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Analysis of Buying and Selling Land in Production Forest Areas in the Tampo Sub-District, Napabalano Sub-District, and Muna District

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Abstract

This research aims to find out the legal protection for land buyers of well-intentioned production forest areas in Tampo Village napabalano district of Muna regency that is done under the hands and to find out the legal efforts that can be done by buyers against land sellers of production forest areas in Tampo Village Napabalano District Muna Regency. This type of research is Empirical research. In this study using secondary data and primary data Data collection techniques in empirical legal research there are 3 (three) techniques used, either individually or separately or used together at the same time in order to get conclusions, the research location is located in the Kelurahan Tampo Napabalano District, Muna Regency and used descriptive qualitative analysis. The results showed that: (1) Legal protection of good faith land buyers harmed by the seller of regional land is to compensate for losses experienced by land buyers in the form of refunds on purchase prices, return on results, costs incurred in connection with buyer lawsuits, changes in costs, losses, and interest and costs related to purchases. (2) The choice of resolving land buyer disputes with land sellers of production forest areas in Tampo Village is carried out of court through consensus deliberation with dispute resolution mediators, namely community leaders, indigenous leaders, and local governments from both the Head of Tampo Village and the Head of Napabalano District. In addition, litigation dispute resolution is the final means after alternative dispute resolution does not produce results, the Raha District Court is authorized to adjudicate because the dispute that occurred in Tampo Village napabalano district of Muna regency is the jurisdiction of the District Court (PN) Raha.

Keywords: *Legal protection; Responsibility; Dispute Resolution*

Introduction

The land agriculture is a matter of life and livelihoods because it is man's source and source of food. Hence, men are willing to make sacrifices, to make wars for land, to sustain life and livelihoods. Freud said "the essence of human life is the preservation and the preservation of offspring.[1]

[1] Freud dan Mochammad Tauchid, 2009. *Masalah Agraria Sebagai Masalah Penghidupan Dan Kemakmuran Rakyat Indonesia*, STPN Press, Yogyakarta, hlm. 1

Efforts to meet human needs interact between individual and individual. The process of interaction can then generate conflict that encourages social instability. To maintain social stability requires a means to realize order through the legal system guaranteeing "certainty, justice and expecency".[2]

Legislation number 5 in 1960 on the basic regulatory agrarian points (which will then be called UUPA), is an instrument for the well-being, justice, legal certainty of all citizens, and for managing legal relations in the land land land land. The birth of the UUPA is expected to clear the role of the agrarian law of the colonial era with the feature of "capitalistic and liberalistic, explosive.[3]

UUPA wants religious communistic values in governing agrarian law. The concept of such communism is seen in chapter 1 of the verse (1) UUPA, which says "the whole region of Indonesia is the union of all Indonesian people as Indonesia." The terms contain two elements which are "common property" and "commission" elements. A civil common property element but not the jurisdiction of "the common land of all peoples who have united into Indonesia".[4] The commission elements are public "to govern and govern the possession and use of the land".[5] It is reflected in the right to rule the country over land.

The notion of rights to control the land was "a jurisdictional mastery governed under article 2 UUPA does not give physical possession, if countries need land rights then the state should be stripped of the rights and immediately take up the land. This also applies to land designated as forest areas. Although forestry is governed by the 1999 act number 41 on forestry (which comes to be called the forest law), the state of land rights within a forestry area is still "regulated by land law.[6]

The forest law gives the state only forest mastery authority to govern, care for, that deals with forests and forest products, establish the status of forest areas and manage the law subjects with forests and forest products with respect to the rights of the people, which is reflected in article 4 of the forest law. They defined that governments had the authority to govern, care for, define forest areas and establish legal relations between law subjects and forests. Those not authorized to use forest areas as well as to do land mastery within forest areas are not permitted to do forest use.

The land mastery of the forest area should be below the forest department, but in reality there is land mastery within the forest area controlled by the people. The people considered the possession of the land on the basis of their early parents' legacy of clearing the forest. This can be seen from the case of forest soil belonging to the forest ranger corps (KPH) vi unit of muna island in ex. Tampo, little man. Napabalano, kab. Muna, that led to a land mastery dispute.[7]

The land issue began when the KPH unit vi of the island of muna teleh issued a wooded borrowing permit (ipek) to the prosperous agricultural community of tampo in 2006 based on SK.NO.142/KPTS-VI 2006 on the permission of the region's forests asa 20 year area of 236 hektare (ha).

[2]Nurhasan Ismail, 2007. *Perkembangan Hukum Pertanahan Pendekatan Ekonomi Politik (Perubahan Pilihan Kepentingan, Nilai Sosial, dan Kelompok Diuntungkan)*, Huma dan Magister Hukum UGM, Yogyakarta, hlm. 23.

[3] Moh. Mahfud. MD, 1999. *Karakter Produk Hukum Zaman Kolonial Studi Tentang Politik dan Karakter Produk Hukum Pada Zaman Penjajahan Di Indonesia*, UII Press, Yogyakarta, hlm. 73

[4] Arie Sukanti Hutagalung dan Markus Gunawan, 2009. *Kewenangan Pemerintah Dalam Bidang Pertanahan*, Rajawali Press, Jakarta, hlm. 20.

[5]*Ibid*

[6] Boedi Harsono, 2008. *Hukum Agraria Indonesia Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya (Jilid I Hukum Tanah Nasional)*, Djambatan, Jakarta, hlm. 9.

[7] Wawancara yang dilakukan dengan Wa Ode Sitti Neli Nurlaila, Kepala Seksi Tata Hutan Dan Pengelola Hutan UPTD KPH Unit VI Pulau Muna, pada tanggal 9 Agustus 2021

The permit was issued on the basis of a public appeal to allocate agricultural land in order to protect food and energy. But in reality, the ipman's land was the local people's practice of buying up land in the forestry region with an alibi that it was the land that their parents had inherited from the clearing.

The practice of buying and selling land in the forestry region goes back in 2017 to the welfare of farmers from around the country, according to the low knowledge associated with buying and selling of land. The production of land on land in the forested region was carried out under the hands with the price range of rp 4,000,000,- to rp 1 million,- per hektare (ha).[8]

The land produced in kelurahan tampo has until now been controlled by communities to provide as much as 45 ha (45 ha) of farmland and as many as 3 permanent homes. According to data provided by the world bank, the country's economic growth was expected to reach 6.3 percent in the second quarter of 2007, he said.[9] Land in the kelahan region of tampo remains to this day a conflict between the KPH unit vi island and the local people.

This case illustrates that the real estate seller was not the rightful owner of the land on which it was sold but the owner of the regional forest owner KPH unit vi island of muna. Furthermore, the careful rate of the ground buyers is very small in that they are not sure of the dispute within the object and are not sure that the seller is the rightful owner of the object.

On the basis of this problem, it aims to downplay the issue into law writing in hopes of providing input to the community and to law enforcement.

Formulation of the Problem

Based on the above background description, the problem with this research is:

1) What Is the Legal Protection for Good-Faith Forest Land Buyer in Kelgoong Seems to Be a Debentures of Napabalano Sub-District, And Muna District Conducted Under the Hands?
2) what legal remedies can be taken by the buyer against the seller of production forest area land in Tampo village, Napabalano District, And Muna Regency?

Research Methods

This research is categorized into the empirical legal search type. it is based on issues and or themes that are brought up as research topics. By using empirical research for data collection, which is the secondary and primary data gathering techniques in empirical law research there are 3 (three) techniques used, either separate or separate or used together at the same time in order to come up with conclusions aimed at generating new discoveries in answer to the subject matter established, And the location for research is located in keluralano district of muna district. In a slingshot technique using the random sampling, which is a sampling method that provides the same opportunity or opportunity to take to any population. And it will be analysed with data and information gathered from the research, both in-house interviews, land and community executive committees and then qualitatively analysed.[10]

[8] Wawancara yang dilakukan dengan La Jia, Camat Napabalano masa bakti tahun 2012-2017, pada tanggal 7 Agustus 2021
[9] Wa Ode Sitti Nurlaila, *Loc. Cit.*
[10] Peter Mahmud Marzuki, *Penelitian Hukum*, Kencana Prenada Media Group, Jakarta, 2011, hlm. 22

Discussion

1. Legal Protection for Well - Meaning Production of Forest Land Buyers in the Tampo Sub-District, Napabalano Sub-District, And Muna District That Was Done Under the Hand

A contract or covenant became legal and legally binding for the parties making it. The legitimate terms of the agreement are set in article 1320 of civil code. In article 1320 of the document the four valid terms of the agreement:

a) Permit as voluntary agreement from those who make covenants (*toestemming*);
b) The ability to make a binding (*bekwaamhei*d);
c) Of a particular matter or object (*bepaalde onderwerp*);
d) There is a justifiable cause (kausa) (*georloofde oorzak*).[11]

The first and second requirements involve the subject or parties in the covenant as subjective terms, while the third and fourth requirements are called objective requirements because of the object of a covenant. When a covenant's subjective requirements (agreement and bonding skills) are not met, it does not result in a binding of covenants, but can only be nullified by a judicial decision. When the requirements involving the object of a covenant (a certain matter and the presence of an lawful law) were not set aside, the covenant was null and void.

Here is an explanation of the valid conditions of the covenant:

1) I agree they tied her u It means that the parties involved in the agreement must agree or agree on the points of the covenant. Article 1321 civil code dictates that consensus is invalid if given by error or by force or deceit.

2) The ability to make a bond

Article 1330 civil code makes it clear that everyone is qualified to form bonds unless the laws determine that he is incompetent. Regarding individuals who are not qualified to make covenants we can find in article 1330 of civil code that is:

a) Immature child
b) Person who is put under surveillance;
c) Women who have married in constitutionally and generally all persons who by the law are forbidden to make certain agreements
d) A specific matter or object.

3) Regarding this we can find in chapters 1332 civil code and chapters 1333 civil code. Article 1332 civil code specifies that only items that can be traded can be the subject of a covenant. And article 1333 civil code specifies that an agreement must have as the subject of the least set of items. It is not a hindrance that the amount of goods is uncertain, if any number of them can be determined or counted.

4) Justifiable causality

What he means is that in article 1337 civil code dictates that a cause is forbidden, if the contents of the agreement are forbidden by law or contrary to common decency or order. Additionally, isa chapter

[11] Suharnoko, 2008. *Hukum Perjanjian, Teori dan Analisa Kasus*, Prenadamedia Group, Jakarta, hlm. 1.

1335 civil code records also state that a covenant made without cause or because of a false or forbidden cause was without the power of the law.

Take a look at the case of the problem in The Tampo Sub-District, Napabalano Sub-District, And Muna District Regarding land purchase agreements in the forestry region (3) the 1999 e bill no. 41 letter on forestry stating that individuals are prohibited from receiving, buying or selling, receiving an exchange, receiving a package, storing, or having a known or suspected forestry yield from or illegally picking up. Therefore, the land and land of forestry places, the production of land in tampo household, was null and null, because of the contrary to the objective terms of the agreement.

Chapter 78 verses (5) section number 41 in 1999 on forestry states that anyone intentionally violating the provision as indicated in article 50 verses (3) an e or an f, is threatened with a maximum of 10 (ten) years and a maximum fine $10,000 000,000,000,00 (five billion rupiah).

From the real estate sale case in The Tampo Sub-District, Napabalano Sub-District, And Muna District The real estate owner can be threatened with a maximum prison criminal 10 (ten) years and $10,000 10,000 ($5,000) as in article 78 verses (5) of statute number 41 in 1999 on forestry.

Article 1 is 15 environment minister and forestry rule number 27/ menlhk/setjen/kum. 1/7/2018 of the 2018 loan agreement to the forestry region, which follows the statement of a forest loan to be issued to use forest regions for development beyond forestry activities without changing the function and collapse of forestry.

Loan understanding according to section 1740 civil code[12]It is "an agreement in which the one gives the other one an article of free use, on the condition that the one receiving the item, after putting it on or after a certain time passes, will return it." Next in section 1741 civil code[13] It states that "the lending party continued to be the owner of the thing lent."

In view of the case of the problem it was clear that the land sold by the parties was the forestry land of the region produced by the KPH unit vi island of muna from the land born-loan agreement (ipec), in the sense that the seller of the region was not a land owner that was purchased but a landlord of the region's v1 unit of muna island. In this case, the region's landowners had no good faith in buying and selling land because the seller did not own the land.

While the buyer of land forests was produced in The Tampo Sub-District, Napabalano Sub-District, And Muna District Had good faith in buying land deals because the buyer was completely unaware that the land was the land and was dealing with the real owner of the land that was sold by the sale of the land and that the buyer of the land should have legal protection.

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As a result of literature review, there can be seen an agreement among the writers that "well-meaning buyers" should be interpreted as: "honest buyers, not knowing the defects of the purchased goods." This agreement can be found, among other things, in the following opinions:

[12] R. Subekti dan R. Tjitrosudibio 2004. *Kitab Undang-Undang Hukum Perdata*, Pradnya Paramita, Jakarta, hlm. 448.
[13] *Ibid*

a)"well-meaning buyers are defined as buyers who do not know at all that they are dealing with people who are not really their owners".[14]
b) A well-meaning buyer is someone who buys an item with full trust that the seller truly is the owner of the item he sells".[15]
c)Well-meaning buyers are honest people who do not know the defects attached to the item they buy".[16]

So far, the Supreme Court of the republic of Indonesia (mari) has tried to unify such views, by unanimous agreement of the civil room pleno appearing in a Supreme Court (sema) no. 7/2012. Inside the ke-ix grains it's formulated that:

1) "protection should be given to well-meaning buyers only to discover that the seller is an invalid (an estate sale)."
2) "owner of origin can appeal only a compensation suit to an unjustified seller."
3) In the article on well-meaning buyers, 49 decisions have been handed down to the beneficiary of well-meaning buyers. The most widely used reason was that he had done business through a notary/civil deed deed (ppat) or through public auction. Among the 9 out of the 12 rulings it was a well-meaning buyer if the buyer bought land in front of ppat. When it comes to public auctions, 12 out of 14 rulings state that the buyer has taken good faith. But there are 20 other rulings that are bypassed. The reason for this is that the buyer is not considered to be very careful in checking the land status of selling goods (the ruling ma no. 4340 k/PDT /1986) or the purchase property is still in sengta (the ruling ma no. 1861 k/PDT /2005).Public buyers who do business in front of ppat or at public auctions may not always be viewed by the judge as well-meaning buyers. This is the case if there is a data forgery in purchase (the ruling ma no. 98 of f/PDT /1996, no. 143 k/PDT /2011), or if the national property agency (BPN) has warned land status that is not to be sold (the ruling ma no. 429 k/PDT /2003). When it comes to the auction ground, the buyer is considered to be of no good faith, if he buys his own land that is diagonned (PTS no. 252 k/PDT /2002), or when referring to a land rights that have been removed (the court no. 300 pk/PDT /2002).[17]

The legal protection theory proposed by satjipto rahardjo is understood to mean that protection of the law is a legal matter of protection from harm done by other legal subjects.

"Satjipto rahardjo said that a protection of the law could mean giving stewardship to human rights (human rights) to be harmed by others, and the purpose of law protection is to give society a sense of comfort and security to enjoy all that is rightfully afforded by the law".[18]

According to satjipto raharjo's theory of protection, the transaction could not be a cause or a problem for the buyer, especially in the region selling land without knowing that it was state land obtained from the purchase.

Thus, the responsibility for selling land in forestry regions of the land was to make up for the good - faith sale of land that can be seen in section 1496 civil code, among other things:

[14] R. Subekti, 2014. *Aneka Perjanjian*, PT Aditya Bakti, Bandung, hlm. 15.
[15] Ridwan Khairandy, 2004. *Iktikad Baik Dalam Kebebasan Berkontrak*, UI Press, Jakarta, hlm. 194.
[16] Agus Yudha Hernoko, 2008. *Hukum Perjanjian Asas Proporsionalitas Dalam Kontrak Komersial*, Mediatama, Yogyakarta, hlm. 25.
[17] Widodo Dwi Putro, dkk, 2015. *Pembeli Beritikad Baik dalam Sengketa Perdata Berobjek Tanah*, Puri Imperium Office Plaza, Jakarta, hlm. 11
[18] Satjipto Rahardjo, *Loc. cit*

1) Refunds at purchase price;
2) Returns, if he is obliged to turn the results over to the demands of the owner;
3) Costs paid in connection with customer complaints to be paid, as does the plaintiff's expenses;
4) Reimbursement, losses and interest and the cost of the case concerning purchase and submission, only that has been paid by the buyer.

2. What Legal Remedies Can Be Taken by the Buyer Against the Seller of Production Forest Area Land in Tampo Village, Napabalano District, And Muna Regency

a. Non litigation

In settling disputes in public can generally be done by two means, using formal and non-court courts. To a civil dispute especially land issues, a settlement must not be used by a formal court, but can still be carried out outside the court. This can be seen in article 58 of act no. 48 of 2009 on the judiciary mentions that the settlement of civil disputes can be carried out outside the state court through abitase or alternative settlement of the issue.

The solution of the issue by using a court or outside the court by citizens especially citizens of tampo was not an arbitrary choice of action by people of the community of tampo in settling the issue at hand. The problem is why people of tampo were more inclined to go outside the courts than to use the formal courts at point of resolution. The inclination of citizens of tampo for settlement in settlement by using outside formal courts should basically be viewed asa legal symptom in the lives of people. This symptom according to van dijk as quoted mochamad munir is the legal behavior of citizens.

Thus the use of an outside court mechanism needs to be prioritized, with 8 (eight) the advantage:[19]

1) To reduce congestion and congestion in judicial institutions. The numerous court cases were long prolonged and costly and often produced unsatisfactory results;
2) To increase civic engagement (decentralized law) or to trick those involved in settling disputes;
3) To smooth the path of justice in society;
4) To provide opportunities for a settling of disputes that result in decisions that are accepted by all (win-win solutions).
5) Quick resolution and low cost;
6) Is private and confidential;
7) More likely to strike a deal than the future parties on the line may be well - interfaced;
8) To reduce the prevalence of foul play in judicial institutions

The reason people do not choose to settle disputes through the formal (public court) line, requiring large amounts of money, is to look only formal evidence such as the certificate of possession, too bureaucracy-race-ism to be a long time.[20]

According to yahya harahap, in an effort to settle the issue by using the first level of a formal (common court) court to the kasasi could take from 15 to 20 years.[21]

According to the homans' exchenge theory, the proposed actions are rational if based on profit margin. The basis of this theoretical thinking is that human action was equivalent to an economic act based on profit and loss.[22]

[19] Adi Sulistiyono, 2006. *Mengembangkan Paradigma Non-Litigasi di Indonesia*, UNS Press, Surakarta, hlm. 15.
[20] Sahnan, 2015. *Pilihan Hukum Penyelesain Sengketa Tanah diluar Pengadilan*, Mimbar Hukum Volume 27, Nomor 3, Oktober 2015, Halaman 405-417, hlm 410.
[21] Yahya Harahap, 2014. *Hukum Acara Perdata*, Sinar Grafika, Jakarta, hlm. 317.

Judging from the aspect of social relations, people consider settling disputes by stepping outside the court as a viable action choice to avoid hostilities. Whereas a court settlement only adds to the enmity. Judicial solution is viewed asa perversity of the custom, not of the sense of family, which eventually attracts hostility.[23]

Citizens tend to vote the issue over court according to Idrus Abdullah[24] Is caused by 2 (two) the underlying factor of internal and external factors. Internal factors may include local rules or rules that bind citizens as individuals, as well as groups, which serve as guidelines in behavior and in each society must adhere to them. The norms that serve as guidelines can be religious norms, social norms (customs, customs, or traditions), as well as decency norms in everyday associations. Moreover, what affects these internal factors is their social (charismatic) integrity.

This external factor is affected by 3 (three) the basic factor: first, the demands of the business world; Second, the judiciary is unable to meet society's legal needs; And third, the contentious goal factor. The tendency of society to avoid the miscarriage of judicial dispute is due to the condition that sometimes judicial rulings in a matter give no legal certainty. Furthermore, normative messages were delivered to parties far from the sense of public justice

Conclusion

Based on research and discussion, the writer deduced a few things:

1) Legal protection against well-meaning land buyers would be offset by the region's farmers in replacing the purchase price repayments, return of produce, expenses incurred in connection with the purchase price, change, loss, and interest expenses.

2) The choice of settling disputes involving the land buyers with the sale of land land areas was produced in The Tampo Sub-District, it is conducted outside the court by means of a deliberation with an intermediary between the public, indigenous, and local authorities both from Tampo kelurate and from a debuttal of Napabalano. In addition, the litigation solution was the final solution after another issue had not been successful, so the court of raha was authorized to try for the case in The Tampo Sub-District, Napabalano Sub-District, And Muna District Was the jurisdiction of the state court raha.

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[22] George Ritzer, 1992. *A Multiple Paradigm Science (Sosiologi Ilmu Pengetahuan Berpradigma Ganda) (Terj. Alimandan)*, Rajawali Press, Jakarta, hlm. 91-93.
[23] Mochamad Munir, *Op. cit*., hlm. 194.
[24] Idrus Abdullah, 2002. *Penyelesaian Sengketa Melalui Mekanisme Pranata Lokal: Studi Kasus dalam Dimensi Pluralism Hukum pada Area Suku Sasak di Lombok Barat*, Disertasi, Program Doctor Pascasarjana Universitas Indonesia, Depok, hlm 63-85.

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