Jurnal Pembaharuan Hukum
Volume 12, Number 2, August 2025
E-ISSN : 2355 – 0481 (Print)
ISSN : 2580 – 3085 (Online)

LEGAL POSITION OF UNDERHAND AGREEMENTS IN LAND INVESTMENT WITH BUYBACK SCHEMES IN INDONESIA

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ARTICLE INFO

Keywords:
Agrarian Law; Buyback Schemes; Land Investment; Underhand Agreements.

ABSTRACT

This study examines the legal position of underhand agreements in land investment in Indonesia, particularly within buyback schemes that are increasingly used in practice. Although not executed before a notary, such agreements remain valid if they fulfill the essential elements of a contract under the Indonesian Civil Code. Using a normative legal approach supported by case studies, this research analyzes the validity, legal risks, and investor protection issues surrounding these informal transactions. The findings indicate that underhand agreements, while offering flexibility and lower costs, create vulnerabilities due to weak evidentiary value in disputes. Ambiguous buyback clauses and the absence of authentic documentation often hinder investors from reclaiming funds, generating legal uncertainty and escalating civil conflicts. Opportunistic behavior by landowners further exacerbates the imbalance of bargaining power. The legal urgency addressed in this study lies in the need for regulatory reform to strengthen legal certainty and investor protection in land investment. Recommendations include mandatory registration of buyback agreements, involvement of notarial services, and improved legal literacy for stakeholders. This study contributes to ongoing discussions on legal reform by emphasizing the balance between contractual freedom and equitable protection in Indonesia's land investment sector.

A. INTRODUCTION

Land investment in Indonesia has become one of the main pillars in national economic growth. According to data from the Investment Coordinating Board (*Badan Koordinasi Penanaman Modal*/BKPM) by 2022, the property and real estate sector will contribute around 10% to Indonesia's Gross Domestic Product (GDP).[1] This shows that land investment is not only important for individuals or companies, but also for the country's economy as

[1] Badan Koordinasi Penanaman Modal (BKPM), *Laporan Tahunan 2022*, (Jakarta: BKPM, 2022), 15. See too, Ali Masum, and Tri Prihatinah, "The Responsibility of Notary in Making Nominee Agreements for Foreign Citizens in Indonesia," *Problems of legality* 161, no. 14 (2023): 296.

a whole. With an ever-increasing population and rapid urbanization, the need for land for residential, commercial and industrial use is increasingly pressing.[2]

In this context, underhand agreements are often used as an alternative in land investment transactions. These agreements, although not officially registered, have the force of law recognized in the Indonesian legal system.[3] However, the use of underhand agreements carries significant risks, particularly in relation to legal uncertainty and potential disputes between the parties.[4]

Buyback schemes, which allow investors to sell land back to the previous owner, are increasingly popular as a way to reduce investment risk. However, vagueness in these agreements can lead to complex legal issues.[5] Therefore, it is important to analyze the legal standing of underhand agreements in the context of land investment and buyback schemes, as well as the legal implications that may arise from this practice.[6] This research aims to analyze the legal standing of underhand agreements in the context of land investment in Indonesia. By understanding the legal basis and characteristics of these agreements, it is expected to provide a clearer picture of their legal force and the challenges faced by the parties in implementing these agreements.

This study aims to examine the legal status and enforceability of underhand agreements in land investment practices in Indonesia, with a specific focus on buyback schemes. The analysis is grounded in national legal norms but also draws from selected case examples in West Java to illustrate how these agreements operate in practice. By assessing the legal implications and associated risks, the study offers insights into the effectiveness of current

[2] Listri Herlina, and Palupi Permata Rahmi, "The Gross Domestic Product Analysis In Indonesia For 2008-2021," *Journal of Business and Management Inaba* 1, no. 2 (2022): 69.

[3] Ega Permatadani, and Anang Dony Irawan, "Kepemilikan Tanah Bagi Warga Negara Asing Ditinjau Dari Hukum Tanah Indonesia," *Khatulistiwa Law Review* 2, no. 2 (2021): 350.

[4] Zico Junius Fernando, Pujiyono Pujiyono, Heru Susetyo, Septa Candra, and Panca Sarjana Putra, "Preventing bribery in the private sector through legal reform based on Pancasila," *Cogent Social Sciences* 8, no. 1 (2022): 2136. See too, Rahmad Safitri, "Tinjauan Hukum Perjanjian Baku Pada PT AXA Mandiri Financial Services," *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan dan Ekonomi Islam* 15, no. 1 (2023): 134.

[5] Yuni Andaryanti, Endang Yuniarti, Wahyu Ririn Erawati, Anis Mashdurohatun, and Henning Glaser, "Addressing Legal Gap in Creditor Safeguards for Mortgage-Backed Loans," *Journal of Management World* 2025 3, no. 1 (2025): 714. See too, I. Gusti Ayu Widiadnyani, Ratna Artha Windari, and Ketut Sudiatmaka. "Implikasi Yuridis Jual Beli Tanah Adat Melalui Perjanjian Dibawah Tangan Dalam Perspektif Undang-Undang Pokok Agraria," *Jurnal Komunitas Yustisia* 1, no. 1 (2018): 48.

[6] Rio Rahmawanto, Ayu Diah Parwati, Cornelia Ingrid Setiawan, Michelle Pearlyna Setiawan, and Nabiel Azriel Wirayudha, "Pengaruh PPKM terhadap Potensi Masyarakat menjadi Pelaku dan Korban Kejahatan Jalanan di Kecamatan Beji Depok," *Deviance Jurnal Kriminologi* 5, no. 1 (2021): 59.

legal protections and the need for regulatory improvements to ensure greater certainty and fairness in land transactions.

B. RESEARCH METHODS

This study adopts a normative legal research approach, complemented by limited empirical insights to illustrate the practical implications of underhand agreements in land investment and buyback schemes. The normative method focuses on analyzing Indonesian positive law, with primary legal sources consisting of the Indonesian Civil Code (KUHPerdata), the Basic Agrarian Law, relevant statutory instruments on land registration, investment law, and notarial practice, as well as judicial decisions interpreting such agreements in disputes. Secondary legal sources include scholarly writings, journal articles, textbooks, expert commentaries, and policy reports from institutions such as the Investment Coordinating Board *(Badan Koordinasi Penanaman Modal/*BKPM*)*, which provide critical perspectives and highlight gaps in regulation. The selection of these sources is based on their relevance to the research questions, their authoritative nature, and their recency in addressing contemporary land investment practices. This methodological framework ensures that the research is grounded in authoritative legal norms while also incorporating analytical and practical insights, thereby directly supporting the study's objectives of examining the validity, risks, and legal protections associated with underhand buyback agreements and contributing to the discourse on regulatory reform to strengthen legal certainty and investor protection.

Additionally, case analysis is conducted through the review of court decisions and brief interviews with legal practitioners in West Java who have handled disputes involving informal land agreements. Data collection also involves literature reviews from scholarly legal journals and relevant publications. A comparative perspective is included by examining the legal framework of informal contracts under English law to enrich the analysis and highlight areas for potential reform in Indonesia.

C. DISCUSSION

1. Legal Validity and Evidentiary Challenges of Underhand Agreements in Buyback Schemes

An underhand agreement is a contract made and signed by the parties without following formal legal procedures. Under Indonesian law, such agreements are considered valid and binding as long as they fulfill the requirements under the Civil Code[7], namely mutual consent, legal capacity,

[7] Agus Yudha Hernoko, and M. H. Sh., *Hukum Perjanjian*, (Jakarat: Prenada Media, 2019), 34. See too, Desi Pratiwi, Mohammad Hifni, Dani Darmawan, and Muhamad Jahiri, "Tinjauan Yuridis

and a clear object. Their legal enforceability rests on the principle of freedom of contract, which grants parties the autonomy to arrange obligations outside formalities.[8]

Despite their recognition, underhand agreements face significant challenges in terms of evidentiary strength. Without notarization or registration, proving the existence and content of these agreements in court can be difficult, particularly when one party disputes its terms. This evidentiary weakness generates legal uncertainty and heightens the risk of prolonged disputes, high litigation costs, and even fraudulent practices, especially in land investment schemes such as buyback arrangements.[9]

A notable example is Bale Bandung District Court Decision Number 45/Pdt.G/2021/PN.Blb, where an investor sought the return of IDR 500 million under a buyback clause.[10] The developer denied the existence of the clause, and the court dismissed the case because the agreement lacked notarization. Although the claimant presented a stamped copy of the contract, the court deemed the evidence insufficient, underscoring the vulnerability of underhand agreements in judicial proceedings.[11]

A buyback schemes is a mechanism where investors have the right to sell back the land they have invested in to another party or to a developer within a certain period of time.[12] This scheme provides protection for investors, as they have a guarantee to get their investment back. However, buyback

Perlindungan Hukum Bagi Pembeli Dalam Perjanjian Jual Beli Tanah di Bawah Tangan: Study Kasus Putusan No. 12/PDT/2025/PT BTN," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 4 (2025): 4662-4672.

[8]Nurhafni Nurhafni, and Sanusi Bintang, "Perlindungan Hukum Konsumen dalam Perjanjian Baku Elektronik," *Kanun Jurnal Ilmu Hukum* 20, no. 3 (2018): 487. See too, Eddie Bachtiar Siagian, "Kepastian Hukum dalam Perolehan Hak Atas Tanah dalam Kegiatan Penanaman Modal dalam Perspektif Hukum Investasi," (PhD diss., Universitas Kristen Indonesia, 2023), 42.

[9] Putri Habibah Siregar, "Perlindungan Hukum Terhadap Investor Publik Melalui Pembelian Kembali Saham (Buy Back) Dalam Keadaan Pasar Yang Berpotensi Krisis Menurut Peraturan Otoritas Jasa Keuangan Nomor 3/SEOJK. 04/2020," *Iuris Studia: Jurnal Kajian Hukum* 3, no. 2 (2022): 237.

[10] Ayu Ambarwati, Mega Yuni Hospita, Pucuk Nyimas Sekar AS, and Aslan Noor, "Analysis Of The Validity Of Underhand Exchange Agreements (Study Of Court Decision Number 21/PDT. G/2020/PN BLK)," *Journal Equity of Law and Governance* 5, no. 2 (2024): 165. See too, Muhammad Arba, *Hukum Agraria Indonesia*, (Jakarta: Sinar Grafika, 2021), 43.

[11] Hasim Sukamto, Hulman Panjaitan, and Paltiada Saragi, "Legal Protection for Foreign Investors at Normative and Implementation Levels in Indonesia," *International Journal of Law, Crime and Justice* 3, no. 1 (2025): 65. See too, Muhamad Rafli Miftahudin, Alya Nur Oktafiani, Soca Rizky Amalina, Ade Ernawan, and Zelfi Ghaffar Aufiya, "Akibat Hukum Jual Beli Di Bawah Tangan Dalam Pembelian Tanah Yang Tidak Dituangkan Dalam Akta Otentik," *Jurnal Pendidikan Sosial dan Humaniora* 4, no. 2 (2025): 3487.

[12] Bahori Ahoen, "Legal Certainty of Land Sale with Buyback Right as an Alternative Financing Option for Real Estate Companies in Legal Reform Efforts," *INJURITY: Journal of Interdisciplinary Studies* 4, no. 4 (2025): 65. See too, Shouqiang Wang, Haresh Gurnani, and Upender Subramanian, "The informational role of buyback contracts," *Management Science* 67, no. 1 (2021): 289.

schemes can also lead to legal issues if not clearly stipulated in the agreement.[13]

The legal implications of a buyback scheme depend heavily on the terms set out in the agreement.[14] If the agreement does not include clear provisions regarding the rights and obligations of the parties, disputes may arise in the future. According to Wicaksono, it is important for investors to understand their rights in a buyback scheme to avoid getting caught up in costly legal disputes.[15] Similar findings are noted in comparative studies where legal systems mitigate such risks by requiring strict contract formalities for land transactions.[16]

Although underhand agreements do not require notarization, involving a notary in the agreement-making process can provide additional guarantees for the parties. A notary can help ensure that the agreement meets legal requirements and can provide strong evidence in the event of a dispute.[17] Therefore, although it is not mandatory, involving a notary in underhand agreements is highly recommended. Many disputes arise due to vagueness in underhand agreements, especially in the context of buyback schemes. In the case, one of the parties claimed that the agreement was invalid because there was insufficient written evidence. This highlights the importance of clear documentation in underhand agreements.[18]

2. Legal Protection and the Role of the State

The main legal question is whether Indonesia's current regulatory framework provides sufficient protection for investors in underhand buyback

[13] Rahayu Febriani, Licha Dian Puspita, Aura Rizqi Pratiwi, and Zelfi Ghaffar Aufiya, "Kekuatan Hukum Perjanjian Di Bawah Tangan Dalam Proses Jual Beli Tanah," *Jurnal Pendidikan Sosial dan Humaniora* 4, no. 2 (2025): 3472.

[14] Efrimol Efrimol, "Kebijakan Pemerintah tentang Pengaturan Mengenai Pertanahan dalam Penanaman Modal dan Investasi di Indonesia," *Inovatif: Jurnal Ilmu Hukum* 4, no. 5 (2011): 445.

[15] Marhara Tua Mulyadi Tambunan, Ramli Siregar, and Windha Windha, "Tanggung Jawab Direksi Terhadap Pemegang Saham Beritikad Baik Atas Pembelian Kembali Saham Yang Batal Karena Hukum," *Transparency Journal of Economic Law* 1, no. 1 (2013): 1469.

[16] Robert Johnson, "Estoppel and Informal Contracts: Comparative Lessons for Emerging Economies," *Law and Contemporary Problems* 85, no. 2 (2022): 156. See too, Muhammad Arif Prasetyo, "Peranan Hukum Investasi Dalam Meningkatkan Penanaman Modal di Indonesia," *Ilmu Hukum Prima (IHP)* 4, no. 2 (2021): 145. See too, Diar Abdul Aziz, "Analisis Putusan Pengadilan Negeri Bale Bandung no. 417/Pid. B/2023/PN Blb terhadap Tindak Pidana Perjudian Online dihubungkan dengan pasal 45 ayat (2) Undang-Undang Republik Indonesia nomor 19 tahun 2016," (PhD diss., UIN Sunan Gunung Djati Bandung, 2024), 89.

[17] Ratna Puspita, "Developer's Responsibility To Banks And Customers In Home Ownership Credit (Kpr) Agreements With Buy Back Guarantees," *International Significance of Notary* 5, no. 1 (2024): 47. See too, Evi Djuniarti, "Hak Menguasai Tanah oleh Negara dalam Penggunaan Tanah untuk Investasi," *Jurnal Penelitian Hukum De Jure Vol* 23, no. 4 (2023): 489.

[18] Muhammad Fakhruddin, "Preventing Disputes in Buyback Schemes through Adequate Documentation," *Jurnal Hukum dan Kebijakan Publik* 15, no. 1 (2022): 245.

agreements.[19] Substantively, the Civil Code recognizes contractual freedom and binds parties to agreements that meet the requirements of consent, capacity, and a definite object. However, in practice, this recognition is hollow when evidentiary rules prevent investors from enforcing their rights. This shows that the law privileges formal certainty over substantive justice, creating a gap between doctrine and protection.[20]

Soeprijanto[21] view that investors should be guaranteed the right to reclaim their capital aligns with the constitutional principle in Article 33 of the 1945 Constitution, which obligates the state to regulate land and investment for the greatest benefit of the people. The absence of enforceable safeguards in buyback schemes therefore raises not only contractual issues but also constitutional concerns, as the state fails to prevent exploitation of weaker parties.[22]

Government regulation is thus not a matter of administrative efficiency but a legal necessity to harmonize contractual autonomy with equitable protection. Mandatory notarization or registration of buyback clauses would strengthen evidentiary value, while transparency obligations would mitigate risks of fraud. As Siregar emphasizes, community involvement ensures that investment practices reflect not only private bargains but also social justice principles embedded in land law.[23]

3. Comparative Analysis: The English Legal System

In English law, informal agreements such as oral contracts can be legally binding provided there is mutual agreement and consideration. However, transactions involving land or property are subject to stricter formalities under the Statute of Frauds 1677 and the Law of Property (Miscellaneous Provisions)

[19] Fanno Vera Sumolang, "Kajian Hukum Penanaman Modal Di Kabupaten Minahasa Utara Sebagai Penunjang Pembangunan Ekonomi," *Lex Et Societatis* 5, no. 4 (2017): 365.

[20] Tri Budiyono, "Problematika Pembelian Kembali Saham Dalam UU PT dan UU Pasar Modal," *Masalah-Masalah Hukum* 40, no. 1 (2011): 43. See too, Dewi Arnita Sari, "Legal protection of the parties in land purchase transactions through underhand agreements," *Jurnal Al-Dustur* 5, no. 2 (2022): 298.

[21] Troeboes Soeprijanto, "Land Reform-Reform Agraria-Redistribusi Lahan Perspektif Pasal 33 Ayat 3 Uud 1945," *Civis: Jurnal Ilmiah Ilmu Sosial dan Pendidikan* 12, no. 1 (2023): 59. See too, Socha Tcefortin Indera Sakti, and Ambar Budhisulistyawati, "Perlindungan Hukum Bagi Para Pihak Dalam Perjanjian Jual Beli Tanah Letter C Di Bawah Tangan," *Jurnal Privat Law* 8, no. 1 (2020): 148.

[22] Putri Habibah Siregar, "Perlindungan Hukum Terhadap Investor Publik Melalui Pembelian Kembali Saham (Buy Back) Dalam Keadaan Pasar Yang Berpotensi Krisis Menurut Peraturan Otoritas Jasa Keuangan Nomor 3/SEOJK. 04/2020," *Iuris Studia: Jurnal Kajian Hukum* 3, no. 2 (2022): 236. See too, Fanno Vera Sumolang, "Kajian Hukum Penanaman Modal Di Kabupaten Minahasa Utara Sebagai Penunjang Pembangunan Ekonomi," *Lex Et Societatis* 5, no. 4 (2017): 365.

[23] Dwi Sulistiani, "Peran pendidikan non formal berbasis sosial ekonomi dalam peran organisasi sosial preman super di Malang Raya," *Jurnal Pendidikan Ilmu Pengetahuan Sosial* 5, no. 2 (2019): 96.

Act 1989, which generally require written contracts signed by the parties.[24]

Despite these requirements, English courts recognize equitable doctrines such as promissory estoppel and proprietary estoppel to protect individuals who have acted to their detriment based on a promise, even in the absence of a formal agreement. This approach highlights the balance between legal formality and substantive fairness something the Indonesian legal system can take inspiration from when addressing evidentiary challenges in informal contracts.[25]

To minimize the legal risks associated with underhand agreements, parties must adopt several safeguards.[26] First, contracts should be drafted in clear and legally precise language to avoid potential ambiguities that could weaken their enforceability in court. The involvement of notaries or legal professionals in the drafting process is equally important, as it not only ensures compliance with legal requirements but also strengthens the evidentiary value of the agreement. Moreover, conducting thorough due diligence on the status and ownership of the land can prevent disputes arising from hidden defects or overlapping claims. Finally, maintaining well-organized documentation and reliable evidence of all transactions provides legal security and serves as an essential defense in the event of litigation. Taken together, these measures provide stronger legal certainty and reduce the vulnerability of parties entering into underhand agreements.

Legal education for parties involved in underhand agreements is essential. According to Mardani, a good understanding of the rights and obligations in an agreement can help prevent disputes in the future.[27] Therefore, it is important for legal practitioners to educate the public on underhand agreements and the associated risks. Recommendations for legal

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[24] Rahma Fitri Amelia Hasibuan, Muhammad Abdillah, Nadilah Andini, Fitria Mukhtar Siregar, and Annisa Putri Andini Tanjung, "Kontrak Kerja vs Kontrak Platform: Perbandingan Perlindungan Hukum bagi Pekerja di Era Ekonomi Digital," *Konsensus: Jurnal Ilmu Pertahanan, Hukum dan Ilmu Komunikasi* 2, no. 3 (2025): 78. See too, Gita Tiara Marhayu Putri, and Bambang Santoso, "Sistem Investasi di Indonesia," *TOMAN: Jurnal Topik Manajemen* 1, no. 2 (2024): 310; Putu Diva Sukmawati, "Hukum Agraria Dalam Penyelesaian Sengketa Tanah Di Indonesia," *Jurnal Ilmu Hukum Sui Generis* 2, no. 2 (2022): 98.

[25] Anggraeni A. Lubis Isnaini, and M. SH. *Hukum Agraria Kajian Komprehensif*, (Medan: Pustaka Prima, 2022), 23. See too, Troeboes Soeprijanto, "Land Reform-Reform Agraria-Redistribusi Lahan Perspektif Pasal 33 Ayat 3 Uud 1945," *Civis: Jurnal Ilmiah Ilmu Sosial dan Pendidikan* 12, no. 1 (2023): 61.

[26] Poppy Hairunnisa, and Agus Sekarmadji, "Legalitas Pembelian Tanah Dengan Pihak Lain Sebagai Cara Perolehan Tanah Oleh Badan Bank Tanah," *Lex Sharia Pacta Sunt Servanda: Jurnal Hukum Islam dan Kebijakan* 1, no. 1 (2023): 32.

[27] Rahayu Febriani, Licha Dian Puspita, Aura Rizqi Pratiwi, and Zelfi Ghaffar Aufiya, "Kekuatan Hukum Perjanjian Di Bawah Tangan Dalam Proses Jual Beli Tanah," *Jurnal Pendidikan Sosial dan Humaniora* 4, no. 2 (2025): 3474. See too, I. Gusti Agung Ayu Lita Pratiwi, Nella Hasibuan Oleary, and Ni Made Puspasutari Ujianti, "Akibat Hukum Jual Beli di Bawah Tangan Atas Tanah Hak Milik di Kabupaten Badung." *Jurnal Konstruksi Hukum* 1, no. 1 (2020): 178.

practice in the context of underhand agreements include the need for clear documentation and involving a notary in the agreement-making process. In addition, it is important for parties to conduct due diligence before signing an agreement.[28] With these measures, the risks associated with underhand agreements can be minimized.

D. CONCLUSION

This study highlights the nuanced legal position of underhand agreements within the Indonesian land investment system, particularly in buyback arrangements. While such agreements are legally valid under civil law, their informal nature creates a significant gap between formal recognition and practical enforceability. The findings suggest that this legal grey area can increase transactional risks, especially in high-value investments where evidentiary weaknesses often prevent effective legal remedies. Beyond legal analysis, the study underscores the urgency of institutional reform. One key practical implication is the need for the government to establish a mandatory registration mechanism for underhand agreements involving land transactions exceeding a certain monetary threshold. Such a registry possibly implemented at the subdistrict or land office level could serve as a low-cost alternative to full notarization while preserving evidentiary integrity.

Additionally, there is a need to introduce investor protection protocols, such as standardized contract templates for buyback schemes and legal literacy programs targeting both urban and rural investors. These measures would not only reduce disputes but also enhance transparency and accountability within informal land transactions. In sum, the legal recognition of underhand agreements must be accompanied by proactive regulatory safeguards. A balance between contractual freedom and structured oversight is essential to ensure both legal certainty and equitable protection in Indonesia's rapidly evolving land investment landscape.

[28] Ferdiansyah Prawira Negara Setiawan, Very Armando, and Andrea Tamaranova Retaly, "Aspek Hukum Perlindungan Pembeli Pada Transaksi Jual Beli Hak Atas Tanah di Bawah Tangan," *Innovative: Journal Of Social Science Research* 3, no. 6 (2023): 3004. See too, James McConvill, "Schemes of Arrangement, Selective Buy-Backs and Village Roadshow's Preference Share Tussle: Entering the Matrix," *Macquarie J. Bus. L.* 2 (2005): 210.

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