

# Validity of Selling Plants of Land with Credit in The Prespective of National Agrarian Law

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## ARTICLE INFO

### Article history:

Received Nov 09, 2022

Revised Nov 16, 2022

Accepted Des 07, 2022

### Keywords:

Buying and selling;

Plots of land;

Agrarian law;

Customary Law;

## ABSTRACT

In meeting the personal and social needs of the community for land in everyday life and with limited purchasing power in the midst of an economic downturn due to the Covid-19 pandemic and limited availability of residential land, for land sellers it is carried out by providing land through plots of land in the form of plots -Plots are ready to build while for buyers it is done by installment or credit.

This research is a normative research that examines various laws and regulations, norms, concepts and jurisprudence using a conceptual, statutory and philosophical approach. In making a sale and purchase agreement Land sale and purchase agreements are generally subject to articles 1457, 1458 and 1459 Burgelijk wet Boek (BW), which require a seller and a buyer and the legal terms of the agreement as stipulated in article 1320 BW, which are marked by an agreement and the surrender of the object (*levering*) but since the enactment of the Basic Agrarian Law the provisions for buying and selling land are subject to customary law, namely carried out with the cash and clear concept.

## ABSTRAK

Dalam mencukupi kebutuhan personal dan sosial masyarakat terhadap tanah dalam kehidupan sehari-hari dan dengan keterbatasan kemampuan daya beli masyarakat ditengah keterpurukan ekonomi akibat pandemic covid-19 dan keterbatasan ketersediaan tanah perumahan, bagi penjual tanah dilakukan dengan cara penyediaan lahan melalui cara kavling tanah dalam bentuk petak-petak siap bangun sedangkan bagi pembeli dilakukan dengan cara angsuran atau kredit. Penelitian ini merupakan penelitian normative yang mengkaji berbagai aturan perundang-undangan, norma, konsep dan jurisprudensi dengan menggunakan pendekatan konseptual, perundang-undangan dan filosofis. Dalam membuat perjanjian jual beli Perjanjian jual beli tanah pada umumnya tunduk pada pasal 1457, 1458 dan 1459 *Burgelijk wet Boek* (BW), yang mensyaratkan adanya penjual dan pembeli dan syarat sah perjanjian sebagaimana diatur pasal 1320 BW, yang ditandai dengan kesepakatan dan penyerahan objek (*levering*) tetapi sejak berlakunya Undang-Undang Pokok Agraria ketentuan jual beli tanah tunduk pada hukum adat, yakni dilakukan dengan konsep tunai dan terang.

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## I. INTRODUCTION

Land has a role as a basic need and is very important in human survival, one of which is the need for shelter, both for human personal and social interests.(Suyanto Suyanto, 2022)The need for land as new residential land is increasing from year to year due to population growth in Indonesia, especially in urban areas either due to natural growth or as a result of urbanization, while this occupation growth is constrained by limited land to fulfill residences and the economic ability to buy land is limited.

The increasing need for land in the life of modern society is a logical consequence of the increasing land problems which are caused by, among other things, the high interest in land by individual legal subjects or legal entities, while the limited provision of agricultural land. As one of the impacts of the Covid-19 pandemic, landowners sell land according to the ability of buyers, one of the breakthroughs made is by dividing the land into squares of the size of the change or plot system and selling it in installments or credit using an underhand agreement made by both parties. by including the clause after the installment is paid off according to the agreed price, then the process of transferring the land rights to the buyer is carried out.

Land as a material right, land rights can be transferred and transferred, one of which is the transfer of rights due to buying and selling. The land sale and purchase agreement has the same principles as the principles in contract law in general, the agreement is an agreement between two or more parties where an agreement must occur between the two parties, namely one party as the seller and the other party as the buyer. The provisions concerning the legal validity of the sale and purchase agreement in the Civil Code do not automatically apply when it relates to a sale and purchase agreement on land rights made on credit, because apart from being guided by the legal terms of the agreement, it must also be guided by the provisions on the legal terms of the transfer of rights over land rights. soil.

The phenomenon of buying and selling land on credit that occurs in the midst of the community has many potential agrarian conflicts, especially land ownership disputes. The potential conflicts include proof of master ownership of the plots of land, the mechanism for transferring rights, the legal certainty of the sale and purchase transaction, up to the validity of the sale. buying land on credit in the perspective of national agrarian law when it turns out that one of the parties is in default. Research on the validity of buying and selling land on credit in the perspective of agrarian law with the type of normative research has not been carried out by previous researchers, most of the existing researchers have studied and examined the cancellation of land sale and purchase agreement deed examining court decisions(Sujono, 2020)and research examining the validity of land plots sale and purchase agreements by developers based on Law of the Republic of Indonesia Number 1 of 2011 concerning Housing and Residential Areas(Eric Indra Kusuma, 2022)As well as research on the validity of the binding sale and purchase agreement on land rights based on a notary deed (case study of Supreme Court Decision Number 130 K/Pdt/2017)(Utami & Suyatna, 2019), the strength of the deed of the official making the land deed in the process of buying and selling land lots(Made Agus Satria Wahyudi et al., 2022)as well as the cancellation of the deed of sale and purchase bond agreement for plots of review of decision No. 535/Pdt.G/2015/PN.Sby(Sujono, 2020)

## II. RESEARCH METHODS

This research is a normative juridical research, which conducts research on applicable legal norms and principles by using primary legal material sources in the form of laws and regulations, and secondary legal material sources in the form of books, journals which can support primary legal material sources. This research uses a statutory approach, a conceptual approach and a philosophical approach in finding answers to the legal issues being studied.

### III. RESULTS AND DISCUSSION

Agreements regulated in book III of the Civil Code adhere to an open system, which means that they provide the widest possible freedom to make agreements both in form and content. The form of this agreement can be in the form of written and unwritten agreements, the contents of the agreement can be anything as long as it does not conflict with laws and regulations, decency and public order, Article 1313 of the Civil Code defines "Agreement is an act by which one person or more binds himself to one other people or more". From this definition it can be seen that an agreement is an 'action (handeling)' not a 'legal action (rechshandeling)' so that it can be concluded that every action can be called an agreement even though the action does not cause legal consequences because it is not a legal action.

While the sale and purchase agreement is made based on the provisions of Article 1457 to Article 1540 of the Civil Code, buying and selling according to Article 1457 of the Civil Code is "an agreement in which one party binds itself to surrender an object and the other pays at an agreed price". A sale and purchase agreement is a reciprocal bond in which one party (the seller) promises to hand over the ownership rights to an item, while the other party (the buyer) promises to pay a price consisting of an amount in return for acquiring the right. This reciprocal action is in accordance with the Dutch term *koop en verkoop*, which means one party *verkoop* (sell) and the other party *koop* (buy). Furthermore, regarding the transfer of rights to the object of sale and purchase, Article 1459 of the Civil Code stipulates "Property rights to the goods sold do not transfer to the buyer as long as the goods have not been delivered". Handover of land as immovable property is carried out with the announcement of the relevant deed (agreement).

The meaning of buying and selling in Article 1457 of the Civil Code can be interpreted simply in a land sale and purchase agreement, namely requiring the owner of land rights as the seller and the owner of the money as the buyer, and followed up with reciprocity in the form of levering, namely the delivery of money by the *koop* (buyer) and the transfer of rights on *verkoop* (seller) land, so that the legal action is completed with this reciprocity. When it turns out that the sale and purchase agreement has not recurred due to a certain reason, Article 1458 of the Civil Code states that the sale and purchase agreement is a consensual agreement, meaning that the agreement is born when both parties reach an agreement regarding goods and prices, There are 4 (four) conditions that determine the validity of a land sale and purchase agreement, including:

- a. Terms of agreement that bind themselves, meaning that both parties have mutually agreed to enter into a land sale and purchase agreement, draw up a deed or written agreement before an authorized official;
- b. Competent requirements, meaning that the parties to a land sale and purchase agreement are people who are considered capable, namely people who have fulfilled the legal adult requirements, are of sound mind and are not under guardianship;
- c. Conditions for certain matters, meaning that what has been agreed upon must be stated clearly in the agreement, both regarding the land area, location, certificate, rights attached to it, as well as the rights and obligations of both parties;
- d. Causal conditions or certain causes, meaning, in the procurement of an agreement, the contents and objectives of the agreement must be clear, which are based on the wishes and objectives of both parties entering into the agreement;

While the elements of the agreement can be categorized as *essentialia*, namely elements of an agreement without which agreement is impossible, *naturalia*, namely elements that are determined by law as regulatory regulations, and *accidentalia*, namely elements that are added by the parties to agreements where the law didn't set it (Sahal Afhami, 2019).

In accordance with the provisions of Article 1313 of the Civil Code, in buying and selling land can be done authentically or underhanded, in buying and selling in writing, namely buying and selling carried out before an authorized official which in the context of a land sale and purchase agreement is carried out by the Land Deed Official (PPAT), while buying and selling under the hand, namely buying and selling land carried out by buyers and sellers using only simple agreements and agreements regarding the land object being sold and the payment price without

being made before the Land Deed Making Officer as an official authorized to make agreements regarding the transfer of land rights.

The agreement made under the hand was made by the seller and the buyer themselves, even though the making was witnessed by a third party as a witness, but this does not become a guarantee of legal certainty, because the agreement can later be broken by the parties who made it. These underhand agreements are often used for the process of buying and selling land plots and are carried out on credit without using financing facilities from banks.

There are differences in substance in land plot credit agreements through banks and those not through banks, including credit agreements through banks usually through developers, buyers of land objects in paying the price of land purchased using bank money, in this case the buyer has a legal relationship with the bank in the form of debt receivables, while the relationship with the seller of the land has been completed with the payment being paid. Whereas in the credit agreement between the seller and the buyer which is carried out without bank facilities, the buyer pays directly to the seller with a credit system and uses an underhand agreement before the local village head. The sale of plots of land is not only through developers, but land owners can also sell directly to consumers. (Rudy Condro, 2022) The agreement on the purchase of land that has not been paid off is carried out by entering into a sale and purchase bond agreement as a start for carrying out the Sale and Purchase Deed. (Fauzansyah et al., 2019)

This underhand agreement on credit when referring to the provisions of Article 1457 of the Civil Code, but when the credit sale and purchase agreement is carried out on land rights in the form of land lots, the validity of the agreement must follow the provisions that have been specifically regulated in legislation by following the legal principle of *lex specialis derogate lex generalis* (special rules override general rules).

In the land sale and purchase agreement, the signing of the agreement (deed) alone does not result in the transfer of ownership rights to the goods from the hands of the seller to the hands of the buyer before the delivery (leveraging) is carried out. In essence, the sale and purchase agreement is carried out in two stages, namely the agreement stage of the two parties regarding the goods and prices which are marked with the word agreement (sale and purchase) and the delivery stage (leveraging) of the object which is the object of the agreement, levering is carried out with the aim of transferring the ownership rights of the object. mentioned, as in Article 1457 of the Civil Code, while insofar as it concerns land agreements these provisions are no longer valid after the Basic Agrarian Law was enacted. (Ramadan & Sukirno, 2022)

Law Number 5 of 1960 concerning Basic Agrarian Provisions (UUPA) revokes Book II of the Indonesian Civil Code insofar as it concerns the land, water and natural resources contained therein. Article 5 UUPA Agrarian law that applies to earth, water and space is customary law, so that the land sale and purchase agreement in the National Land Law that is used is based on customary law, because customary law is Indonesian original law which is in accordance with the personality of the Indonesian nation. According to customary law, land sale and purchase agreements are clear and cash in nature.

The principle of light and cash is a legal principle of buying and selling which is a concept that is also interpreted as the nature of openness in transactions. (Desvia Winandra, 2020). In the considerations of the UUPA it is stated that the agrarian law that applies to the earth, water and space is customary law in the form of embodying customary law norms in statutory regulations and as long as these regulations do not exist then customary law shall apply.

The principle of cash is that the transfer of rights and the payment of land prices are made at the same time. In addition, this principle means that payments are made until they are paid off in accordance with the agreed price agreement and set forth in the sale and purchase agreement. Cash does not mean payment and settlement of land prices must be made immediately, but means making payments according to the agreed price. So the principle of cash is still fulfilled even if a payment is made by installment or credit method.

While the principle of light (concrete), means that buying and selling land is carried out openly and not covered. This clear principle is fulfilled when buying and selling land is carried out before the PPAT, by following the provisions of the enactment of Government Regulation

Number 24 of 1997 concerning Land Registration juncto Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units, and Land Registration. This sale and purchase with the clear principle has a function as a guarantee for the truth about the status of the land, the right holder and the legitimacy that the implementation of the sale and purchase of land is carried out according to applicable law known to other parties, representatives of village residents (village officials) and 2 (two) witnesses if carried out before the PPAT as a form of the principle of publicity originating from the pattern of the customary law community which is completely clear or real, Jhon Salindeho stated that buying and selling land according to customary law does not recognize the division even the meaning of obligator and or zaklijk like western law, in essence it is not a back agreement that exists between two parties (seller and buyer) but a delivery of goods by the seller to the buyer with the aim of transferring rights between both parties, if the contact is not paid, it is not a sale and purchase, but a debt of credit, so that buying and selling land according to customary law is a real, clear and cash experience (contant, concrete, belevend en participarent denken).(Laila M Rasyid, 2019).

Buying and selling land in the customary law system has 3 (three) contents, namely the transfer of land rights on the basis of cash payments in such a way with the right to get it back after paying the amount of money that has been paid, the payment of land rights on the basis of cash payments without the right to buy return and transfer of land rights on the basis of payment with an agreement that after several years of harvest and without certain legal actions the land will return.(Setiadi et al., 2019) .

Terms of buying and selling land according to the BAL must meet material and formal requirements regarding both the seller, the buyer and the land. Material requirements are conditions for determining the sale and purchase, namely regarding the conditions for the buyer who has the right to buy in accordance with Article 21 of the UUPA, the seller has the right to sell the land in question as the legal owner, and the land being traded is not in dispute, regarding land that can be traded is regulated in article 20 of the UUPA. If one of these material conditions is not met, namely the seller is not a person entitled to the land he is selling or the buyer does not meet the requirements to become the owner of the land rights, or the land being traded is in dispute, then the sale and purchase of the land can be cancelled, and if it is land that cannot be traded,(Setiawan et al., 2021) Formal requirements in buying and selling land include the formality of the sale and purchase transaction which includes the deed which is proof of the sale and purchase agreement and the official authorized to make the deed.

The decision of the Supreme Court of the Republic of Indonesia Number 3438.K/Pdt/1987 which was later used as a reference for the decision on the same issue states that there are two conditions that must be met in the validity of a land sale and purchase, namely cash requirement, the land buyer hands over the money to the seller which is simultaneously followed by the seller handing over the land he sold to the buyer (contante handling), clear terms, the implementation of the cash requirement is carried out in the presence of witnesses from officials. If these two conditions are not fulfilled, then land sale and purchase has not taken place according to customary law. The terms of buying and selling land were then adopted in Article 19 of Government Regulation Number 10 of 1961 concerning Land Registration which was subsequently amended by PP No. 24 of 1997.

From the aspect of the form of the land sale and purchase agreement, it must be done in writing with a deed made by the PPAT, then the sale and purchase agreement (deed) is registered at the local Land Office. The sale and purchase carried out before the Land Deed Making Officer can guarantee the legality of the object and subject in the sale and purchase of land based on the material and formal requirements, the procedure for transferring land rights. One of them is about the payment and legality of land objects. The transfer of land rights carried out by private agreement remains valid as long as the parties acknowledge the legal action, but this agreement cannot be used to change land ownership data because it is not in accordance with the provisions of Article 37 paragraph (1) PP 24 of 1997.(Sakti & Budhisulistiyawati, 2020)

The transfer of rights or the transfer of rights over land, seen from the characteristics of the rights and the process of transferring the rights, has different legal elements, especially those

related to formal and material matters, procedures, and mechanisms which are largely determined by the nature or circumstances of the subject and object of the rights. The main requirement is that there must be supporting evidence (for land that has not been registered or not certified), such evidence is a deed of sale and purchase or other proof of legal land ownership according to law.

Before the Basic Agrarian Law (UUPA) came into effect, land transactions in the form of transfer of land rights were sufficient to be carried out before the Village Head and this was considered valid, because at that time the Village Head was responsible for government affairs, development, the social sector including land affairs as well as the Village Head. acting as the Traditional Head who holds supreme authority over customary land(Suyanto, 2021). Land registration is regulated in Article 19, Article 23, Article 32 and 38 of the Basic Agrarian Law (hereinafter also referred to as UUPA) and then regulated in Government Regulation Number 10 of 1962 concerning Land Registration, in a further development on July 8, 1997 amended by Government Regulation Number 24 of 1997 concerning Land Registration.(Suyanto Suyanto, 2022)

#### IV. CONCLUSION

If a sale and purchase agreement on credit is made to comply with the provisions of Article 1320 of the Civil Code concerning the legal terms of the agreement, then the agreement is valid based on the provisions in the National Agrarian Law, namely Law Number 5 of 1960 concerning Basic Agrarian Provisions, namely buying and selling carried out based on customary law, namely on the principle of cash and light. The principle of cash means that the transfer of rights and payment of land prices is carried out at the same time, the principle of cash does not mean that payment and settlement of land prices must be made immediately but means making payments according to the agreed price, the principle of cash in the sale and purchase is still fulfilled even though a payment is made by installment or credit method. While the principle of light (concrete), In making a sale and purchase agreement for land plots on credit, even though the agreement is valid, but to guarantee legal certainty to the parties, make an authentic agreement before the Land Deed Making Officer and register it with the Land Office according to the mechanism in Government Regulation Number 24 of 1997 concerning Land Registration as stipulated has been amended by Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flats Units and Land Registration.

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