terminologically the act of buy and sell is defined as the exchange transaction beside with the presence facility, and also the enjoyment obtained from that transaction [7].

In The Code of Civil Law, buy and sell is certain agreement in which one party bonds himself/herself to hand over the right on certain goods and another party pays for the price promised. It means in buy and sell activity, it starts from the process of agreement among the parties who agreed to do the legal action and there is exchange of right and obligation in its process.

Necessarily, if the community refers to the existed constitutional regulation, each buy and sell activity must be done in front of Land Titles Registrar to guarantee the presence of recognition on the transfer of land right ownership. However among the community, the practice of land buy and sell under hand is still frequently conducted without any involvement of the authorized party.

However, the case which is still frequently occurs massively is the community always do land buy and sell without considering the administrative obligation namely about the land transfer of title, and fulfill the obligation as a good citizen by paying the tax, and worse, in doing land buy and sell, the community only relies on a piece of paper and or invoice made as the evidence that a legal action has occurred among the those parties.

This usually occurs as the consequence of community habit in doing land buy and sell that is only through short process and using a piece of paper and/or invoice as the official evidence of certain buy and sell conducted. Whereas its legal implication is causing the transfer of land ownership right and/or unofficial transfer of right on the land and there is no legal certainty and legal protection in it.

The community does not realize that doing land buy and sell with only a piece of paper and/or invoice as evidence does not have legal force and it has potency to cause legal matters. Certainly this deed will really disadvantage one of parties, especially the party who bought the land because in legal force, the evidence on the land ownership is not strong. Then if transfer of title is not conducted, then it will cause confusion because in the eyes of law and in accordance with the land regulation, the transfer of land ownership right when the name in the certificate is transfered then in the eyes of law the legal owner is the name written in the land certificate.

Some parties still do not realize the importance of transfer of title **of land** certificate **from the previous owner to the new owner**. This **is** conducted to prevent the legal matters which could occur in the future after land buy and sell conducted. The certificate transfer of title gives legal certainty and also legal protection on the new owner on the land right ownership. If conflict occurs concerning the land right ownership, then the invoice and/or a piece of paper used as the transaction evidence of the land purchase can become the

evidence if both parties namely the seller and the buyer have good intention to admit their deed. However, if there is bad intention from the parties, then a piece of paper and/or the invoice can be denied by the court.

Therefore the country makes the regulation that everytime there is land buy and sell, it must be in front of Land Titles Registrar [8]. Beside that, he/she becomes the witness if later there is conflict, Land Titles Registrar (PPAT) also issues the letter as the official evidence that a transfer of land ownership right has occurred which becomes the basis for the new owner for the transfer of title process or establishing the new land certificate.

Then, if buy and land occurs without doing transfer of title **from the previous owner to the new owner**, then it will become a problem in the future for the new owner because if the new owner will resell the land that had been bought, either person to person or to corporation, it will be difficult to occur because the prospective buyer will doubt the land ownership.

The corporation party in buying the land for developing their company has its own standard in doing the land buy and sell transaction because the company party does not want the buy and sell deed causes risks which can inhibit the corporation development. As the consequence, the company party will always reject to buy the land without transfer of title first. When someone makes the land certificate as Mortgage Right, then the bank party will ensure that the land certificate proposed is also on the name of the proposer of Mortgage Right. If it is not conducted by the Bank Party, then at certain time if the party who takes the loan is not capable anymore to do his/her obligation, meanwhile the bank party will execute the Mortgage Right, then it will become contradiction.

The party who claims to be the owner of the mortgage right can sue the bank because of doing execution on the mortgage right, meanwhile that party never do the proposition to make the land as the morgage right in the bank. The case like this can occur if there is no good intention from the party who does not do transfer of title on the land ownership.

The land that transfer of title is not done to it also cannot be used as Mortgage Right in the bank because the certificate is not on the name of the loan applicant. Until the bank party does not want to cause any problem in the future, therefore the bank will always reject the land certificate to be mortgage right if the land certificate is not on the name of the loan applicant. Certainly this will really disadvantage the new owner who does not conduct the transfer of title on the land right ownership because in the eyes of law actually the land owner is the one whose name is written on the land certificate, even though a transaction has occurred, however legal uncertainty occurs on it. And the land right pad also cannot be made as The Mortgage Rate considering that the right pad is not on the name of the applicant.

Then if land buy and sell has occurred without transfer of title on the right, at sometime the owner who has not done the transfer of title passes away, then the land bought if has been transfered of the title, then it can be inherited to the wife, child, and/or the family. If it is not done yet, then it can be divided even though the land is not transfer of title yet, but it will cause problem in the future. The problem appearing related to this inheritance can also come from the seller party. Because the seller and buyer conducted the buy and sell under the hand (unofficially) which means the seller and buyer did not do buy and sell in front of Authorized Land Titles Registrar and also did not do transfer

of title on the land right, if the wife, child, and the family does not know it has been sold by the father, then legal matter will occur.

The family of seller who does not know can reside in the land as they like because they still consider that the land still belongs to their parents, meanwhile the buyer's family claims that the land has been bought from their parents when their parents were still alive, and they had the evidence in the form of invoice and the land certificate has been transferred to the holder, the buyer's heir.

This certainly will become a complicated problem for both parties. In one side, the seller's family does not know for sure when their parents sold the land, and still claims the land because the land certificate is still on the name of their parents. Meanwhile in another side the buyer's family could only show the evidence in the form of a piece of paper and/or the invoice as the evidence that the land purchase had occurred.

From the side of land certificate, the buyer's family will not have legal force and legal uncertainty occurs because the land certificate is still on the name of the seller's party. Then claiming will occur between the seller's family and the buyer's family that they do not know the main problem of the case. This frequently occurs in the community because they consider the business can be solved in a family manner.

It is undeniable that as long as there is good intention either from the buyer's family party and the seller's family, then the problem can be solved in a family manner. However, if each party or one of the parties do not have good intention and want to acquire the land then it will be a complicated problem, the problem solving can take a very long time. If the land is inheritance, and divided or distributed into some parts, certainly they must administer the land to be issued and established for the new land certificate on the name of the new owner. For the establishment of the new certificate, then it must refer to the previous land certificate. If the land certificate is still on the name of the previous owner, then the administration cannot be done considering through *de facto* the land is still owned by the previous owner.

Therefore, it is undeniable that it will cause new problem for the completion which certainly it will not be easy as imagined. If the seller's family party has responsibility on the land administration, then the buyer's family party will be capable of distributing the land as the inheritance. If not, then a new problem will appear.

Then if the seller's party and the buyer's party do not do transfer of title on the land right, the country is also disadvantaged, and legal uncertainty occurs again in it. Country's disadvantage here emans from the side of tax. If in the buy and sell process is conducted on the Land Titles Registrar, then one of requirements is to pay for tax for the importance of land certificate registration to establish the new land certificate on the new owner's name.

If buy and sell is not conducted in front of Authorized Land Title Registrar, certainly the tax which supposes to be paid and received by the country as the country income. If it is not conducted in front of Authorized Land Title Registrar, then the tax which should be paid such as Income Tax (PPn), Property Tax (PBB), and Fees for Acquisition of Rights to Land and Buildings (BPHTB) are automatically not paid. This will become disadvantage for the country, even though the amount paid is not too big, however it is done by many people then the country will not get income from the process of land buy

and sell because the country is the master of earth, water, and natural richness contained in it, the country must obtain benefit from this acquisition.

Then if the revenue officer comes to collect the tax payment on the land, it again will cause legal matter. Juridically, the land ownership is still owned by the previous land owner, then the one who must pay for the land tax is the previous owner party because in line with the land certificate, the previous owner is the one who owns the land. This certainly will disadvantage the seller, meanwhile the buyer's party only enjoy and has no responsibility on paying the tax because the revenue officer will come to the land owner juridically. And worse is if the land position is in strategic place, it makes the sale value of the tax object high/expensive, automatically the tax collected will be high too and it will burdensome the seller's party.

Therefore, each legal action of land buy and sell done, the seller and the buyer party must follow the constitutional rule and do it in accordance with the applicable law. If not, there will be many legal consequences appear afterwards and it will burdensome both parties and in obtaining the advantage of the land bought is not fully felt by the buyer's party.

4 Conclusion

The legal consequences caused in Buy and Sell of The Land That is Not Transfer of Title Yet in Simpang Perak Jaya Village (Case Study of Freehold Title Number 733) is creating legal uncertainty and there is no legal protection towards any parties involved in the land buy and sell practice that is not transfer of title yet. This will extremely impact on the land owner in de facto way, and also causing juridical disadvantage on the seller's party. Furthermore, not only both parties will be disadvantaged personally, but also if the land bought would become inheritance, it will also cause a new problem too. The country is also disadvantaged on the practice of land buy and sell practice that is not transfer of title yet, because the country will not get income from the buy and sell activity in which the country supposes to get benefit from that legal action.

According to the criteria, party that can do buy and sell is legally capable person. Then whoever does buy and sell practice of land must follow the prevailing constitution provision to avoid legal problem in the future. Land buy and sell must be done in front of Land Titles Registrar to create legal certainty and legal protection on the previous land owner and the new one, also the country will get benefit upon it.

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