

## Returning The Name Of The Certificate Of Proprietary Rights To Land Based On Buying Based On Buying Unpaid In The City Of Padang

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**Abstract:** Land registration in Indonesia is currently very important because it ensures who is the current owner of the land and also legal protection for those who will acquire the rights to the plot of land. Transfer of rights means the transfer of ownership rights to land from the owner to another party due to a legal act, one example of which is buying and selling. The act of buying and selling land in the UUPA is based on customary law which states that buying and selling land is a clear and cash transfer of land rights. This means that the transfer of land rights is carried out in the presence of an authorized public official, namely the Land Deed Making Officer (PPAT) and the payment is made in cash and simultaneously. The deed made by and before the PPAT becomes a means of proving that buying and selling has occurred in the registration of the transfer of rights. At this time there are payments for buying and selling which are carried out in stages. When the seller and buyer agree that the payment of the sale and purchase price is carried out in stages, To protect the interests of prospective sellers and buyers in the future, both of them make a binding agreement to carry out a sale and purchase, namely the Sale and Purchase Binding Agreement (hereinafter referred to as PPJB). Although in principle PPJB does not result in the transfer of ownership rights, but if it refers to Attachment SEMA 4/2016 (page 5), the transfer of land rights based on PPJB legally occurs if the buyer has paid the land price in full and has mastered the object of sale and purchase and is carried out with good faith. However, in practice, many do not do it in good faith. This research was conducted to see how the process of buying and selling land got behind the name based on unpaid payments and how to resolve it in the event of a dispute related to the transfer of property rights based on unpaid sale and purchase.

**Key Words:** Transfer of Title, Property Rights Certificate, Sale and Purchase, and Unpaid.

### 1. INTRODUCTION:

In principle, it is considered sufficient for a sale and purchase agreement that is simple and runs smoothly. Simple in the sense that the objects being traded do not contain or cause problems, either related to the physical objects being traded or the ownership status that the seller had at the time the agreement was made. It runs smoothly in the sense that both the seller and the buyer fulfill their obligations in accordance with the agreement they agreed on, including that the buyer has paid the price and the seller has delivered the goods he is selling. In other words, the provisions in the two articles mentioned above are sufficient as a legal basis for the practice of buying and selling in daily life which is generally short-lived.

Along with the times, there are payments for buying and selling which are made in stages or installments. When the seller and buyer agree that the payment of the sale price is made in stages or in installments, then actually there has not been a sale transaction because there has not been a settlement here. Usually, to safeguard the interests of prospective sellers and buyers in the future, both of them make binding agreements to carry out sales and purchases, namely the Sale and Purchase Binding Agreement (hereinafter referred to as the PPJB).

### 2. THEORITICAL FRAMEWORK:

#### a. Legal Certainty Theory

According to Sudikno Mertokusumo, legal certainty is a guarantee that the law is enforced, that those entitled by law can obtain their rights and that decisions can be enforced.[1]

b. Responsibility Theory

According to Hans Kelsen, the concept of legal responsibility is that a person is legally responsible for a certain action or that he bears legal responsibility, the subject means that he is responsible for a sanction in the event of an act that is contrary.[2]

c. Theory of Justice

According to John Austin, law is *a command of the law giver* (an order from legislators or authorities), that is, law is strictly separated from morals and justice is not based on good or bad judgments.[3]

d. Benefit Theory

This theory requires that policy makers or laws must consider the benefits to the community from the rule of law that is enforced, therefore the law is made to provide a sense of security, benefits or uses for the community, to create that, the implementation of the law or law enforcement must be enforced.

### 3. LITERATURE REVIEW:

Binding of sale and purchase (PJB) is a legal breakthrough that is widely used by parties to make it easier to buy and sell land rights, because if you follow all the rules that apply in buying and selling land rights, then not all parties are able to directly pay all the requirements regarding the sale and purchase of land rights at one time such as paying the agreed sale and purchase price of land rights followed by payment of the seller's tax (SPP) and the buyer's tax, namely Land and Building Rights Acquisition Fees (BPHTB) and other obligations related to the preparation and management of the deed of sale and purchase (AJB) as well as the transfer of other rights, namely land registration (transfer of name).

According to Boedi Harsono, the deed of the Official for Making Land Deeds (PPAT) functions as a means of proving that a sale and purchase has been carried out. The sale and purchase can still be proven by means of other evidence.[4]

According to Kartini Muljadi and Gunawan Widjaja, property rights based on the Civil Code, are defined as the right to enjoy an item more freely and to act upon that item freely, as long as it does not conflict with laws or general regulations stipulated by authorized power of attorney does not interfere with the rights of others; all of this does not reduce the possibility of revocation of rights in the public interest and appropriate compensation, based on statutory provisions.[5]

The emergence of legal disputes regarding land originates from complaints from a party (person or legal entity) containing objections and demands for land rights, both regarding land status, priority and ownership, in the hope of obtaining an administrative settlement in accordance with applicable regulations.

### 4. METHOD:

The method used in this research is a sociological legal approach, namely in the form of empirical studies to find theories regarding the process of the operation of law in society.[6]

### 5. DISCUSSION:

Normatively, if there are no legal defects in the sale and purchase of the land, the buyer can obtain the rights to the land he has purchased and the ownership of the land rights is registered at the local land office. After the sale and purchase process mentioned above, the buyer will receive a land title certificate containing copies of the land book and measurement certificate as proof of land ownership, issued for the benefit of the relevant right holder, in accordance with the physical data contained in the measurement letter and juridical data that has been registered in the land book. However, in field practice there are several buyers who have transferred land rights even though the buyer has not paid the payment for the sale and purchase of the land. This causes one of the parties, namely the seller to feel disadvantaged.

### 6. ANALYSIS:

#### A. Process of buying and selling land whose payments have not been paid in full in the city of Padang

In theory, the process of buying and selling where payments have not been paid seems trivial by simply mentioning that the buyer who has not been able to pay off the price of the land is considered to be only a debt

owed to the seller of the land owned by the buyer. The freehold land can be directly transferred to the buyer who has not been able to pay off the remaining price.

### **B. The Process of Transferring the Name of a Certificate of Property Rights Based on Unpaid Sale and Purchase in the City of Padang**

The process of transferring land rights based on the deed of sale and purchase and the matter of paying off or not paying off the payment without the knowledge of BPN, but it is an agreement made by both parties which is set forth in the deed of agreement which is known by the authorized official, namely the Notary and/or Deed Making Officer Soil.

### **C. Settlement of Unpaid Land Rights Transfer Dispute in the City of Padang**

The land dispute settlement process can be in the form of settlements outside the court (non-litigation) and settlements outside the court (litigation).

## **7. CONCLUSION**

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

- 1) From the process of buying and selling land where payment has not been paid in full In the city of Padang, it is necessary to make a sale and purchase binding agreement (PJB) for the seller and buyer beforehand which is made by a Notary if the payment is not in cash or the payment is made in stages.
- 2) Regarding the administrative process of transferring land rights based on the sale and purchase of land rights that have not been paid off in the City of Padang carried out by the Land Office of the City of Padang, the land office revealed that this practice was outside the knowledge of the Land Office, because in the administrative process the name of the party's certificate was reversed. the land office is guided by the deed of sale and purchase made and registered by the PPAT at the Land Office, if the deed of sale and purchase from the PPAT does not exist, the administrative process cannot be continued.
- 3) Whereas the settlement of disputes over the transfer of ownership rights over unpaid land in the City of Padang, the parties to the dispute took the settlement path through the Judicial Institution (Litigation) by filing a court suit and then guided by the judge's decision.

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