



Legal Review on the Transfer of Land Rights (Buying and Selling) to Minors

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Abstract: This study aims to determine the legal review of the transfer of land rights (sale and purchase) to minors. The research method used by the author in this study is normative research. The research approach uses analytical descriptive and uses qualitative analysis techniques. The results of this study show the process of transferring rights to the owner or seller of underage land must meet the conditions for buying and selling land, where the conditions are material and formal. The material requirement is that the land to be traded is the land owned by the seller and the land is not in dispute. While the formal requirements are related to the administration and the deed of sale and purchase of land. So, legally minors in terms of the process of buying and selling land are not and are not regulated in the laws in force in Indonesia unless the minor has a companion or in this case is his guardian so that the process of land transfer or the process of buying and selling land This can be done by a child who is still under age through his guardian according to a court order.

Keywords: Switching; Soil; Child.

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1. Introduction

The role of land in the life of every social creature is as the parent of all the needs that are met in the life of creatures on this earth so it is so important that land has become an absolute (permanent) property owned by every human being. Land has become a valuable treasure economical if used properly, if seen from the benefits it is no longer only the highest economic value but there are other values contained in it, such as the prosperity of the people and welfare people. On the other hand, this need does not underlie that it is easy for someone to own or control land, because it returns to the rules made by the government, namely Article 33 (3) of the 1945 Constitution which states that problems that exist in the earth and natural resources that exist in the land. This earth has been controlled by the state, but all of this is done for the welfare of the people and the prosperity of the people.¹In our daily life, even in society, to meet the needs of life there are often crimes and violations committed by certain people and people who threaten some members of the community, which in the science of law are known as criminal acts.²So with the rapidly growing development of internet technology, it has had a very big impact on the world community.³

One of the objectives of the formation of the UUPA is basically to provide guarantees for the rights to land owned by the people. As a form of guaranteeing legal certainty for the rights of the people, when the government makes a law again, it should not conflict with existing rules, in this case the UUPA. In addition, the UUPA itself has given a signal to the people that ownership of land rights must be proven by certificates of land rights, which are now used as documentary evidence of ownership of land rights. In addition, if you want to register land if the land you control does not have a land certificate, so that this can be avoided from irresponsible people, for example the act of doing double certificates on parcels of land owned by the people. The land registration described above certainly has a clear legal basis, so this is a form of providing legal guarantees to the people. Land registration itself has been stated in Article 19 (1) of the LoGA.⁴ Everyone else, including the government must heed it, by making laws on the basis of natural rights themselves.⁵Because of this, one of the aims of the recognition and establishment of the rule of law is to protect human rights, meaning that individual rights and freedoms are recognized,

¹ Samun Ismaya. Introduction to Agrarian Law. (Graha Ilmu: Yogyakarta, 2011), 27

² Dian Ekawaty Ismail, Mohamad Taufiq Zulfikar Sarson. (2021). Criminology Analysis of Women's as Perpetrators of Domestic Violence Crimes. *Journal of Law Review*. 3(3), 58

³ Mohamad Rivaldi Moha. (2020). The Urgency of Registration of Electronic System Operators for E-Commerce Businesses. *Journal of Law Review*. 2(2), 115

⁴ Urip Santoso. Agrarian Law. (Dating: Jakarta, 2014), 3

⁵ Daffodil, Dolot Alhasni. (2020). Determination of Legal Protection for Neighboring Right Holders. *Journal of Law Review*. 2(1), 67

respected and upheld.⁶ Considering that Indonesia is also one of the countries that puts forward the constitution in every aspect of the life of the nation and state.⁷

After describing the important role of land in human life, then next is the discussion regarding the transfer of rights from one person to another or in legal terms the transfer from one subject to another, this is also often referred to as the transfer of rights. Basically, in terms of the transfer of rights, there are two ways, namely switching or being transferred. Self-transfer in question is the transfer of rights from one subject to another without any legal consequences from the original owner, this is often referred to as inheritance. While the meaning of the word transferred can indirectly be interpreted as the transfer of rights from one subject to another subject through legal actions, for example through the buying and selling process.⁸

Furthermore, to continue the above statement, the buying and selling process in civil law has basically been regulated in legislation, in this case the Civil Code, especially in article 1457 where it is said that in the case of an agreement where the owner of the right has been bound by the provisions of the legislation by handing over his rights to another person and paid at the agreed price. The purpose of this article is to form an agreement in which the owner of the right can give goods/objects to other people and other people have the obligation to pay for the rights granted by the owner.

Based on Article 19 of the LoGA, it is pluralized in Article 37 concerning land registration where it is said that in the case of the process of buying and selling land, basically the owner must be able to show the original land deed to the buyer, this is possible to provide legal certainty to the buyer of the land that is owned by the buyer. will have. According to prospective researchers, in the process of buying and selling land, people who hand over their goods/land to other people must be able to show the authenticity of the land rights to be traded. This is not only to guarantee legal certainty but also to give confidence to the buyer that the land, the land to be purchased, actually has a valid deed from the PPAT.⁹

The legal basis described above can provide an understanding that in the case of the transfer of land rights, it is basically based on applicable laws and regulations, for example, one must sign the deed at the PPAT depart which is then registered with the BPN to get a valid deed. . So it can be concluded that the transfer of things in any way, if it is proven by a valid deed, then the transfer of rights is contrary to the existing laws and regulations.

⁶ Badu, Lisnawaty. (2012). Euthanasia and Human Rights. *Legality Journal*. 5(1), 1-11

⁷ Fakhris Lutfianto Hapsoro. (2020). Constitutional Interpretation in Constitutional Testing to Realize The Living Constitution. *Journal of Law Review*. 2(2), 145

⁸ Ibid.

⁹ J. Andy Hartanto. *Land Law*. (Surabaya: LaksBang Justitia, 2014), 83

The process of transferring land rights due to sale and purchase is regulated in the provisions of Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration which confirms that the transfer of land rights and ownership rights to flat units through sale and purchase, exchange, grants, income in the company and other legal actions, the transfer of rights, except for the transfer of rights through auction, can only be registered if it is proven by a deed made by the authorized PPAT according to the provisions of the applicable laws and regulations.

Heirs who are underage, any related actions cannot carry out legal actions by themselves because according to law, they are considered legally incompetent (Article 1330 jo 330 of the Civil Code). Minors are considered incompetent to carry out legal actions, so an adult is needed as their guardian. It is emphasized in the provisions of Article 345 of the Civil Code that if one of the parents dies, the guardianship of the minor child is assumed by law by the living parent, as long as the parent is not released or dismissed from the parent's power. Children who are not under the auspices of their parents need to be appointed a guardian for them by the local court. This is confirmed in the provisions of Article 359 of the Civil Code.¹⁰ The improvement of people's welfare facilitated by this law is certainly synergistic with Subekti who has the thought that "the law is dedicated to the direction of the state which in essence is to produce glory and joy for the people."¹¹

For example, a comparison of cases that occurred outside the Gorontalo area, namely in Padang Pulau Village, Bandar Pulau Subdistrict, where there was a process of buying and selling land that was not carried out according to legal procedures applicable by minors. At the time of the transaction, the Village Head, Village Apparatus and the parties are present, in the purchase it is through a receipt by writing down the amount of money that must be paid by the buyer to the seller and writing down the full names of each party. However, in the buying and selling process, the buyer does not get a land sale and purchase deed, because the land sale deed can only be obtained when the land sale and purchase transaction process is carried out before the Land Deed Making Officer, which is abbreviated as PPAT.

Furthermore, in one of the conditions to obtain a land sale and purchase agreement, all transaction procedures must be carried out before a state official or the so-called Land Deed Maker. 37 of 1998, PPAT is referred to as a public official who is given the authority to make authentic deeds regarding certain legal actions related to land rights or Property Rights to Flat Units. However, because of the minors in the cases that the author has mentioned above, legally the minors have not met the requirements both formally and materially.

¹⁰ Ariefulloh, Abd Asis, Maskun. (2019). The Dilemma of the Implementation of Traffic Violation Sanctions Against Children. *Journal of Law Review*.1(2), 198

¹¹ Jufryanto Puluhulawa, Mellisa Towadi, and Vifi Swarianata. (2020). Leato / Japanese Cargo Wreck Underwater Site Legal Protection. *Journal of Legal Reform*, 24(2), 201

2. Method

The research method used by the author in this study is normative research based on the opinion of Mukti Fajar and Yulianto Ahmad where it is said that normative research basically examines norms, legal rules, legal principles and legislation.¹²The research approach uses analytical descriptive and uses qualitative analysis techniques.

3. Legal Review on the Transfer of Land Rights (Buying and Selling) to Minors

One of the transfers of land rights can occur because of buying and selling. Buying and selling can only be carried out by parties who meet formal or material requirements. The material conditions are that the seller has the right and authority to sell the land in question, the buyer has the right to buy the land in question, the land rights in question may be traded and are not in dispute. Formal requirements for buying and selling land. If all the material requirements have been met, the parties face PPAT to enter into a land sale and purchase agreement. Minors who have land rights are not automatically authorized to transfer their land rights. Minors, because they are considered incompetent to carry out legal actions, need a guardian to be able to transfer their land rights through buying and selling.

In its implementation in the field, it shows that there is still the practice of transferring land rights by the guardian without prior determination from the local district court before carrying out any buying and selling actions. Due to the absence of a determination from the local district court beforehand, it will cause legal consequences in buying and selling activities. For example, the case in Sidomukti Village, Mootilango District, where there has been a process of buying and selling land by minors which basically does not refer to the provisions of the applicable laws and regulations. For example, the child does not meet the formal and material requirements as stipulated in the existing regulations. In its implementation, the sale and purchase of land does not have a guardian or a court order.

Juridically, minors in terms of the process of buying and selling land are basically not yet and are not regulated in the applicable laws in Indonesia, based on the explanation above this can be done if the child has a companion or in this case is his guardian, so that the process of land transfer or sale process Buying the land can be done by a child who is still a minor. If referring to the opinion of Rusdi¹³that a person's ability to carry out legal actions is related to physical maturity in the land law based on the provisions of Article 330 of the Civil Code, namely "minors are those

¹² Mukti Fajar, Yulianto Achmad. *Dualism in Legal Research (Normative and Empirical)*, (Yogyakarta: Pustaka Pelajar, 2010), 153.

¹³ Rusdi Pohan. *Educational Research Methods*. (Bandung: PT. Citra Aditya Bakti, 2007), 29

who have not reached the age of 21 years and have not previously been married", this is understandable because it is not clear regarding the age provisions. mature in law, especially customary law which can be used as the basis for its regulation. Furthermore, according to him, in conducting the sale and purchase of land with certificates belonging to the minors, it must be accompanied by a Letter of Determination from the Court. This is in accordance with the provisions of Article 309 and Article 393 of the Civil Code, the transfer of property rights from minors must be based on a decision from the Court.

In practice the transfer of rights that often occurs in the community is the transfer of rights by way of buying and selling. Referring to Adrian Sutedi's opinion, the conditions that have a role in determining the legality of the land sale and purchase process are material requirements and formal requirements. The formal and material requirements referred to are as follows:

a) The material requirements are:

- 1) The seller has the authority to sell the land he owns;
- 2) The owner in this case called the seller has the right to sell the land he owns;
- 3) the buyer has the right to buy the land sold by the seller;
- 4) The land being traded is not currently in disputed land status.

According to this explanation, it can be concluded that the material requirements are relevant requirements regarding facts related to subjects and objects. Article 1320 of the Civil Code stipulates that every sale and purchase event must meet material requirements.

b) Formal terms

Related to administration, namely making authentic deed of sale and purchase. In addition, formal requirements can also be in the form of a certificate of death of the testator and a certificate as an heir. The administrative provisions referred to are as in the case of each party conducting the sale and purchase or attended by a valid legal representative and witnessed by two witnesses, and equipped with certain requirements such as ID cards, PBB, KK and so on which are conditions in the case of buying and selling. soil.

If all material requirements have been met, the parties involved in the buying and selling activities must appear before the PPAT to enter into a land sale and purchase agreement as outlined in an authentic deed made by the PPAT. In Government Regulation Number 24 of 1997 concerning Land Registration, buying and selling activities must be carried out by the parties involved in front of the PPAT. Any agreement that aims to transfer land rights must be proven by a deed where the deed is used as evidence that there has been a process of transfer of sale and purchase rights made by PPAT.

According to this explanation, it is concluded that the above conditions can be carried out by minors when carrying out the process of buying and selling land accompanied by a guardian or assistant in accordance with the determination of the district court as the author discussed previously and where the process of buying and selling agreements carried out before the PPAT is normatively obliged to fulfill the provisions contained in Article 1320 of the Civil Code which regulates the conditions for the validity of an agreement. In addition to having to fulfill the four conditions for the validity of the agreement as regulated in Article 1320 of the Civil Code, the transfer of land rights through buying and selling also needs to be considered regarding the material requirements of buying and selling land rights.

Legal acts committed by a child are regulated in Article 47 paragraph (1) of Law Number 16 of 2019 on the amendment of Law Number 1 of 1974 concerning Marriage which states that children who have not reached the age of 18 years or have never married are under the authority parents as long as they are not deprived of power. Paragraph (2) of the law stipulates that the parents represent the child regarding legal actions inside and outside the court. Further regulation is regulated in Article 48 which states that parents are not allowed to transfer rights or pledge permanent assets owned by their children who are not yet 18 years old or have never been married, unless the interests of the child so desire. The representation by the parents does not necessarily apply in the case of the relinquishment of land rights owned by a child. This needs to be considered because the release of land rights will reduce the rights of a child so that there needs to be legal protection.

According to the author's opinion, in the implementation of buying and selling land carried out by minors, it can be done if there is an emergency will in the agreement. The author's intention is that the process of buying and selling land can be carried out, but the minor is accompanied by his parents without a decision from the court, but with the will of the seller having an emergency interest and must get money from the sale of the land, for example, the seller wants to go on a pilgrimage so that he needs funds quickly or in a short period of time. Other wishes, for example, from family members, must be operated on so that it requires fast costs. So that the buying and selling process must be carried out in front of the Village/Kelurahan Head, Village Apparatus and the parties. However, an agreement must be made in advance that after the sale and purchase of land occurs, the receipt must be signed by the parties and witnesses who are at the place of the land sale and purchase process. Furthermore, there must also be an agreement that after the seller fulfills his needs at a fast cost, the parties must be ready to complete the documents before the PPAT or in front of a notary so that the buyer gets the deed of sale and purchase of land. However, it must also be noted that the buyer must appoint a guardian through a court order, so that both parties are legally able to take legal action. Because in the process of buying and selling land, only formal requirements and material requirements must be fulfilled. Furthermore, there must also be an agreement that after the seller fulfills his needs at a fast cost, the parties must be ready to complete the documents before the PPAT or in front of a notary so that the buyer gets the deed

of sale and purchase of land. However, it must also be noted that the buyer must appoint a guardian through a court order, so that both parties are legally able to take legal action. Because in the process of buying and selling land, only formal requirements and material requirements must be met. Furthermore, there must also be an agreement that after the seller fulfills his needs at a fast cost, the parties must be ready to complete the documents before the PPAT or in front of a notary so that the buyer gets the deed of sale and purchase of land. However, it must also be noted that the buyer must appoint a guardian through a court order, so that both parties are legally able to take legal action. Because in the process of buying and selling land, only formal requirements and material requirements must be met. However, it must also be noted that the buyer must appoint a guardian through a court order, so that both parties are legally able to take legal action. Because in the process of buying and selling land, only formal requirements and material requirements must be met. However, it must also be noted that the buyer must appoint a guardian through a court order, so that both parties are legally able to take legal action. Because in the process of buying and selling land, only formal requirements and material requirements must be met.

The land sale and purchase agreement made by the previous parties is a binding to then carry out a sale and purchase agreement before a notary, witnessed by at least 2 witnesses who according to the provisions of the applicable laws and regulations meet the requirements to act as witnesses in a legal act. , who testifies, among others, regarding the presence of the parties or their proxies, the existence of the documents shown in the making of the deed, and the implementation of the legal action by the parties concerned as regulated in the Regulation of the State Minister of Agrarian Affairs/Head of BPN Number 03 of 1997 concerning Regulation Implementation of Government Regulation Number 24 of 1997 concerning Land Registration (Permen Agraria No. 03 of 1997).¹⁴The reason is that government policies as outlined in laws and regulations are always followed by criminal sanctions¹⁵and the involvement of the State which is also one of the characters of the conflict phenomenon.¹⁶ Furthermore, the form of the legal system also requires people to have a sense of love and affection, mutual respect, mutual help, loyalty, honesty, and adequate physical and spiritual support, so that the implementation of the legal system can run in accordance with people's lives in general.¹⁷Furthermore, an important point in the preparation of every policy issued by the Government comes

¹⁴ Ibid, 49

¹⁵ Hwian Christianto, Michelle Kristina. (2022). Fulfilling the Right of Education during Covid-19 Pandemic Period: A Comparative Study. *Journal of Law Review*. 4(1), 1

¹⁶ Yudha Chandra Arowana. (2019). Mediation Path in the Settlement of Land Disputes as an Impetus for the Fulfillment of Human Rights. *Journal of Law Review*. 1(2), 216

¹⁷ Dedi Sumanto, Titin Samsudin, Fikri Asnawi Amiruddin. (2021). The Existence of the Religious Court in Handling Divorce Cases on the Reason of Domestic Violence. *Journal of Law Review*. 3(2), 228

solely from the wishes of the people.¹⁸ So that when this does not cause problems and if the policy is not in accordance with the behavior patterns of the community, then the government must resolve a problem with the community itself.¹⁹

According to the law, all people are in a state of competence (authority) to act, so that they can take legal actions, including making or signing an agreement, except those regulated by law. Those who are excluded are called people who are incompetent (not authorized) to take legal action, namely the following parties:²⁰

- a. Immature child
- b. People who are under mercy
- c. Women who have been married in matters stipulated by law and in general all those who are prohibited by law from making certain agreements. However, based on SEMA number 3/1963 in conjunction with Article 31 of Law number 1 of 1974, women who are still bound in marriage are capable of carrying out legal actions themselves.
- d. People who are prohibited by law from doing certain actions

So if one or both parties to the agreement are found to be incompetent, then the juridical consequences are as follows:²¹

1. If the agreement is made by a minor (minor), then the agreement will be canceled at the request of the child who is not yet an adult, solely for reasons of immaturity of the child. Article 1446 paragraph (1) of the Civil Code in conjunction with Article 1331 paragraph (1) of the Civil Code.
2. If the agreement is made by a person who is under guardianship, then the agreement is canceled at the request of the person under guardianship, for the sole reason of being under the custody.
3. The agreement made by people who are incapable of acting, which is later declared void, then the parties to the agreement must place the agreement in a state before the agreement was made, so the agreement is considered as if it did not exist.

Based on the explanation above, it can provide an understanding that again and again in the process of buying and selling land, minors can not do it unless they are

¹⁸ Nurdin, Putri Handayani. (2019). Political Law Regulation of Political Education by Political Parties. *Journal of Law Review*. 1(2), 146

¹⁹ Fitriyadi, Ahmad Adi. (2020). Differentiation of Refugees and Asylum Seekers in International Refugee Law and Its Relation to the Principle of Non-Refoulement. *Journal of Law Review*. 2(2), 127

²⁰ M. Fuad Fatoni, Weppy Susetyo. Juridical Overview of the Contract of Sale and Purchase of Land with the Legal Subject of Minors. Article, 60

²¹ Munir Fuady. *Civil Law Concept*. (Raja Grafindo Persada: Jakarta. 2014), 196-197

a woman, then it can be done, but with a note that the woman is married, so that by law the woman can do her own legal actions. without a guardian. In other words, if it is concluded from some of the statements above, the first is called competent if the person is 21 years old or legally the child is an adult and is over 18 years old, the second is still a minor but has been bound by marriage. then by regulation that person can take legal action and third is the person who wants to take legal action is not under guardianship or under age.

Therefore, with the conditions mentioned above and must be met by minors who want to carry out the process of buying and selling land, basically only protecting the interests of the child himself and the conditions given, according to the author, are to provide legal certainty for the land to be purchased. by the child, in addition to fulfilling the conditions in the sale and purchase of land carried out by minors solely to obtain proof of the land sale and purchase agreement. The appointment of a guardian basically has the duty and responsibility to take care of the interests of the child who is under his guardianship as well as the property that is under the control of the child.

According to Lili Rasyidi, the duties and responsibilities of guardians can be seen in the provisions of Article 51 Paragraph (1) of the Law of the Republic of Indonesia Number 16 of 2019 on the amendment to Law Number 1 of 1974 concerning Marriage which confirms that guardians are obliged to take care of children under their control and property as well as possible by respecting the religion and beliefs of the child.²²The term liability in legal terminology is often also replaced by liability. Responsibility can be interpreted as a basic willingness to carry out what is an obligation.²³Local government is a subsystem of the government of the Unitary State of the Republic of Indonesia. Therefore, all the goals and ideals mandated by the opening of the 1945 Constitution of the Republic of Indonesia are also the ideals and goals of local governments that must be achieved.²⁴If you refer to what Prof. Fenty Puluhalawa in his writings that the government through the law has provided a starting point for the judiciary, which is carried out for the sake of justice based on the One Godhead.²⁵ To quote as said by Fence M. Wantu in his Journal that the essence of justice is an assessment from one person to another, which is generally seen from the party receiving the treatment only.²⁶ Quoting as stated by Suwitno

²² Lili Rasyidi. *Marriage and Divorce Law in Malaysia and Indonesia*. (Bandung: PT Pemuda Rosdakarya, 2011), 144-145

²³ Tijow, Luciana. (2010). Protection of Human Rights to the Right to Life of Children in the womb outside of a legal marriage. *Legality Journal*. 3(2), 88

²⁴ Novendri M. Nggilu. (2020). Juridical Review of Criminal Sanction Arrangements in Gorontalo Provincial Regulations. *Lambung Mangkurat Law Journal*. 5(2), 112

²⁵ Fenty Puluhalawa, Lusiana M, Tujow, Sutrisno. (2020). Application of the Principles of Justice, Legal Certainty and Benefit in Judge's Decisions. *Gorontalo Law Review Journal*. 3, (2), 174

²⁶ Fence M. Wantu. (2013). Judge Constraints In Creating Legal Certainty, Justice, And Benefits In Civil Court. *Legal Pulpit Journal*. 25(2), 206

Yutye Imran that Justice serves as a guide to distinguish between fair and unfair actions, elements of the aspect of justice can be contained in the substance.²⁷

4. Conclusion

The process of transferring rights to the owner or seller of underage land must basically meet the conditions for buying and selling land, where the conditions are material and formal. The material requirement is that the land to be traded is the land owned by the seller and the land is not in dispute. While the formal requirements are related to the administration and the deed of sale and purchase of land. So, legally minors in terms of the process of buying and selling land are basically not and are not regulated in the laws in force in Indonesia, unless the minor has a companion or in this case is his guardian, so that the process of land transfer or the process of buying and selling land This can be done by a child who is still under age through his guardian according to a court order.

There should be regulations governing the obligation to apply to be a companion or guardian in the process of buying and selling land that will be carried out by minors.

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²⁷ Suwitno Y. Imran. (2021). The Urgency of Regulation of the Ultra Qui Judicat Principle in Criminal Judgments. Journal of Law Review. 3(2), 398

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