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Juridical Analysis Of Unregistered Kaveling Land Transactions In Batam City

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Abstract. *Unregistered kaveling land creates legal uncertainty for parties involved in buying and selling transactions. Without a certificate, the legal ownership status of the land remains unclear. Based on the discussions in this thesis, the issues addressed are: 1) Legal Regulations of Unregistered Kaveling Land Transactions. 2) Implementation of Unregistered Kaveling Land Transactions in Batam City. 3) Constraints and Solutions for Unregistered Kaveling Land Transactions in Batam City. The research method employed is empirical legal research with a qualitative approach. The approaches used include statute approach and conceptual approach. Primary data was obtained through in-depth interviews. The research findings indicate that specific legal regulations governing transactions of unregistered kaveling land are not clearly defined in the law. Nevertheless, land transactions in Indonesia are governed by various regulations, including the Civil Code, Law No. 5 of 1960 on Basic Agrarian Principles, and Government Regulation No. 18 of 2021 concerning Amendments to Government Regulation No. 24 of 1997 on Land Registration. However, there are relevant regulations that also govern aspects related to land transactions in Indonesia. Constraints in the practice of unregistered kaveling land transactions in Batam City include lack of knowledge or understanding among the public regarding land certificate application procedures. The public often perceives sporadic possession letters or Location Determination Maps (PL) as sufficient evidence of legitimate ownership.*

Keywords: *Sale and Purchase, Kaveling Land, Certificate.*

1. INTRODUCTION

In the era of globalization and rapid economic development like today, property, including land, is one of the most valuable assets. In Indonesia, Batam City is one of the cities that has experienced significant economic growth in the last few decades. This growth has a direct impact on the property sector, especially in land lot buying and selling transactions. Land plot sales transactions in Batam City often involve land that does not yet have a certificate. This condition raises various complex legal issues related to legal protection for the parties involved in the transaction. Land certification is legal proof of ownership issued by the state, which provides legal certainty for the land. In Indonesian land law, the principle of nationality is recognized as stated in Article 1 paragraph (1) of the UUPA which states that "the entire territory of Indonesia is a unified homeland of all Indonesian people who are united as the Indonesian nation" and Article 1 paragraph (2) of the UUPA which states that "all land, water and space including the natural resources contained therein in the territory of the Republic of Indonesia as a gift from God Almighty are the earth, water and space of the Indonesian nation and are national wealth". To realize the principle of legal certainty in the land sector, there are two things that must be considered, namely the need for written land law and the implementation of land registration.

However, in practice, there are land plot sales and purchase transactions in Batam City that are carried out without land certificates. This can cause problems that arise not only related to the clarity of land ownership, but also include aspects of legal protection for the parties involved in the transaction, including land certificate management procedures that are often complex and require a deep understanding of applicable regulations. Based on the background description above, the author raises several problems that will be discussed further. The problems are as follows:

1. How is the legal regulation for buying and selling uncertified land plots in Batam City?
2. How is the implementation of buying and selling uncertified land plots in Batam City?
3. What are the obstacles and solutions for buying and selling uncertified land plots in Batam City?

Based on the formulation of the problem stated above, it can be seen that the objectives of this research are:

1. To find out the legal regulations for the sale and purchase of uncertified land plots in Batam City.
2. To find out the implementation of the sale and purchase of uncertified land plots in Batam City.
3. To find out the factors, obstacles and solutions for the sale and purchase of uncertified land plots in Batam City.

2. LITERATURE REVIEW

To provide a sense of security to the community, legal certainty is very important because it ensures fair and consistent application of law in a government. Legal certainty is one of the vital pillars of law and plays an important role in maintaining overall legal stability. The level of legal certainty can be measured by the extent to which justice is applied to all levels of society, without discrimination against anyone. The theory of responsibility is a theory that analyzes the responsibility of legal subjects who have committed unlawful acts or criminal acts to bear costs or losses or carry out criminal penalties for their mistakes or negligence. Legal analysis refers to the process of researching and evaluating a legal issue or problem using legal approaches and methods. In general, legal analysis is conducted to identify, analyze, and interpret relevant legal regulations and court decisions related to a particular legal case or issue. Buying and selling is a transaction or agreement in which there is a reciprocal exchange, either between goods, money, or goods for money.

In the Civil Code (hereinafter referred to as the Civil Code), there are articles that regulate the sale and purchase agreement, starting from Article 1457 to Article 1540. In Article 1457 of the Civil Code, a sale and purchase is an agreement between two parties, in which one party binds himself to make a delivery of an object, and the other party binds himself to pay the agreed price. Based on the understanding in the article, it states that in a sale and purchase agreement the parties have their respective obligations, the seller has the obligation to deliver the goods while the buyer has the obligation to pay the price of the goods. Based on Article 1458 of the Civil Code, a sale and purchase agreement is considered valid when the parties have reached an agreement on the object being traded and its price, even though the delivery of goods and payment have not been made. This article recognizes that the agreement or deal between the seller and the buyer is a crucial element in determining the occurrence of a sale and purchase, although things such as physical delivery of goods and payment can be done later according to their agreement. Thus, agreement on the object and price is the main prerequisite that must be met to consider a transaction as a sale and purchase according to civil law in Indonesia.

In the Regulation of the Head of the Batam Free Trade Zone and Free Port Authority Number 11 of 2023 concerning the Implementation of Land Management (Perka BP Batam Number 11 of 2023), Article 1 number 3 explains that land refers to the surface of the earth which includes land and water, as well as space above or within the earth's body, within certain limits whose use and utilization are directly or indirectly related to the exploitation and use of the earth's surface. Plot land refers to a piece of land that is divided into small plots to be sold to the public as a form of investment or for the construction of houses or commercial buildings. The term "plot" itself comes from Dutch, which means a piece of land that is divided. A certificate is an official document issued by the National Land Agency (BPN) as legal proof of land ownership. This document is the main basis for conducting land purchase transactions. The certificate contains information related to the land owner, land area, land location, and type of land rights owned.

3. RESEARCH METHOD

The type of research used by the author is empirical legal research, a research approach that emphasizes the use of real evidence and direct observation to produce knowledge. The approach methods used in this research are the statute approach and the conceptual approach. The research location refers to the place that is the focus or object of a study. In this study, the author chose Batam City as the research location. The population that is the focus is the population living in Batam City. The sample is a group of individuals selected randomly or based on certain criteria, so that the data for each variable is information or facts observed by a researcher to represent a larger population in a study.

4. RESULTS AND DISCUSSION

1. Legal Regulations for the Sale and Purchase of Uncertified Plots of Land in Batam City

Based on the laws in force in Indonesia, a plot of land can be considered to belong to an individual or legal entity if it has proof of ownership in the form of a legally recognized land certificate, so it can be concluded that land that has not been certified is not clearly regulated in the legal regulations in Indonesia. Based on Article 1457 of the Civil Code, it states that a sale and purchase is an agreement by which one party binds himself to hand over an object and the other party pays the price that has been promised. In Article 1313 of the Civil Code, an agreement is an act by which one or more people bind themselves to another person, so a land sale and purchase agreement is an agreement where the seller hands over his land and the buyer will receive the land by paying the price to the seller according to the agreement between the parties, so that the transfer of land rights from the seller to the buyer.

The definition of the sale and purchase of land rights after the UUPA came into effect is a legal act of transferring rights for ever in cash which is regulated in the implementing regulations of the UUPA, namely Government Regulation Number 24 of 1997, which stipulates that the sale and purchase of land rights must be proven by a deed made by and before a PPAT, as stated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997. That every transfer of land rights is required to register the transfer of rights. Which for the sale and purchase of land is no longer made before the village head privately, but must be before the PPAT. PPAT is tasked with carrying out land registration activities by making deeds as evidence of legal acts regarding land rights, including such things as buying and selling, exchanging, granting, investing in a

company (inbreng), sharing joint rights, granting building use rights/use rights over land ownership rights, granting mortgage rights and granting authority to impose mortgage rights.

2. Implementation of Sale and Purchase of Uncertified Land Plots in Batam City

In general, the sale and purchase is carried out before the PPAT by signing the AJB. In the case where there is no valid land certificate as proof of ownership that is legally recognized, the land sale and purchase process is hampered. The PPAT requires valid proof of ownership to be able to issue a Sale and Purchase Deed (AJB). In addition, other problems such as the rejection of the Rights Transfer Permit (IPH) because the land does not yet have a building can also be an obstacle in the process. In situations like this, Notaries/PPATs often suggest making a temporary agreement called a Sale and Purchase Binding Agreement (PPJB). This PPJB functions to legally bind both parties (seller and buyer) to carry out the sale and purchase of land in the future, after the necessary requirements are met. The PPJB usually includes provisions regarding price, transaction conditions, purchase period, and legal consequences if one party does not fulfill its obligations. The PPJB is not a valid Sale and Purchase Deed replacing the AJB, but is a middle ground used to facilitate the land sale and purchase process where the certificate or IPH cannot yet be obtained. Once all requirements have been met, including the processing of the certificate or IPH, the transaction can then be followed up by making a valid AJB by the PPAT.

To carry out PPJB, the seller must bring land documents such as PL, KPT, and PPT to the Notary's office to be checked for completeness in order to carry out PPJB. If the documents are incomplete, the seller must complete them first. After that, the sales and purchase taxes will be paid in accordance with applicable laws and regulations. In Batam City, sellers are subject to Income Tax (PPH) of 2.5%, while buyers are subject to Land and Building Acquisition Tax (BPHTB) of 5% of the Taxable Object Acquisition Value (NPOP) or Taxable Object Sales Value (NJOP) after being reduced by the applicable Non-Taxable Object Acquisition Value (NPOPTKP). In 2024, NPOPTKP in Batam City is IDR 120,000,000. This reduction only applies once a year, which means that buyers can only claim a reduction when purchasing the first object in the relevant year. Starting early 2024, payment of these sales and purchase taxes must be made before signing the PPJB, with this provision only applicable to PPJB Paid. For PPJB Not Yet Paid, tax payment is not required. After the completeness and requirements are met, the

signing schedule between the parties will be arranged by the Notary. At the time of signing the PPJB, the transfer of rights from the seller to the buyer is declared valid and legally enforceable.

Land registration aims to provide certainty and legal protection to land rights holders so that they can prove their ownership status. In addition, land registration also aims to provide information needed by interested parties and to maintain orderly land administration. The main purpose of systematic land registration is to record and manage land ownership data comprehensively in an area. This process includes land mapping to determine clear land boundaries and archiving related documents. In addition, this systematic registration also aims to facilitate the issuance of land certificates to owners who have been officially registered in the land system.

3. Constraints and Solutions for Buying and Selling Uncertified Plots of Land in Batam City

A statement of physical control of land is a document stating that the land is being controlled by someone, noting since when the land was owned, controlled, and obtained. This document is in the form of a private letter that can be made personally with the approval of the local Village Head. However, land disputes often occur because more than one person has sporadic letters for the same land. Land that has not been certified will certainly be difficult to sell. One factor is the community's ignorance or lack of understanding of the procedures for managing land certificates. The sale and purchase of land that has not been certified can result in disputes over land ownership rights, due to the lack of strong evidence of ownership which can be detrimental to the buyer, because at some point a dispute occurs the buyer cannot show strong evidence of ownership in the form of a certificate. In addition, the legal consequences of this uncertified sale and purchase can also be detrimental to the seller who will sell the land at a price cheaper than the price of land that has been certified.

The current implementation for sale and purchase transactions on uncertified land is still possible as long as the Transfer of Rights Permit (IPH) from BP Batam has been issued. In submitting the Transfer of Rights Permit (IPH), the related party must attach existing legal documents, which are then checked internally by BP Batam. These documents include the UWT Invoice, PL, SPPT, SKEP, PBB, and seller and buyer data. However, there is one obstacle when this land document exceeds the UWT period and a UWT extension is needed. At the time of the UWT extension, BP Batam will issue a new

UWT Billing Invoice. After payment is made, the process continues with the issuance of a draft SPPT (Land Utilization Agreement), and after signing, the PL, SPPT, SKEP, and Recommendation for Granting Land Rights will be issued.

The solution for buying and selling land that has not been certified is to check the existing documents, submit a Transfer of Rights Permit (IPH) to BP Batam. If the Transfer of Rights Permit (IPH) is issued, it means that the buying and selling transaction can be continued. However, if the Transfer of Rights Permit (IPH) is rejected due to a dispute, BP Batam will issue a Notification Letter of Rejection of the Transfer of Rights Permit (IPH), and this must be resolved with the relevant parties. By overcoming these obstacles, it is hoped that the process of buying and selling land that has not been certified in Batam City can be smoother and legally guaranteed.

5. CONCLUSION AND SUGGESTION

1. Conclusion

Based on the discussion in the previous chapter, the following conclusions can be drawn:

Uncertified land plots create legal uncertainty for the parties involved in the sale and purchase transaction. Without a certificate, the legal ownership status of the land is unclear. The availability of land certificates is very important to provide legal protection to owners and prospective buyers. Land certificates are valid proof of ownership and provide legal certainty in sale and purchase transactions. Land plot sale and purchase transactions that are not supported by certificates can potentially pose legal risks for the parties involved. Financial losses and legal problems can occur if land ownership is questioned or disputed in the future. However, documents owned by the owner such as land ownership letters (sporadic) or Location Determination drawings (PL) can be upgraded to certificates by fulfilling the requirements and procedures explained in the previous discussion chapter. Thus, the existence of valid proof of ownership will reduce the constraints of legal factors and risks that may be faced by both sellers and buyers in the transaction process.

2. Suggestion

From this conclusion, the author can provide several suggestions, namely: Land sales and purchases should be proven by a deed made by and before the Land Deed Making Officer (PPAT) as stipulated in Article 37 paragraph 1 of Government Regulation Number 24 of 1997. This process is important so that the transaction has strong legal force and is valid in the eyes of the law. The public is expected to carry out sales and purchases in accordance with the procedures stipulated in the laws and regulations. In addition, the Government is expected to be able to educate the public regarding the provisions and sanctions in proper sales and purchase activities. So that it can prevent problems such as the sale and purchase of land that has not been certified. With a good understanding of the applicable regulations, it is hoped that sales and purchase activities or transfer of land rights can be carried out in accordance with applicable provisions, reducing the risk of legal problems in the future. Therefore, law enforcement efforts and education for the public are important steps in ensuring that land sales and purchases take place legally and in accordance with applicable regulations.

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