

## Aspects of Legal Protection in the Agreement of Selling and Purchase of Heritage Land

Adi Sanjaya<sup>1</sup>, Sriono<sup>2</sup>, Elviana Sagala<sup>3</sup>

<sup>1,2,3</sup>Faculty of Law, Universitas Labuhanbatu, Indonesia

[Sriono.mkn@gmail.com](mailto:Sriono.mkn@gmail.com)

### Abstract

*This study aims to identify and analyze the sale and purchase of land originating from inheritance and to analyze forms of legal protection for buyers in the event of problems in the process of buying and selling inherited land. The method used in this research is using the normative juridical method by taking primary data from the applicable laws and regulations, especially in Indonesia. The results of the study show that legal protection for buyers of inherited land is contained in Article 1492 of the Civil Code which provides an explanation that although at the time of the sale there is no promise of guarantee, the seller, by law, is obliged to bear the buyer against claims of rights through law to surrender all or part of the goods. sold to a third party*

### Keywords

inheritance land; sale and purchase agreement; legal protection



## I. Introduction

Soil is very important for human life, because land is a source of life for all living things. Humans use land as a place to live and take advantage of natural products for survival. With the importance of land for humans, it is necessary to get protection guarantees legal certainty of ownership. In accordance with Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), the basic land rights are controlled by the state which further gives authority to be controlled or owned by an individual, community group, customary law and or legal entity to be used in accordance with its supply, designation, use and maintenance. With the granting of land rights by the state to individuals, groups of indigenous peoples, and or legal entities may enter into legal relations to transfer land rights, such as buying and selling, exchanging, and some of them. However, the rights granted are determined and regulated by the government in accordance with the laws and regulations in force in Indonesia.

Based on Article 20 of the Basic Agrarian Law, land ownership rights are hereditary, strongest and fullest rights that people can have on land. To obtain legal protection for land ownership rights, the owner must register his land. The aim is to provide legal certainty and legal protection to the holder of the right to a registered plot of land, so that he can easily prove himself as the holder of the right in question. In addition, to provide information to interested parties including the Government in obtaining the necessary data so that the orderly administration of land is carried out (Government Regulation Number 24 of 1997 concerning Land Registration). Legal evidence for land ownership rights is in the form of a certificate document containing juridical data and physical data of an object of land registration that already has rights.

With the evidence of ownership of the land, the person concerned has the authority to use the land to manage the results and use it. The position of the population that continues to increase will affect the state of the land that is permanent. Thus the need for land will also increase. The wider community will take legal efforts to obtain land rights. So that

property rights can be transferred to other parties by carrying out buying and selling activities, exchanging, granting, giving by will, giving according to custom and other actions intended to transfer property rights and their supervision which is regulated by Government Regulation. Government is not built to serve its own needs, but aims to serve the needs and interests of the community and create conditions that allow each member of the community to develop their abilities and creativity to achieve common goals (Perdana, 2019).

In accordance with land ownership rights which are acquisitions from generation to generation, the existence of land becomes one of the objects in the inheritance. Because inheritance is obtained by inheritance due to death. The inheritance will be distributed to the heirs, so that the ownership rights to the land will change its ownership to become the property rights of the heirs. With the transfer of ownership rights to land from inheritance distribution, the beneficiary has the authority to use and manage the land.

In practice, buying and selling transactions must meet the requirements according to legal provisions, especially at this time there are many buying and selling problems that result in disputes that cause losses incurred by the seller and buyer as well as a notary as a land deed official.(Ibrahim, N., Eddy, P., & Mulyadi, D., 2021). In today's society, there are many problems that occur in the distribution of inheritance. Problems that occur between heirs such as in terms of the distribution of land inheritance. Heirs often ignore the laws and regulations related to property rights over inherited assets. The sale of land originating from inheritance which is carried out by the heirs unilaterally without any agreement from other heirs who have rights to the land. So there are often problems between the seller who is the heir and the buyer of the inherited land. The existence of these problems often involves other parties such as land deed officials, which results in the cancellation of the sale and purchase of land. With the cancellation of the sale and purchase of land, of course, it can cause legal consequences for the buyer.

## **II. Research Methods**

Peter Mahmud Marzuki argues, legal research is a process to find the rule of law, legal principles, and legal doctrines in order to answer the legal issues faced. This is in accordance with the character of the perspective of legal science. The research method used in the researcherThis research is normative juridical or also known as doctrinal law research (Directorate General of Intellectual Property Rights, 2013). Namely, legal research carried out by examining secondary data in the form of reading materials or library books. Data collection techniques in this research are by using library research, namely by collecting secondary data through libraries, journals, theses and several relevant sites for use. The data that is the source of research is data related to the author's title. The approach used in this research is a statutory approach, namely by observing, analyzing and analyzing the laws and regulations related to the title of the article. The way of collecting data in this study, the author conducted a literature study by studying primary legal materials, secondary legal materials and tesier legal materials. And conduct field research by means of interviews.

The source of the data used is secondary data or legal material as the main data, which consists of primary legal materials including the Basic Agrarian Law Number 5 of 1960. The Civil Code. Secondary legal materials are in the form of legal facts, expert opinions, doctrines , principles of civil law, tesier materials include a legal dictionary (black's law dictionary).

### III. Results and Discussion

#### 3.1 Buying and Selling Inheritance Land

Based on the acquisition, inheritance land is land obtained due to the occurrence of death which is carried out by inheritance distribution in accordance with inheritance law. Inheritance law that applies to date is also pluralism, namely there are three types of inheritance law, namely Islamic Inheritance Law, Customary Inheritance Law, and Inheritance Law of the Civil Code.(Fatmie Utaria, 2020). according to the division, inheritance is divided into 2, namely; movable and immovable objects. Movable objects are objects that can move or can be moved such as cars, motorcycles, cows, goats, and others. While immovable objects are objects that cannot be moved, such as land, houses, and others.

Assets obtained from inheritance must be divided according to law. After the distribution is carried out, the beneficiary has the right to control or transfer the ownership rights to the inheritance. The transfer of inheritance can be done through a buying and selling process. In the buying and selling process as regulated in book III of the Civil Code (KUHPerdata) is an agreement in which one party binds himself to surrender ownership rights to an item and the other party pays the promised price. in the sale and purchase agreement are goods and prices, where between the seller and the buyer there must be an agreement about the price and the object that is the object of sale and purchase. The elements of the sale and purchase agreement letter include;

- 1) agreement title
- 2) Identity between seller and buyer
- 3) Items for sale
- 4) Rights and obligations of both parties
- 5) The price of the agreement of both parties
- 6) Delivery time and payment
- 7) Obligations after sale and purchase of goods that have been agreed
- 8) Description of the load
- 9) Information about the party who bears the cost to change the name
- 10) Information regarding if there is a dispute
- 11) Description of the amount of the agreement
- 12) Other terms
- 13) Date of writing and place
- 14) Signature of witnesses, notaries, both parties with stamp duty.

What is the validity of a sale and purchase activity if the conditions in the agreement between the seller and the buyer are fulfilled based on article 1320 of the Civil Code which states the following:

- 1) agreement by both parties
- 2) the ability to make an engagement
- 3) a certain thing
- 4) a lawful reason.

In the provisions of Article 1338 paragraph (3) of the Civil Code it is stated that an agreement must be carried out in good faith. This good faith arrangement in contract law is minimal. There is no further explanation of what is meant by good faith. Article 1338 paragraph (3) of the Civil Code reads "all agreements must be carried out in good faith". What is meant in Article 1338 paragraph (3) of the Civil Code is that the implementation of the agreement must take into account the norms of propriety and decency. So, the implementation of the agreement must be on the right track.(Laras Pusparini, 2018)

The sale and purchase of inherited land can be carried out with the approval of the entire heir for the sale of the inherited land. In the sale and purchase of inherited land, there is a conflict, namely the sale and purchase of inherited land, which is not known by the heirs and approved by the heirs. And if you want to make a sale or you want to make a building on the inherited land, then all of the heirs must give their approval and if one of them is unable to attend the approval process at the PPAT (land deed making official) then those who are unable to attend can make a power of attorney to sell to one of the heirs before a notary at the place of residence or in a place that makes it accessible.

Inherited land that will be traded certainly has consequences with the heirs, namely that each heir is entitled to ownership of the land. So when one of the heirs sells the inherited land, at first there has been an agreement between the seller of the inherited land and the buyer. However, after the land was sold and paid for by the buyer legally in front of the witness, there were other heirs who were actually also entitled to the ownership of the inherited land because they felt that they were not included in the sale and purchase of the land.(Budi, 2020.)

Conflicts that occur in terms of buying and selling inherited land often occur even in the realm of criminal acts as a result of selling this inherited land can cause divisions and fights to the point of taking your own life. Settlement of inheritance land disputes can be done outside or inside the court where the family wants to implement it. The problems that occur in the sale and purchase of inherited land cannot be avoided because everyone will become an heir and become an heir because it is abandoned by the heir. The case regarding inheritance land disputes will not fade because human nature is greedy for something that can be owned in any way and does not look at who the person is, whether he has a lot of property or not at all.

Inheritance law comes into force after the testator dies, the property left behind is the inheritance of the heir who has transferred to the heir for control as well as land as inheritance. Currently, the need for land both for residential purposes for the community, agricultural land, plantations and for business locations has greatly increased. The amount of land that is always fixed, while the need for land is increasingly increasing, causing land to become very vital both in terms of its role and regulation so that legal certainty can be created for the community. It can be said that: "land is one of the vital needs for society(Berty Willy Wongkar, Cornelius Tangkere, 2021)

Inheritance law cannot be separated from the family system because inheritance law is part of family law. (Ahmad Azhar Basyir, 2001). In a family, it is certain that there will be a process of inheritance or also often referred to as inheritance. The term inheritance is also contained in the Basic Agrarian Law. The intended inheritance is the inheritance of land rights, in practice it is called land inheritance. Juridically, what is inherited is the right to the land, not the land. The purpose of inheritance of land rights is so that the heirs can legally control and use the land(Suryaningsih, Renny Listianita, 2015).

### **3.2 Aspects of Legal Protection in the Sale and Purchase of Inherited Land for Buyers**

Inherited land that is traded must refer to the inheritance law in force in Indonesia. Inheritance law is needed because of the joint rights of all heirs, so that if the inheritance is sold on the basis of mutual consent and knowledge (Sriono, Sri Dewi, & Hendra Sony Rambe, 2020). If the sale and purchase of inherited land without the consent or knowledge of one of the heirs can cause problems. If there is a problem in the buying and selling process, then there is a party who is harmed, namely the buyer.

In the framework of providing legal certainty to holders of land rights, the government has issued various regulations regarding land, and the most important of which can be seen in the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations or what we usually call the The LoGA, then followed by Government Regulation Number 24 of 1997, which was an amendment to Government Regulation Number 10 of 1961 concerning Land Registration, Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementation of Government Regulation Number 24 of 1997, and Presidential Decree Number 34 of 2003 concerning National Policy in the Land Sector (Saepudin, 2012).

In general, the term “policy” used to designate the behavior of an actor (for example an official, a group, as well as a government agency) or a number of actors in a particular area of activity. The term policy is distinguished from the word wisdom meaning wisdom or wisdom. Policy is a general statement of behavior than organization (Purba, 2019). The policy of resolving land conflicts often forgets the most fundamental issue which is the recognition of land rights that can be enjoyed by the people. Whereas the Government is obliged to restructure and prioritize policy instruments in order to guarantee land and natural resource management that is coherent with the development agenda. Development must consider environmental preservation, or in other words maintain environmental balance (Kholil, 2019).

With evidence of the rights of the holder of the right to the land, it is possible to carry out legal relations of transfer of property rights by way of buying and selling in an agreement. In which the agreement is a legal act that causes, changes, abolishes rights, or creates a legal relationship and in this way, the agreement creates legal consequences which are the goals of the parties. It can be concluded that with the agreement reached by the parties, it directly binds the will of the parties in the agreement that has been determined. Agreements made by the parties in writing can be made in the form under the hand and with an authentic deed.

In the context of buying and selling inherited land in the community, there are always disputes between families due to the sale of inherited land where one of the heirs who does not agree to the sale and purchase of inherited land, and the existence of one of the parties buying and selling inherited land is in default. In the case of buying and selling inherited land, it does not always go according to plan and there will be unexpected events with things that can lead to disputes over the sale of inherited land. Wirjono Prodjodikoro SH, said that a default is the absence of an achievement in contract law, meaning something that must be carried out as part of an agreement. Perhaps in Indonesian, the term "fulfillment of promises for achievement and non-performance of promises for default" can be used.(Firdaus, 2017).

The emergence of disputes in the sale and purchase of inheritance land poses a risk of loss to the buyer. To provide protection for buyers, the Government makes laws and regulations as contained in Law Number 8 of 1999 concerning Consumer Protection. Consumer protection is all efforts that ensure legal certainty to provide protection to consumers. Then in Article 1492 of the Civil Code explains that although at the time of the sale there is no promise of guarantee, the seller, by law, is obliged to bear the buyer against the claim of rights through law to surrender all or part of the goods sold to a third party, or against the burden according to the information provided. third party owns the goods but is not notified when the purchase is made. It can be defined even though it has been agreed that the seller will not bear anything, he is still responsible for the consequences of an act he has done; any agreement contrary to this is void.



If in the sale and purchase agreement that has been made together there is a claim of the right through law (*uitwinning*) to deliver the goods sold to someone, then the seller is obliged to return the purchase price, unless the buyer, at the time of purchase, is aware of the punishment for surrendering the purchased goods. , or buy the goods by stating that they will bear the profit and loss themselves. However, if guarantee is promised or if nothing is promised, then the buyer, in the event of a legal claim for the right to deliver the principal goods and by promising not to demand the return of the interest he has paid.

#### IV. Conclusion

Based on the above discussion, it can be concluded as follows that the validity of a sale and purchase activity if it is carried out in accordance with the contents of the agreement that has been made based on the legislation. In the sale and purchase of inherited land, each heir is entitled to ownership of the land. So that when one of the heirs sells the inherited land, there must be an agreement with the approval of all the heirs of the land. The sale of inherited land without the consent of all the heirs will cause a dispute between the seller and the buyer which can result in legal action. The form of legal protection due to disputes arising in the sale and purchase of inheritance land which poses a risk of loss to the buyer, then the seller is obliged to bear the buyer against the claim of the right through law to surrender all or part of the goods sold to a third party, or against the burden that according to the third party's information he has on the goods but was not notified when the purchase was made and any agreement that contradicts this is null and void. . If in the sale and purchase agreement that has been made together there is a claim of rights through law (*uitwinning*) to hand over the goods sold to someone, then the seller is obliged to refund the purchase price. The form of legal protection to the buyer lies in Article 1492 of the Civil Code which provides an explanation that even though at the time the sale is made no promise is made about guarantees, the seller, by law.

#### References

- Berty Willy Wongkar, Cornelius Tangkere, M. M. M. S. (2021). *Penyelesaian Hukum Penyerobotan Tanah Warisan Menurut Legitime Portie Dalam Hukum Waris Perdata*. *Lex Administratum*, IX(1), 31–40.
- Budi, A. P. (2020). *Kekuatan Hukum Terhadap Akta Notaris Berupa Akta Jual Beli Dan Pelepasan Hak Atas Tanah Sebagai Alas Hak Untuk Mengajukan Permohonan Hak Guna Bangunan Yang Jangka Waktunya Telah Berakhir*. tesis, Universitas Islam Sultan Agung Semarang
- Code Of Civil Law Republic of Indonesia
- Fatmie Utaria, H. H. (2020). *Perlindungan Hukum Bagi Pihak Pembeli Dalam Perjanjian Pengikatan Jual Beli Yang Tidak Terlaksana Akta Jual Beli Akibat Penolakan Dari Sebagian Ahli Waris Pihak Penjual Berdasarkan Kitab Undang-Undang Hukum Perdata*. 2, 191–209.
- Firdaus, R. (2017). *Perlindungan Hukum Bagi Pembeli Dalam Perjanjian Pengikatan Jual Beli Tanah Yang Masih Berstatus Hak Pengelolaan*. *Lambung Mangkurat Law Journal (Lamlaj)*, 2(1), 119–128.
- Government Regulation of the Republic of Indonesia Number 24 of 1997 concerning Land Registration
- Ibrahim, N., Eddy, P., & Mulyadi, D. (2021). *Kajian Hukum Pidana Terhadap Notaris Yang Membuat Perjanjian Pengikatan Tanpa Disertai Surat-Surat Bukti Kepemilikan*

- (Studi Kasus Putusan Nomor 1362/Pid.B/2019/PN Jkt.Utr). *Jurnal Ilmiah Advokasi*, 9(1), 31-41. doi:<https://doi.org/10.36987/jiad.v9i1.2064>
- Kholil, S., et al. (2019). Communication Planning of Langsa City Government in Building an Islamic and Environmentally Friendly City. *Budapest International Research and Critics Institute-Journal (BIRCI-Journal)*, 638-644.
- Laras Pusparini. (2018). Itikad Baik: Studi Tentang Pertimbangan Hukum Hakim Dalam Perjanjian Jual Beli Di Putusan Pengadilan Negeri. skripsi, Universitas Muhammadiyah Surakarta, [http://Eprints.Ums.Ac.Id/61683/1/Naskah Publikasi.Pdf](http://Eprints.Ums.Ac.Id/61683/1/Naskah_Publikasi.Pdf)
- Law of the Republic of Indonesia No. 5 of 1960 concerning Basic Agrarian Regulations..
- Law of the Republic of Indonesia No. 8 of 1999 concerning Consumer Protection.
- Perdana, A. A., et al. (2019). Society Response to Mobile Services on Mobile on The Road Investment Services and Integrated One-Stop Licensing Services in Tebing Tinggi City. *Britain International of Humanties and Social Sciences (BIOHS) Journal*, 44-52.
- Purba, N.A.Y., et al. (2019). The Social and Public Health Impacts that Occurred in Rantau Utara Subdistrict after the Publication of the Labuhanbatu District Regulations No.10 of 2011 about the Swallow Bird Tax, Indonesia. *Britain International of Humanties and Social Sciences (BIOHS) Journal*, 64-73.
- Saepudin, H. A. (2012). Upaya Hukum Penyelesaian Sengketa Kepemilikan Hak Atas Tanah Antara Perseorangan Dengan Instansu Pemerintah ( Studi Kasus Di Wilayah Kota Bekasi). Tesis, Universitas Diponegoro Semarang
- Sriono, S., Sri Dewi, & Hendra Sony Rambe. (2020). Analysis Of The Calculation Of The Inheritance In The Family: Analysis Of The Calculation Of The Inheritance In The Family. *International Journal of Science, Technology & Management*, 1(1), 7-13. <https://doi.org/10.46729/ijstm.v1i1.3>
- Suryaningsih, Renny Listianita. (2015). Peran Ppat Dalam Proses Pembagian Hak Bersama Tanah Warisan Di Surakarta. *Reportorium*, 3, 108–122.