



Legal Protection against Buyer in Good Faith on Dual-Certified Land

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Abstract

The sale and purchase agreements, particularly the sale and purchase of land often have disputes, either at the pre-agreement, the agreement even until to the execution of the agreement. The most underlying thing for land purchase agreement dispute is that one of the two parties has a bad faith. Sale is an agreement, therefore the provisions of the agreement in Book III of Civil Law, especially article 1338 shall be the reference in a sale and purchase agreement. In practice, there are many land-buying and selling disputes that harm the buyer to the public because the land he has bought through a buy and sell agreement before the notary and PPAT in the future found that the seller is a person who is not entitled or the original owner sued the sale. In this research, land sale and purchase disputes were caused by a double certificate issued by BPN. The seller and the original owner each hold a certificate with the same land object. The original owner sued the issuance of the certificate held by the seller and the lawsuit was granted. This research aims to analyse the responsibilities of juridical National Land Agency (BPN) on double-certified land and legal protection of the buyer in good faith in buying and selling of dual-certified land objects. This method of research using empirical legal research methods means research using fact-in-field deeds as primary data aimed at obtaining a tangible, clearer, and systematic picture of the National Land Agency (BPN) responsibilities that involve dual-certificate and legal protection against purchasers of a dual-certified land objects. The approach used is the case approach, the sociological approach, the statute approach, the conceptual approach. The result of this research are, a. BPN in issuing the certificate refers to the Government Regulation No. 24 of 1997 on land registration and BPN is not able to detect the possibility of data manipulation by the applicant because BPN has no obligation to do materially check the application data for certificate issuance. In addition, BPN gives false information to the land related to the soil that will be the object to buy and sell as a result of not being coordinated between the ruling on the court with BPN related to the land matter and the form of an administrative liability of BPN, namely the accountability of the Administration (Condemnatoir) or the creation (constitutif), b. Akmaludin is a buyer of the government, but does not obtain legal protection due to the decision of the Mataram state court number 30/PDT. G/2013/PN. Mtr. Not consider circular letter of the Supreme Court number 7 year 2012.

Keywords: *Legal Protection; Good-Faith Buyers; BPN*

Introduction

The sale and purchase agreements, particularly the sale and purchase of land often has disputes, either at the pre-agreement, the agreement even to the execution of the agreement. The most underlying thing for land purchase agreement dispute is that one of the two parties has a bad faith. This problem is certainly very influential about the intensity of the transition to land rights, because a dispute is difficult to occur without any cause arising from either party or both.

In general, buying and selling is a legal act that gives rise to the rights and obligations of the parties in the form of paying the buyer's obligation and the right to receive payment by the seller under the agreed terms. It is in line with the formulation of article 1457 of Civil Law which mentions that, "*sale and purchase is an agreement, with which the other party shall bind itself to submit a material and the other to pay the promised price*". In this case, the buy and sell agreements are classified in reciprocal agreements. Because buying and selling is an agreement, the provisions of the agreement in book III of Civil Law on the Alliance become a reference in making a sale and purchase agreement.

The principle of good faith must be carried out from the negotiation stage, the agreement, and to the implementation of the buy and sell agreement. But the meaning of good faith is still very abstract, so it arises a different sense of goodwill. Good faith does not have a singular meaning, and until now there is debate over how it actually means or the meaning of good faith. Apart from article 1338, the protection of the good faith is governed by the circular of the Supreme Court Letter (SEMA) No. 7/2012. About the law formulation of the Pleno meeting of the Supreme Court room as a guideline for duty to judge. In bullet IX formulates that, "*protection shall be given to good-faith buyers, even if it is known that the seller is an unqualified person (the land-buying object), the original owner can only file a lawsuit for injunctive relief to the seller who is not entitled.*" Similarly, it applies to the appropriate rights holders, in the VIII paragraph that: "*The right holder of the appropriate obligation shall be protected even if later it is known that the rightsholder is a person who is not entitled.*"

One of the many problems that occur in the sale and purchase of land is that the land that is a buy and sell object has a double certificate. This dual-certified land purchase case also predated, ranging from double certificates due to falsification or double certificates due to re-issuance of the same certificate by the National Land Agency (BPN). As we know that the certificate of property rights in the land is an authentic proof of the property rights holder. The registration mechanism and the transition of land rights set in the transition of land rights based on government Regulation Number 10 of 1961 concerning land registration as amended by government Regulation Number 24 of 1997 on land registration. As for the assignment to register the current rights transition, based on government regulation, is handled by the BPN. Pursuant to article 1 Number 1 Government Regulation number 24 of 1997 on land registration, stated:

"Land registration is a series of activities undertaken by the Government continuously, continuous and orderly manner, including the collection, processing, accounting and presentation and maintenance of physical data and juridical data in the form and list of the field of land and units of the House, including the provision of proof of right to the areas of land that have no right and property of the units of houses and certain rights that provide it".

Implementation of land registration is the duty of the National Land Agency through the head of National Land agency office as stipulated in article 5 of Government Regulation Number 24 of 1997 concerning land registration stating, "*Land registration is held by the National Land Agency.*" In carrying out its duties the head of National Land Agency Office is assisted by the Land Deed Official (PPAT) as stipulated in article 6 paragraph (1) and (2) the Government Regulation.

“(1) in order to implement land registration as intended in article 5 the implementation of land registration is done by the head of land office, except for certain activities that by this Government regulation or the relevant legislation assigned to other officers.”

“(2) in carrying out the land registration, the head of government land is assisted by PPAT and other officers who are assigned to carry out certain activities according to this government regulation and the legislation in question.”

Based on these provisions, in case of a land sale and purchase dispute that has a double certificate, the fundamental problem is the responsibility of the National Land Agency responsible for issuing certificates and legal protection of the good-faith buyers who buy the land.

Research Method

This method of research uses legal research methods to research the law empirically study by using fact-in-field deeds as primary data aimed at obtaining a tangible, clearer, and systematic picture of the National Land Agency (BPN) responsibilities that involve double certificate and legal protection against purchaser of the land that has double certificate objects.

Discussion

Responsibility of Juridical National Land Agency (BPN) on dual-certified land

BPN is a state institution that has the task and authority to issue certificates based on the President regulation of the Republic of Indonesia No. 63 of 2013 on the National Land Agency of the Republic of Indonesia. In the regulation of the state Meteri agrarian/head of BPN No. 9 of 1999 on procedures for granting and annulment of land rights and management rights in article 3 paragraph (1) shall be mentioned that: *“Provision and cancellation of property rights, rights of use, building rights, rights and management rights conducted by the minister.”* While in paragraph (2) it is mentioned that:

“The granting and cancellation of rights referred to in paragraph (1), the Minister may delegate his authority to the head of Regional office, head of Land office and appointed official.”

Double certificates are a certificate that outlines one area of the same land. So thus one field of land is outlined with 2 (*two*) or more certificate which of course has different or distinct data. Empirical there are still many double certificates against one area of land caused by various factors, namely the internal factors of BPN and community factors. The internal factor of BPN is the form of negligence and infidelity as well as disagreement of land officials in conducting checks and research on the land that is asked and the data of the applicant certificate and not available maps of the soil registration. As for the community factors such as the applicant does not directly control the land, people who takes care or cultivates the land does not committal, the existence of proof letter or recognition of the right behind the day is proven to contain untruth, which generally is the bad faith of the interested parties to the land that was asked.

In the case of a double certificate issued based on incorrect information or data submitted by the applicant, the BPN has a very important role to avoid misrepresentation in the issuance of the certification. BPN must examine carefully all sorts of information provided by the applicant and not only refer to the applicant's proprietary statements, moreover, when the applicant submits a certificate of replacement for the reason the old certificate is lost, damaged, etc. Usually the case of a double certificate like this happens in areas that are building such as tourism areas.

Double certificate can occur due to some technical errors that rely on the infidelity and inaccuracy of BPN such as:

- a) the applicant intentionally or accidentally shows the location of the land and the wrong boundaries. To avoid technical errors like this, BPN is supposed to be in the measurement of the registered land field presenting the owner of its limits. If BPN does not do so, then the potential for the data to be caused by the issuance of double certificates will be greater;
- b) The existence of letter of evidence or recognition of the right behind the day is proven to contain unrighteousness, falsehood or no longer valid. In order to avoid such confusion, BPN should conduct careful and thorough checking and does not make evidence of a letter from the applicant as the applicant's proprietary guidelines on a land field;
- c) No Land registration map is available in the registered land area; and
- d) the existence of an inheritance dispute. To avoid this, BPN should play an active role in obtaining accurate information on the land objects that are registered by involving village villages in the village concerned.

The legal implications of the double certificate are one of which must be canceled. Revocation of land rights in article 1 digit 12 of the regulation of the Minister of Agrarian state/head of National Land Agency number 3 of 1999 about the delegation of the authority of the granting and cancellation of land rights decision, hereinafter referred to as PMNA/KBPN No. 3 of 1999, namely:

“Cancellation of a decision about granting a land right because the decision is a legal defect in its publication or carrying out a court ruling that has been legally fixed.”

Article 1 Number 14 regulation of the Minister of Agrarian state/head of National Land Agency number 9 of 1999 on procedures for granting and annulment of land rights and Management Rights, hereinafter referred to as PMNA/KBPN number 9 of 1999, the meaning of revocation of land rights is:

“Revocation of the decision on the granting of land rights or the certificate of land rights because the decision is a defect of administrative law in its publication or to carry out a court ruling that has a fixed legal force.”

The responsibility in the Bahasa Indonesia Large Dictionary means that the State is obliged to bear things (*in case anything can be prosecuted, blame, predicted, etc.*). In the legal dictionary, responsibility is a requirement for someone to perform what has been obliged. While according to the law, responsibility is a result of the consequence of the freedom of his actions relating to ethics or morality in the conduct of an act.¹ The responsibility of the law occurs because of obligations not fulfilled by one of the parties who commit the agreement, it also makes the other party suffer a loss due to its rights not fulfilled by either party.²

According to Titik Triwulan Tutik, that accountability should have a basis, which causes the occurrence of legal rights for one to prosecute others as well as the thing that gives the legal obligation of others to give accountability.³

In summary, it can be said that every governmental affairs in which there is an element of maladministration and the detriment of citizens, its responsibility and responsibility is imposed on the person who performs the maladministration action.⁴ Then the State administration conducts criminal liability, if there are criminal elements in the act of the Government.

¹ Andi Hamzah, *Kamus Hukum*, (Ghalia Indonesia, Jakarta, 2005), p. 42

² Soekidjo Notoatmojo, *Etika dan Hukum Kesehatan*, (Rineka Cipta, Jakarta, 2010), p. 39.

³ Titik Triwulan Tutik dan Shinta Febrian, *Perlindungan Hukum bagi Pasien*, (Prestasi Pustaka, Jakarta, 2010), p. 48

⁴ *Ibid.*, p. 70.

In relation to the accountability of the National Land Agency can also be concluded as follows:

a. As a TUN office, the National Land Agency has two forms of accountability, namely institutional responsibility and personal responsibility; *b.* Personal responsibility to the National Land Agency shall occur if there is a dispute in the court of Land Certificate declared accepted in the judiciary, and found the presence of maladministration. The form can be criminal liability if found the element of criminal, or civil responsibility if found an element of action against the law; *c.* Institutional liability to the National Land Agency shall occur if there is a dispute in the land-order disputes received by the State Administrative Court, and can not be found maladministration. The form can be accountability of administration (*condemnatoir*) or Creation (*constitutif*), or can also be civil liability if found element of act against the law.

Legal protection against buyers in good faith in buying and selling land objects that are dual-certified

The definition of purchasable buyers, according to the experts, can be concluded as follows: 1) a good-faith buyer is included in subjective goodwill; 2) A good-faith buyer is an honest buyer, not knowing the blemishes of the goods it bought; 3) A good-faith buyer is a buyer who does not know that he is dealing with a person who is not the owner; 4) A good-faith buyer is a person who buys the goods with the person that the seller is actually the owner of the goods sold; 5) A good-faith buyer is a buyer who actively examines material facts and juridical facts about the goods purchased; and 6) Good-faith buyer is the criterion of the buyer who got legal protection.

In summary, a good-faith buyer is interpreted as “*honest buyer, not knowing the blemish of goods purchased*”. However, the difference is seen in how the “*blemish inherent in purchased goods*” is explained. According to Subekti and Ridwan Khairandy who are in more detail, the error occurs when the buyer thinks he has bought the goods from the owner.

Legal protection can be interpreted as a guarantee or assurance that a person will get what has become its rights and obligations, so that the concerned feel safe. Legal protection can be grouped into two forms of preventive law protection that prioritizes the anticipatory nature or prevention of acts that allow the detriment of third parties, in which case the buyer is well-itched. This protection is provided by the State through the mechanisms of legislation with the aim to prevent before the occurrence of harm inflicted on third parties and provide signs or restrictions in carrying out an obligation.

Repressive legal protection is a legal protection that serves to settle in the event of a dispute and is the final protection in the form of fines, imprisonment and additional punishment is given when the dispute has already occurred or has been committed by a certain party.

The specification of the case in this study is that Akmaludin has been buying and selling land that has been certified with a woman whose name is given by the certificate, namely Trie Rully. Before the sale occurs, Akmaludin first checks, both the data checking and the physical data of the soil to be bought. Soil physical data checking is done in BPN through PPAT and checking the physical data by ensuring ownership of Trie Rully on the land to be purchased through the headman and village head where the land is located. Once the physical data and the juridical data have been confirmed, there is a sale of buying and selling between Akmaludin and Trie Rully before notary and PPAT. After that, Akmaludin reverse the name of the land certificate that was bought from earlier on behalf of Trie Rully became on behalf of Akmaludin.

Someone named Robert F Nolthing who was a foreign citizen sued Akmaludin certificate that the land bought by Akmaludin was his own land and he also held a certificate on behalf of Trie Rully. Thus, there are two certificates of Trie Rully with the same land object, a certificate held by Robert F Nolthing,

one other certificate held by Trie Rully which is already behind the name of Akmaludin. Robert F Nolthing's lawsuit was granted, and the sale and purchase agreement between Akmaludin and Trie Rully was declared invalid as well as a substitute certificate on behalf of Trie Rully (*Akmaludin also stated invalid*). Akmaludin lost the land he had bought before the notary and PPAT and has fulfilled all the provisions as buyer of the good.

From the case specifications of the good faith buyer with a land object that is double certified above it can be seen that the buyer has fulfilled even beyond the elements of the purchaser of good faith. However, in the above cases there are three types of judicial proceedings that are passed, namely the justice of the religion, the judicial administration of the State, and the state judiciary that consists of the criminal decree of Mataram state Court No. 274/PID. B/2011/PN. MTR and the civil ruling of the Mataram state court No. 30/PDT. G/2013/PN. PTR as it is known that the three courts have different competencies.

The justice of the Mataram religion in its verdict No. 164/PDT. G/2008/PA. MTR is seen that the act of buying and selling between Akmaludin with Trie rully has not yet occurred, but this ruling is the determining source of the right or whether Trie rully buy and sell with Akmaludin against the land in the ruling. In the decision of the Mataram religious court, the Tribunal declared that the land and the buildings that stood on the rights certificate (SHM) No. 155/Western winner on behalf of Trie Rully Stiandi Rahayu was the right of Robert Frederik Nolting because it was the innate property of Robert Frederik Nolting who is a Dutch citizen. The ruling on the Mataram religious court does not consider the provisions of article 21 paragraph (3) and article 26 paragraph (22) of Law No. 5 of 1960 (UUPA), which prohibits the nominees practice. The ruling was not imparted to BPN so that the land data of BPN was not renewed which consequently Akmaludin was given erroneous information against the soil that would be the object to buy and sell with Trie Rully.

In the ruling of the Mataram State Administrative Court No. 52/G/2010/PTUN. MTR., which was the evidence of the lawsuit Robert F Nolthing was the right of Robert F Nolthing on the land of SHM No. 155 on behalf of Trie Rullystiandari Rahayu was derived from the innate property of Robert F Nolthing before marrying Trie Rully and the issuance of the Mataram State Administrative decree (*the second Sertipikat SHM No. 155 on behalf of Trie Rullystiandi Rahayu*) Based on the false description of Trie Rully as the certificate issuance applicant to the defendant (BPN). The two proofs of the lawsuit were strengthened by the decree of the Mataram religious Court No. 164/PDT. G/2008/PA. MTR. Therefore, the Tribunal judges of the Mataram State Administrative Court severed by granting the plaintiff's lawsuit for its entirety and stating the cancellation of the second certificate (*substitute*) proprietary rights number 155 on behalf of Akmaludin pursuant to the Buy and sell Act number: 193/2009 dated August 27, 2009.

In the criminal decree of Mataram District Court number 274/PID. B/2011/PN. MTR., dated July 28, 2011 with the defendant Trie Rully was stating lawfully and convincing guilty of the transfer of rights to the property of the Land of Others (*Stellionnaat*) and sentenced to imprisonment for 1 (*one*) year. The right to the land belonging to another person referred to in this ruling is the land that is a buying and selling object between Trie Rully and Akmaludin. This ruling is also a consideration in the decision of the Mataram District Court Number 30/PDT. G/2013/PN. MTR., so the tribunal rejected the Akmaludin lawsuit for the entire.

Legal protection of the buyer in good faith Refresif found in the state judiciary with the concept of action against the law as a means to defend its rights. The legal protection of buyer's good-faith prevention rests on the jurisprudence or the provisions of the norm containing a legal method that a qualified buyer must be protected by law. This is then contained in the Supreme Court Circular letter No. 7 of 2012, especially in the IX of point, stated that, "*protection must be given to good-faith buyers, even*

if it is known that the seller is an unqualified person (land-buying object), the original owner can only file a claim for injunctive relief to the seller who is not entitled”.

Conclusion

Responsibilities of juridical National Land Agency (BPN) against a dual-certified land that is, 1) in the issuance of certificates, BPN follow the operational guidelines and implementation issuance of certificates and refers to the Government Regulation No. 24 of 1997 on land registration; 2) BPN does not get a copy of the ruling on the Mataram religious court related to the land object in verdict number 164/PDT. G/2008/PA. MTR., so that BPN erroneously gave information to the PPAT related land that would be a buying and selling object; 3) BPN is not able to detect the possibility of manipulation of data by the applicant or by the seller who is not entitled even more if the sale and purchase agreement is carried out in the presence of PPAT; and 4) The form of an institutional accountability of BPN is the accountability of administration (*condemnatoir*) or the creation (*constitutif*).

Legal protection of buyers in good faith in buying and selling of land objects that are double-certified in North Lombok District namely: 1) Akmaludin was a good-faith buyer who did not obtain legal protection, 2) protection of legal refresif against Akmaludin rested on the decision of the Mataram state court No. 30/PDT. G/2013/PN. The Decree of the District Court of Mataram considers the ruling of the Mataram religious Court No. 164/PDT. G/2008/PA. MTR., the ruling of Mataram PTUN number 52/G/2010/PTUN. Of the Mataram state court's criminal Decree No. 274/PID. B/2011/PN. MTR. With the defendant Trie Rully and does not consider the circular letter of the Supreme Court No. 7 of 2012, particularly in the IX point, stated that, “*protection shall be given to good-faith purchasers, even if it is known that the seller is an unauthorized person, the original owner may only submit a claim for injunctive relief to the authorized seller*”; 5) The purchaser indicator is either unable to guarantee protection against buyer's right.

Suggestion

The suggeston for BPN are : 1) There should be regulatory authorities even requiring BPN to conduct normative data checks as well as empirical data related to agreements with land objects in order for BPN to detect the possibility of data manipulation by the applicant or by unauthorized vendors; 2) BPN should improve coordination with related institutions, especially with the judicial institution because a court ruling with the land dispute object has the legal force to alter or reinforce the previous land-related data; 3) The responsibility of BPN is not only in the form of administration, but there must be the change of material indemnity so that if there is dispute TUN with the object of the certificate, BPN is more thorough and more serious to maintain the decision that has been issued in front of the trial.

The judges have a major role in providing refresif legal protection against purchasers. Therefore, the advice that can be given that are: 1) judge in examining and disconnecting the Land object buy and sell disputes should prioritize the legal protection of the buyer in good faith by the guidance on the Guidelines for implementation of duty to the Court of the circular of the Supreme Court letter number 7 of 2012, Circular letter of Supreme Court No. 5 of 2014 and the Supreme Court Circular letter 2016 No. 4 on the criteria of good-faith buyers. 2) The judge shall order to the seized agent to penetrate or convey any verdict relating to the land rights to the land agency where the object of the dispute is in order that BPN may give the record or an updates of the land data in the land Book of BPN.

Bibliography

The Books

Hamzah, Andi, *Kamus Hukum*, Ghalia Indonesia, Jakarta, 2005.

Notoatmojo, Soekidjo. *Etika dan Hukum Kesehatan*, Rineka Cipta, Jakarta, 2010.

Titik, Triwulan dan Shinta Febrian, *Perlindungan Hukum bagi Pasien*, Prestasi Pustaka, Jakarta, 2010

The Legislation

The Civil Code of law

Law No. 5 year 1960 concerning Basic Agrarian Regulations (State Gazette of the Republic of Indonesia year 1960 number 104 addition of State Gazette of the Republic of Indonesia number 2043).

Circular letter of the Supreme Court, No. 7 year 2012 on the formulation of PLENAO meeting results Supreme Court room as an acting for the court.

Circular letter of the Supreme Court No. 5 year 2014 concerning the formulation of PLENAO results of the Supreme Court room as a duty to the Tribunal.

Circular letter of the Supreme Court No. 4 of 2016 concerning the formulation of PLENAO results of the Supreme Court room as the task executor for the court.

Presidential regulation No. 63 year 2013 on national Land Agency of the Republic of Indonesia.

Regulation of the Minister of Agrarian state/head of National Land Agency number 3 year 1999 about the delegation of the authority to grant and cancel the decision on the granting of land rights.

Regulation of the Minister of Agrarian state/head of national Land Agency No. 9 year 1999 on procedures for granting and annulment of land rights and management rights.

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