

Underhand Land Buying and Selling Practices and Their Legal Consequences

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Abstract. *Underhanded land transactions, which are carried out informally without a legal process regulated by the government, are still common in various regions including Gondai Village. Although practical, these transactions carry significant legal risks. This study uses Lawrence M. Friedman's legal system theory, which divides the legal system into three components: structure, substance, and legal culture, to examine weaknesses in the legal system related to these transactions. This study aims to identify weaknesses in the legal system based on Friedman's theory and to develop steps to increase public legal awareness regarding land transactions. Using a qualitative approach and descriptive analysis method, data were collected through literature studies, in-depth interviews, and field observations. Underhanded land transactions show weaknesses in the structure, substance, and legal culture. To overcome this, comprehensive improvements are needed: strengthening government institutions, simplifying regulations, and improving legal culture through education and socialization. High legal awareness helps parties involved understand their rights, obligations, and risks, including aspects of the legality of land ownership, administrative requirements, and tax payments.*

Keywords: *Buying; Land; Selling; Transaction; Underhand.*

1. Introduction

Land plays an important role as a social asset and capital in development. As a social asset, land binds society in the life of the nation and state. As capital, land must be used for the welfare of the people fairly. Land is highly valued because of three components: benefits to its owners, limited supply, and economic value. Land is also a status symbol, encouraging people to own more land.¹

Land can be acquired through inheritance, grant, exchange, or sale. Land sale and purchase is defined as the exchange of money to obtain land. According to Van

¹Achmad Rubaie, 2007, Law on Land Acquisition for Public Interest, Publisher Bayumedia Publishing, Malang, , p. 1

Dijk, the transfer of land rights can be through sale, exchange, mortgage, grant, and rental.²

To obtain legal protection, land rights must be registered with the local Land Office, so that they fulfill 3 (three) cumulative requirements, namely:

1. The issuance of the certificate is 5 years old or more;
2. The certificate issuance process is based on good faith;
3. The land is physically controlled by the land rights holder or his attorney.³

By implementing land registration, a person will obtain or get a proof of land ownership which we commonly call a land certificate. By issuing the land certificate, a person can avoid the possibility of disputes regarding land ownership, especially with third parties.

Since the UUPA was enacted, land sales and purchases require an authentic deed from the PPAT for registration, ensuring legal certainty and protection. Government Regulation Number 24 of 1997 regulates land registration to avoid disputes.⁴

The practice of buying and selling land without a certificate is still often found in the customs of rural communities, especially those that are done verbally or with receipts, often in front of the village head without written evidence. This is done because it is considered faster and cheaper, although it carries legal risks.

This method of land sale and purchase transaction is actually also done verbally, but as a sign of payment for the purchase of land, the buyer submits a receipt containing the amount of money that they have previously agreed upon with the seller. Then the buyer will occupy the land that will be purchased or directly work on the land. Third, the land sale and purchase transaction is carried out in front of the village head or lurah. Here the seller and buyer agree on the price of the land to be sold, and they meet the village head or lurah to carry out the sale and purchase of the land. After the time and day are determined by the village head or lurah, the village head or lurah along with the village officials come to the place of the land to be sold. Furthermore, the land is measured by the village officials witnessed by the village head or lurah, the seller, the buyer and neighbors as witnesses. Data on land measurements are recorded by the village officials in a "statement letter", where the contents of the letter are the land sale

²Fahmi Putra Dewanto, LEGAL REVIEW OF THE UNDERHAND LAND SALE AND PURCHASE AGREEMENT WITH PUTU, 2022, SAN VERSTEK (CASE STUDY NUMBER: 59/Pdt.G/2018/PN.Smg), SULTAN AGUNG SCIENTIFIC JOURNAL, Sultan Agung Islamic University, Semarang, September 2, pp. 414-437. <file:///C:/Users/HP/Downloads/26788-59394-1-PB.pdf>

³Article 37 paragraph (1) Government Regulation no. 24 of 1997 concerning Land Registration,

⁴Johara T. Jaya Dinata, 1999, Land Use in Rural, Urban and Regional Planning, ITB, Bandung, p. 1.

and purchase transaction from the seller to the buyer, the area of land, the signatures of the parties, witnesses and the village head or lurah which have been stamped.

The object of the sale and purchase of land carried out underhand is the former Indonesian rights to land better known as customary land or former customary land, which for the sake of simplifying the registration process, the proof of the rights in question can be used as a basis for confirmation of rights by the head of the land registration office. Requirements regarding the origin of the land or land data can be obtained from the village C book, which is a book that exists or is owned by the village which contains data on land in the village concerned. In the village C book, the origin of land ownership will be seen.

The author compiled this journal entitled "Practice of Land Purchase and Sale Under Hand and Its Legal Consequences," because this practice is still common.

2. Research Methods

This research uses an Empirical Law approach method which uses specifications analytical descriptive. The data used includes secondary data and primary data. Data retrieval comes from primary legal materials, secondary legal materials, and tertiary legal materials.⁵

3. Results and Discussion

1. The practice of buying and selling land underhand, and its legal consequences

a. Factors that Underlie Why People Still Carry Out Underhanded Land Buying and Selling

The practice of underhanded land sales in Gondai Village, Langgam District, Pelalawan Regency, Riau, still often occurs. This phenomenon is the result of a combination of complex social, economic, cultural, and administrative factors. In this context, it is important to understand the reasons behind the continuation of this practice and its legal impact on local communities.

The practice of buying and selling land underhand in Gondai Village is generally carried out without going through official procedures and without valid legal documents. Transactions are usually based on trust between the parties involved, with verbal agreements or simple written evidence such as receipts, from the results of research and interviews with respondents, there are several factors, some of which are that people still choose to buy and sell underhand on land with letter C status and do not take care of the Certificate.

⁵ Soejono Soekanto, 2007, Introduction to Legal Research, UI Press, Jakarta, p. 45

1) Land Buying and Selling Procedures Under Hand

Underhand land transactions, or what is known as informal transactions without involving the legal process regulated by the government, are still common in many areas. Although these transactions are often done for convenience and speed, they carry significant legal risks. This explanation will outline the general procedure for underhand land transactions, including the steps usually taken, as well as the risks and potential consequences.

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Steps in the Procedure for Buying and Selling Land Under Hand

a) Initial Agreement between Seller and Buyer

The first step in buying and selling land underhand is an agreement between the seller and the buyer regarding the price and terms of sale. Both parties usually negotiate without involving a third party or a notary. This agreement is often based on trust and personal relationships.

b) Physical Land Inspection

Buyers will usually inspect the physical condition of the land, including the area, location, and boundaries of the land. This inspection is often done without involving an official survey or checking legal documents such as land certificates.

c) Making a Simple Agreement Letter

After reaching an agreement, the seller and buyer will make a simple agreement stating that the land sale and purchase transaction has been carried out. This letter usually includes basic information such as the identity of the seller and buyer, description of the land, price, and payment terms. This agreement may only be signed by both parties without witnesses or notaries.⁶

d) Payment

⁶Interview with Muhammad Rizal Ma'ruf, a resident of Pangkalan Gonda Village, on April 29, 2024, at 14:00 WIB.

Payment is made according to the agreement that has been reached. Payment can be made in cash or via bank transfer. In some cases, payment is made in installments based on an agreed schedule.

e) Land Transfer

Once payment is received, the seller hands over the land to the buyer. This handover is usually done physically, with the buyer taking possession and use of the land.

f) Documentation and Storage of Agreement Letters

The agreement that has been made and signed is kept by both parties as proof of the transaction. However, because there is no official approval from the government, this letter does not have strong legal force.

2) Risks and Potential Consequences of Underhand Land Purchases

a) Legal Uncertainty

Land purchased through underhand transactions does not have valid legal evidence. This means that ownership of the land is not legally recognized, so the buyer has no legal protection in the event of a dispute. This legal uncertainty can cause serious problems in the future, especially if another party claims ownership of the land.

b) Land Dispute

Without official documents, land disputes can easily arise. Other parties, including heirs or dishonest sellers, can claim that the transaction was invalid or that the land still belongs to them. These land disputes are often difficult to resolve and can end up in court at high costs and long times.

c) Financial Loss

Buyers risk losing their money if the transaction is declared invalid or the land turns out to be problematic. Without legal protection, buyers have no basis to claim a refund or compensation from the seller.

d) Difficulties in Land Development

Land purchased through underhand transactions is difficult to develop. Buyers cannot use the land as collateral for bank loans or apply for building permits because there is no legal proof of

ownership. This hampers the potential use of land for investment or development purposes.

e) Obstacles in the Next Buying and Selling Process

If the buyer wants to sell the land in the future, they will face great difficulties because they do not have the legal documents required to conduct a formal transaction. This reduces the resale value of the land and limits the potential profit from resale.

2. Increasing Legal Awareness of Gondai Village Community in Land Sales Transactions in Applicable Regulations.

Legal awareness is a mental and moral interdependence that each depends on the human ego. In relation to this, Widjaya stated that legal awareness is a state where there are no clashes in life in society. Society in life is balanced, harmonious and in harmony. Legal awareness is accepted as awareness, not accepted as coercion, even though there are restraints from outside the human self or society itself in the form of legislation.⁷

Legal awareness is a crucial factor in maintaining the legality and validity of land sale and purchase transactions, for example, rural communities also face similar challenges in understanding and following applicable regulations related to land transactions. Therefore, increasing legal awareness in Gondai Village is important to reduce the legal risks associated with underhand land transactions. This paper aims to identify and formulate concrete steps that can be taken to increase legal awareness of the Gondai Village community in land sale and purchase transactions.⁸

Based on the explanation above to answer the following problem formulation, the author uses an analytical tool, namely the Theory of the working of law to create legal awareness and knowledge about land sale and purchase transactions. To carry out land sale and purchase transactions properly, the parties involved need to have a good understanding of the applicable legal regulations and procedures. High legal awareness will help them understand the rights, obligations, and risks associated with the transaction. This understanding includes aspects of the legality of land ownership, administrative requirements, tax payments, and so on that land sale and purchase transactions are common

⁷Widjaya, 1984, Human Legal Awareness and Pancasila Man, Jakarta: Era Swasta, p. 14

⁸Prasetyo, Panji 2021 "Legal Protection of Land Sale and Purchase Underhand Against Unlawful Acts by the Seller (District Court Decision No. 1/PDT.G/2020/PN SNG)," Indonesian Notary: Vol. 3, No. 3, University of Indonesia, pp. 809-823, https://scholarhub.ui.ac.id/notary/vol3/iss3/35?utm_source=scholarhub.ui.ac.id%2Fnotary%2Fvol3%2Fiss3%2F35&utm_medium=PDF&utm_campaign=PDFCoverP.s

activities in people's lives.⁹ However, people often do not fully understand the regulations governing land transactions. Lack of understanding of land law can lead to the risk of legal disputes and uncertainty in land ownership.

Therefore, the first step that needs to be taken is to introduce the applicable regulations regarding land sale and purchase transactions. In the following explanation, we will discuss the importance of understanding the Basic Agrarian Law, related government regulations, and local policies that regulate land issues at the village level, as well as how these introduction steps can be carried out through counseling and socialization.

1. Introduction to Applicable Regulations

The first step to increase legal awareness of the Gondai Village community is to introduce regulations regarding land sale and purchase transactions, including the Basic Agrarian Law and related government regulations. This can be done through counseling and socialization involving the village government, community institutions, and religious leaders. Given the importance of land in economic and social life, a fair land policy is needed to prevent disputes and ensure legal certainty. The community needs to understand the importance of land registration as regulated in Law Number 5 of 1960 and Government Regulation Number 24 of 1997.¹⁰

2. Training and Workshops

Organizing training and workshops on land transactions is very important. This training should cover land transaction procedures, the importance of legal documents, the risks of illegal land transactions, and how to avoid legal disputes. Competent resource persons such as legal experts and notaries need to be invited. Interactive training involving group discussions, case studies, and role-playing can help participants understand. Thus, the community will better understand land law and can avoid legal problems in the future.

3. Provision of Educational Materials

⁹Susanto, I Komang Edy, et al. 2023, "Position of Notary & PPAT in Land Sale and Purchase Agreement and Guarantee of Protection for the Parties. *Journal of Legal Construction, Notary Law Journal* Vol 2 Issue 2, Faculty of Law, Brawijaya University, pp. 95-129. <https://notarylaw.journal.ulm.ac.id/index.php/nolaj>

¹⁰ Setyaningsih, Annisa (2020) "CIVIL LIABILITY OF LAND DEED OFFICERS TOWARDS EMPLOYEES WHO COMMIT UNLAWFUL ACTS (STUDY OF MATARAM DISTRICT COURT DECISION NUMBER 16/PID.B/2018/PN-MTR)" *Indonesian Notary: Vol. 2: No. 4, Article 2, P.. 45-64* https://scholarhub.ui.ac.id/notary/vol2/iss4/2?utm_source=scholarhub.ui.ac.id%2Fnotary%2Fvol2%2Fiss4%2F2&utm_medium=PDF&utm_campaign=PDFCoverP.s

Village governments or social institutions can provide educational materials in the form of brochures, pamphlets, or booklets about the procedures and legal provisions in land sale and purchase transactions. The materials must be written in easy-to-understand language and distributed through various communication channels such as announcements in public places, social media, and community events. Evaluation of the effectiveness of the materials and feedback from the community need to be carried out to ensure that educational goals are achieved.

4. Formation of Discussion Groups and Monitoring

Establishing discussion groups or community forums that discuss legal issues related to land transactions can be a place for the community to exchange information and experiences. These groups can meet regularly to discuss current issues and provide support. In addition, a monitoring team can be formed to ensure that all land transactions in the village are in accordance with applicable regulations. This will help create a more stable legal environment and reduce the risk of legal problems.

4. Conclusion

Underhand land transactions, namely informal transactions without involving legal processes regulated by the government, still often occur in many areas. Although practical, underhand land transactions reflect weaknesses in the three components of the legal system according to the theory. Land buying and selling transactions are carried out underhand, that is, without a regulated legal process. by the government, still often occurs in many areas. This transaction shows weaknesses in the structure, substance, and culture of law according to Lawrence M. Friedman's theory. To overcome this problem, it is necessary to strengthen government institutions, simplify regulations, and improve legal culture through education and socialization. Lack of public understanding of land transaction regulations increases the risk of legal disputes and uncertainty of ownership. The initial step that needs to be taken is to introduce regulations regarding land sale and purchase transactions, including the Basic Agrarian Law, government regulations, and local policies, through outreach and education.

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