
The Principle of Horizontal Separation in the Sale and Purchase of Land which Contains a Building Rental Agreement

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Abstract: *One example of a legal action that occurs as a result of the principle of horizontal separation is someone who rents out the building only, then sells the land. Normatively, applying the principle of horizontal separation is legal. However, in practice in the field it causes problems, especially for buyers of land objects whose building leases are still for a long period of time. This research aims to describe the application of the principle of horizontal separation in the sale and purchase of land where there is a building lease agreement and legal protection for buyers of land objects on which there is a building lease agreement. This type of research is called library research. The approach used in this research is a normative approach. Data collection techniques include secondary data resulting from library studies which aim to obtain concepts, theories, as well as information and conceptual thinking, both in the form of laws and other scientific works. Meanwhile, the data analysis is descriptive. The results of this research indicate that legal actions regarding land do not necessarily include legal actions regarding buildings and plants on them. The existence of the principle of horizontal separation is a legal loophole to deceive several parties. Someone could sell the land, but the building is still rented to another party. Therefore, the criteria for the principle of horizontal separation of land and/or buildings are important to know and ensure as a basis for providing legal protection to buyers. If a legal action on land is intended to cover buildings and plants on it, then this must be stated expressly in a deed proving the implementation of the legal action.*

Keywords: *The Principle of Horizontal Separation, Buying and Selling, Renting.*

1. INTRODUCTION

Currently, agrarian regulations in Indonesia are no longer regulated in the Civil Code (KUHPerduta). The implementation of agrarian law in Indonesia in a unified manner is regulated in Law Number 5 of 1960 concerning Agrarian Principles (UUPA). The discussion about land is of course very closely related to all the objects and buildings attached to it.

There are two principles that regulate legal actions relating to land and attached objects and buildings, namely the principle of horizontal separation and the principle of attachment or accession. Land arrangements based on the UUPA are carried out according to the principle of horizontal separation, while the principle of attachment or accessie is adhered to by the Civil Code (KUHPerduta).

Based on UUPA as a regulation governing agrarian law, the principle that applies in land management should be the principle of horizontal separation. However, in practice what happens in the field is not like that. These two principles, both the Horizontal Separation Principle and the principle of attachment or accession, tend to be implemented (Katya Riksil, 2020).

The principle of horizontal separation is a principle in land law regulated in customary law, implied in Article 5 and Article 44 paragraph (1) UUPA. Then the land is separated from all objects attached to it, such as buildings and trees. In other words, UUPA does not contain provisions regulating the status of buildings or houses or plants. However, in practice in the field which often occurs in society, it is still found that there are land buying and selling practices that ignore the principle of horizontal separation, for example the seller or buyer wants the entire object on the land to be rented or sold or even bought (Fitrian, Achmad, 2022).

One of the legal actions that occurs as a result of the principle of horizontal separation is someone renting out a building, then he sold his land. Normatively, applying the principle of horizontal separation is legal. However, in practice in the field it causes problems, especially for buyers of land objects whose building leases are still for a long period of time.

The transfer of land rights in the legal act of sale and purchase must of course pay attention to the validity and authenticity of the transfer of rights, so that the Sale and Purchase Agreement can be made in the form of a Deed (Mardesiska, et .al, 2020). The legal act of buying and selling land as an agreement is of course bound by a legal norm, namely Article 1320 of the Civil Code (KUHPerduta), where the conditions for the validity of an agreement are agreement, competence, halal reasons and certain conditions. Therefore, the principle of horizontal separation adopted by the UUPA has legal force in legal actions where people rent out their buildings and also sell land.

This article will discuss how to apply the principle of horizontal separation in buying and selling land where there is a rental agreement. Apart from that, this article will also discuss legal protection for buyers of land objects on which there is a building rental agreement.

2. RESEARCH METHODS

This type of research is called library research. Library research is research carried out using references in the form of books, journals, newspapers, magazines or reports of previous research results. (Hamzani, 2015). The approach used in this research is a normative approach.

The normative approach is an approach that relies on the most important legal materials by exploring theories, concepts, legal foundations and statutory regulations related to this research. Data collection techniques include secondary data resulting from library studies which aim to obtain concepts, theories, as well as information and conceptual thinking, both in the form of laws and other scientific works. Meanwhile, the data analysis is descriptive. The descriptive analysis method is to present all existing problems precisely and as clearly as possible (Hamzani, 2015).

3. RESULTS AND DISCUSSION

Some discussions of the core problems resulting from this research are:

3.1. Application of the Principle of Horizontal Separation in the Sale and Purchase of Land where there is a Building Rental Agreement.

Law Number 5 of 1960 concerning Agrarian Principles (UUPA) is the work of the nation which exists as a legal basis for land regulation that embodies the needs, culture and character of Indonesian society. Before the enactment of the UUPA, Indonesia adhered to two different land laws that regulated land, namely; Colonial Land Law which is regulated in Civil Law and Customary Land Law which originates from customary law (Ganindra, et.al.2017).

There are differences in land regulation, where colonial land law based on the Civil Code adheres to the principle of attachment or also known as the *natrekking/accesie* principle. This principle of attachment is clearly regulated in the Civil Code (Civil Code), particularly in Article 500, Article 571 and Article 601 which state that ownership rights to a plot of land also include ownership of everything that is on the land or land. So it can be said that ownership rights to land also include ownership rights to the buildings located on it, because buildings are part of the land and buildings erected on land belonging to another party will become the property of the land owner.

The principle of attachment adopted by colonial land law is certainly not in accordance with customary land law which adheres to the principle of horizontal separation. The principle of horizontal separation adopted in customary land law states that buildings, plants and objects on the land are not part of the land. Land ownership does not include ownership of the building above it, the building is under the ownership of the party who built the building.

Indonesian Agrarian Law Based on UUPA adheres to the principle of horizontal separation, which states that buildings and plants on the land are not part of the land. Land rights do not automatically include ownership of buildings and plants on them. The application of the principle of horizontal separation in the UUPA is in accordance with the principle of Customary Law which is the basis of the UUPA, which states that the owners of land and the objects on it are separated.

Based on Article 1338 paragraph (3) of the Civil Code (KUHPerdata) states that legal action contracts must be carried out in good faith, land sellers are obliged to report all legal actions that occur on their land. In an agreement, good faith plays an important role, because with the good faith shown by the parties in making an agreement, the parties will feel protected. In the legal act of buying and selling land, the seller must provide honest and fair information regarding the condition of the land to be sold and not hide anything related to the land to be

sold. Likewise, buyers must have a careful attitude, to check and ensure that the land they buy has no disputes (Muliarta, I.G.N, 2022).

The sale and purchase of land where there is a building rental agreement is the result of applying the principle of horizontal separation to buildings and plants located on land that is not part of the land. Therefore, the seller must have good faith and the buyer must also have the principle of caution.

3.2. Legal Protection for Buyers of Land Objects on which there is a Building Rental Agreement

The state exists as a community agreement to obtain certainty, justice, prosperity, this is then included in the Constitution, Article 33 paragraph (3) of the Constitution requires the state to regulate and manage Indonesia's natural resources for the welfare of all Indonesian people.

Land is an important essence for Indonesian society. However, in the practice of people's lives there are various problems, especially due to buying and selling. As a sovereign state, it must be responsible for the livelihood of its people and must be able to legally protect the community in the transfer of land rights. Therefore, it is hoped that the policies created and issued by the state can be a solution to this problem. "To guarantee state legal protection for citizens, Article 28 D paragraph (1) of the 1945 Constitution mandates that every citizen has the right to guarantees and protection as well as equality before the law" (Dewi, L.K.2023).

The principle of horizontal separation gives the legal effect that the building and the plants on the land do not constitute one unit. Therefore, ownership rights to buildings and plants on a plot of land do not automatically become the rights of the owner of the land. The transfer of land rights in the form of buying and selling land is not necessarily accompanied by buildings and plants on it, it could be that on the land there is a legal act of renting out buildings.

The transfer of land rights takes the form of land sale and purchase law, where there is a lease on the building, certainly results in losses for the buyer. The buyer may have the intention to buy the land, which means he immediately owns the building on the land for immediate occupancy. However, due to ignorance of land law, the buyer cannot occupy the building because there is a legal act of renting. Moreover, the rental act has a long period of time, in this case the land buyer will certainly suffer a loss. Therefore, buyers must receive legal protection.

Government Regulation Number 24 of 1997 concerning Land Registration to achieve the aim of land registration, namely legal certainty, requires every plot of land to be registered at the Land Office to issue a certificate. The requirement for land registration at the Land Office is that a sale and purchase deed be made by the Land Deed Official. Making a Deed must be carried out with the principle of caution, because it is possible that the parties do not understand land law, or to avoid bad faith on the part of one of the parties.

Actions in bad faith, one example of which is when the seller sells a plot of land title certificate even though there is a legal act of leasing on it. If someone sells in good faith, then conveys that on his land there is a legal act of leasing which is still ongoing, and the buyer also has no objection to this, of course it will not be a legal problem.

It becomes a legal problem if the land seller hides the legal actions of renting the building on the land being sold, and it turns out the buyer is not happy with this. Therefore, this must be confirmed first by the parties before making an agreement in making a sale and purchase deed.

If legal actions regarding land are intended to include buildings and plants on them, then this must be expressly stated in a deed that proves the implementation of the legal action in question.

4. CONCLUSION

The transfer of land sale and purchase does not automatically include legal actions regarding plants and buildings on it. The principle of horizontal separation results in a legal vacuum and opportunities to commit fraud against other parties. Someone could sell the land, but the building is still rented to another party. Therefore, the criteria for the principle of horizontal separation of land and/or building control are important to know and ensure as a basis for providing legal protection to the buyer. If legal action on land is intended to include buildings and plants on it, then this must be expressly stated in the deed that proves the implementation of the legal action.

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