

Legal Power of Buying and Selling Land on the Basis of Power of Sale Under Hand

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Abstract. *The purpose of this study is to analyze the legal force of sales and purchases carried out based on a power of attorney to sell underhand and to examine the judge's legal reasoning in deciding case Number 50/PDT.G/2023/PN Pekalongan. The problem arises because the practice of sales and purchases with a power of attorney to sell underhand is still widely carried out by the public, even though according to Indonesian positive law, the transfer of land rights must be carried out with an authentic deed by a Land Deed Making Officer (PPAT) as regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. This research uses a normative legal research method with a statutory, conceptual and case study approach to the court decision. The results of the study indicate that a sale and purchase based on a power of attorney to sell underhand has limited legal force, because it is valid in civil law as long as it meets the requirements of Article 1320 of the Civil Code, but cannot give rise to material legal consequences in the form of transfer of land ownership rights. The agreement is obligatory (binding the parties), but not yet translatable (transferring rights). A private deed only has evidentiary force as long as it is acknowledged by the signing party and cannot be used as a basis for registering land rights at the land office. Based on an analysis of the judge's considerations, it was found that the legal reasoning used in the Pekalongan District Court decision did not fully reflect the ideal legal rationality as stated by Philipus M. Hadjon. The judge attempted to balance justice and legal certainty, but his legal considerations showed inconsistencies between civil norms and land administration norms. The judge emphasized casuistic justice more than formal legal certainty, so that the decision was substantively fair to the parties, but normatively had the potential to create legal uncertainty in the future. Thus, this study emphasizes the importance of the role of authentic deeds as an instrument of legal protection in land sale and purchase transactions, as well as the need for consistency in the judge's legal reasoning to align with the principles of legal certainty, justice, and benefit.*

Keywords: Attorney; Buying; Legal; Reasoning; Underhand.

1. Introduction

Land sale and purchase transactions are legal acts that have significant private and public consequences, because they involve changes in ownership of fixed assets recorded in land certificates. For a sale and purchase agreement to be declared valid under civil law, it must fulfill the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code, namely: agreement of the parties, capacity of the parties, a specific subject matter, and a lawful/non-forbidden cause.

In the Indonesian civil law system, general provisions regarding buying and selling are regulated in Article 1457 of the Civil Code which states that "Buying and selling is an agreement by which one party binds himself to deliver an item and the other party to pay the promised price." This definition shows that buying and selling arises when an agreement is reached regarding the item and price (consensus).¹so it is consensual in nature. Article 1458 of the Civil Code stipulates that a sale and purchase is deemed to have occurred immediately after the parties agree on the goods and price, even if the goods have not been delivered or the price has not been paid.²

This principle of consensualism is also a manifestation of the principle of freedom of contract as stated in Article 1338 of the Civil Code which states that all agreements made legally are valid as law for those who make them.³This principle gives the parties the freedom to determine the form and content of the agreement, whether verbally or in writing, through an authentic deed or a private deed, as long as it does not conflict with the law, public order, or morality. Therefore, legally, a sale and purchase does not have to be made in a specific form unless the law requires otherwise.⁴

As society evolves and transactions become more complex, the need for legal certainty in sales and purchase agreements is increasing. This is particularly evident in transactions involving high-value assets, such as land and buildings, whose existence and transfer directly impact the order of national land

¹DU Umar, 2022, "Legal Consequences of the Consensual Principle in Article 1320 of the Civil Code, Jurnal Notarius, Jakarta", Vol. 15 No. 2, p. 45.

²J. Satrio, 2017, Contract Law: Contracts Born from Agreements, Citra Aditya Bakti, Bandung, p.21.

³R. Subekti, 2016, Contract Law, Intermasa, Jakarta, p.14.

⁴B. Sutyoso, 2023, "Application of the Principle of Consensuality and Its Legal Implications in Electronic Contracts (Case: Shopee)", Indonesian Journal of Economic, Social, and Strategic Studies Vol. 4 No. 1, p. 112

administration.⁵For this reason, Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) and Government Regulation Number 24 of 1997 concerning Land Registration explicitly require that every transfer of land rights must be proven by an authentic deed made by a Land Deed Making Officer (PPAT).⁶ Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration expressly stipulates that, the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, gift, company investment, and other similar legal acts, can only be registered if proven by a deed made by an authorized Land Deed Making Officer (PPAT) according to the provisions of applicable laws and regulations.

In reality, many land sales transactions in society still use a power of attorney to sell underhand, with the aim of saving time and costs. However, this creates a new problem because a power of attorney to sell underhand cannot be used as a basis for transferring rights, because in accordance with Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, it requires the use of a deed made by a PPAT.

Unfortunately, the use of a private power of attorney as the basis for a sale and purchase often raises legal issues. Conceptually, a power of attorney only authorizes the recipient to act on behalf of the grantor.⁷The power of sale is not the sale and purchase agreement itself.⁸When the power of attorney to sell is used as a basis for carrying out a sale and purchase without an authentic deed, problems may arise regarding the validity of the transfer of rights, legal certainty for third parties, and the strength of the evidence in court.⁹This problem becomes more complicated if the object being sold is an immovable object which according to the law must be proven by an authentic deed.¹⁰

⁵Indah Puspitaningrum, 2023, "The Power of Attorney to Sell in the Purchase of Land Not Registered in the Name of a Housing Developer", Notary, Diponegoro University, page 17 <https://ejournal.undip.ac.id/index.php/notarius/article/download/43766/pdf> accessed on September 21, 2025, at 17:11 WIB.

⁶Dyah H. Prananingrum, 2023, "Binding of Sale and Purchase Agreements from a Legal Perspective", Alethea Journal Vol. 6 No. 2, p. 37.

⁷A. Murtadho and E. Assaris, 2024, "Judge's Considerations in Land Sale and Purchase Agreements Through Absolute Power of Attorney (Case Study)", Legal Brief Journal Vol. 13 No. 1, p. 22.

⁸SZN Aaliyah, 2020, "The Validity of the Power of Attorney to Sell in Land Transfer: A Study...", Lex Patri, University of Indonesia, p. 98, <https://scholarhub.ui.ac.id/cgi/viewcontent.cgi?article=1127&context=lexpatri> accessed on September 21, 2025, at 07:10 WIB.

⁹M. Yahya Harahap, 2019, Civil Procedure Law on Lawsuits, Trials, Confiscation, Evidence and Court Decisions, Sinar Grafika, Jakarta, p. 125.

¹⁰RD Kusuma and RH Siregar, 2024, "Legal Consequences of Cancellation of a Deed of Power of Attorney to Sell", Andalas Notary Journal Vol. 2 No. 2, p. 66.

This phenomenon has often resulted in civil disputes requiring court resolution. One concrete example is Pekalongan District Court Decision No. 50/PDT.G/2023/PN PKL.

This study aims to determine and analyze the legal force of land sales and purchases based on power of attorney to sell underhand as a condition for the validity of the sale and purchase as well as the judge's reasoning in deciding the case of Decision Number 50/PDT.G/2023/PN Pkl.

2. Research methods

The type of research used is normative legal research,¹¹This is legal research conducted by examining primary and secondary legal materials to identify principles, doctrines, and legal regulations relevant to the problem being studied. Normative research focuses on literature reviews and tracing applicable laws and regulations, court decisions, and legal doctrines put forward by experts. The research approach method serves as a foundation for obtaining various aspects of the issue being addressed and makes the legal analysis process focused, directed, and sharp in order to establish comprehensive, constructive, and systematic arguments. In this research, the case approach is used.¹²This approach examines court decisions directly related to the legal issues being researched. Through this approach, researchers can identify the judge's legal considerations (*ratio decidendi*) in deciding land sales cases involving private sales, particularly as reflected in Pekalongan District Court Decision Number 50/PDT.G/2023/PN Pkl. This research also uses a conceptual approach.¹³This is an approach that draws on legal doctrines, scholarly opinions, and established legal concepts to provide a systematic analytical framework. This approach is necessary to outline and clarify the meaning of key terms such as judge, sale, power of attorney, and court decision. Furthermore, a statute approach was also used, namely an approach that examines all laws and regulations related to the research problem, including the Civil Code, Law Number 48 of 2009 concerning Judicial Power, the Notary Law, and regulations in the land sector. Through this combination of various approaches, it is hoped that the research analysis will be sharper, more focused, and more scientifically accountable.

1) Data Types and Sources

Based on the normative legal research method, the data sources are secondary and come from:

¹¹Achmad Yulianto and Fajar Mukti, 2022, *Dualism of Normative and Empirical Legal Research*, Pustaka Pelajar, Yogyakarta, p. 157.

¹²Peter Mahmud Marzuki, 2021, *Legal Research*, Kencana, Jakarta p.134.

¹³*Ibid*, p. 135.

1) Primary legal materials¹⁴

Primary legal materials are legal sources that are authoritative and binding and serve as the primary basis for analyzing the legal issues being studied. The primary legal materials in this research include:

- 1) The 1945 Constitution of the Republic of Indonesia is the written basic law which is the source of legitimacy for all laws and regulations.
- 2) Civil Code (KUHPerdata), especially provisions regarding:
 - 3) Terms of validity of the agreement (Article 1320);
 - a) Sale and purchase agreement (Article 1457 onwards)
 - b) Grant of power of attorney (Articles 1792–1819).
- 4) Law Number 48 of 2009 concerning Judicial Power, which regulates the authority, functions and principles of the implementation of judicial power by judges.
- 5) Law Number 2 of 2014 concerning Amendments to Law Number 30 of 2004 concerning the Position of Notary, which regulates the authority of notaries in making authentic deeds, including deeds of land sale and purchase agreements.
- 6) Legislation in the land sector, which regulates the mechanism for transferring land rights and land registration at the National Land Agency, Article 37 of PP No. 24 of 1997.
- 7) Jurisprudence, specifically the Pekalongan District Court Decision Number 50/PDT.G/2023/PN PKI, which is the main object of research and contains legal considerations regarding the validity of land sales and purchases with power of attorney to sell underhand.

2) Secondary legal materials: Secondary legal materials provide explanations, commentary, or interpretations of primary legal materials. These sources are not as binding as primary legal materials, but serve to strengthen legal analysis and argumentation in research. The secondary legal materials in this research include:

- a. Legal literature
- b. Scientific journals in the fields of civil law, notary law, and land law that are relevant to research problems.
- c. Previous scientific papers and research results

¹⁴Mukti Fajar ND and Yulianto Ahmad MH, 2023, Dualism of Normative and Empirical Legal Research, 7th Edition, Pustaka Pelajar, Yogyakarta, p. 42.

- d. Opinions of legal experts (doctrine) taken from books, articles.
 - e. Legal dictionary and Big Indonesian Dictionary
- 3) Non-legal materials are materials that are not directly legally binding but can be used to provide guidance, illustration, or additional context for understanding the research problem. In this study, non-legal materials serve to enrich the analysis, particularly regarding terminology and social background. The non-legal materials used include:
- a. Big Indonesian Dictionary (KBBI)
 - b. Legal dictionary
 - c. Encyclopedias and other general references
 - d. Articles or news from relevant mass media
- 2) Method of collecting data

The data collection method in this research was conducted through library research, utilizing various relevant primary legal materials, secondary legal materials, and non-legal materials. The data collection steps include:¹⁵

- a. Documentation
 - b. Inventory
 - c. Systematization
- 3) Data Analysis Methods

According to Soerjono Soekanto In the context of normative legal research, it is emphasized that data analysis is carried out in a qualitative normative manner, namely by interpreting laws and regulations, doctrines and court decisions to find logical and systematic legal answers.¹⁶

3. Results And Discussion

3.1. Legal Power of Attorney for Land Sale and Purchase Under Private Law as a Valid Condition for Sale and Purchase in Decision Number 50/PDT.G/2023/PN Pkl

The power of attorney to sell is a form of power of attorney agreement as regulated in Article 1792 of the Civil Code (KUHPPerdata).¹⁷ namely an agreement

¹⁵Si and Shidarta, 2013, Legal Research Methods, preprint, Yayasan Pustaka Obor, Jakarta, p.45.

¹⁶Soerjono Soekanto & Sri Mamudji, 2006, Normative Legal Research: A Brief Review, 1st edition, Raja Grafindo Persada, Jakarta, p.15.

¹⁷Civil Code (Burgerlijk Wetboek), Articles 1792–1819.

in which a person grants power to another person to carry out an affair on his behalf. In the context of buying and selling, a power of attorney means granting authority to the power of attorney (power of attorney) to sell goods belonging to the principal (principal) to another party. This legal relationship is civil in nature and arises from an agreement between the parties, with legal consequences that give rise to reciprocal rights and obligations as regulated in Articles 1792–1819 of the Civil Code. Thus, a power of attorney is essentially an agency agreement that contains elements of trust and legal responsibility from the power of attorney to the principal.

If a power of attorney to sell is made in the form of a private deed, it means that the document was prepared and signed by the parties without involving public officials such as a notary or land deed official (PPAT). Based on Article 1874 of the Civil Code, a private deed remains valid as evidence as long as it is signed by the parties concerned. However, its evidentiary power is different from an authentic deed as referred to in Article 1868 of the Civil Code, because an authentic deed has perfect evidentiary power regarding its content and date of creation, while a private deed only has evidentiary power if its authenticity is acknowledged by the party signing it. Therefore, in civil practice, a private power of attorney to sell remains legally binding for the parties, but its evidentiary value is relatively weaker than that of an authentic deed.

The characteristic of the power to sell privately lies in its personal, limited nature¹⁸, and is a matter of personal trust between the grantor and the grantee. Because it is made without the approval of a public official, its validity depends on proving the authenticity of the signatures and the legal intentions of the parties. In the context of property law, a private power of attorney does not immediately result in the transfer of ownership of the object being sold, but only provides the authority to carry out the legal act of buying and selling. The legal transfer of rights only occurs after further legal action, such as the issuance of a deed of sale (AJB) by a PPAT for land and buildings. Therefore, in legal assessment, a private power of attorney only serves as a basis for legitimizing civil action, not as evidence of the transfer of property rights, so its position is relative and depends on the context of proof in court.

When viewed from the aspect of agreement and capacity, a private power of attorney to sell agreement generally fulfills the elements of validity, as long as it is made based on the free will of the legally competent parties. However, in terms of specific objects, it often causes problems because the power of attorney to sell does not always explicitly state the goods being sold or the agreed transaction value. This can raise doubts about the object of the agreement as required by Articles 1332 and 1333 of the Civil Code. As for the lawful cause, it is not a problem as long as the power of attorney is not intended to avoid

¹⁸R Subekti, 2003, *Principles of Civil Law*, Intermasa, Jakarta, pp. 165–168.

imperative legal provisions, such as regulations regarding the transfer of land rights which must be carried out with a PPAT deed according to Article 37 of Government Regulation Number 24 of 1997 concerning Land Registration.

Based on this analysis, a sale and purchase conducted under a power of attorney under a private hand is valid as a civil contract between the parties, as long as it meets the requirements of Article 1320 of the Civil Code. However, this agreement does not yet give rise to legal consequences for property (*zakelijke werking*) in the form of a transfer of ownership, because the formal aspect of transfer (*levering*) has not been fulfilled. In the context of land law, this action only creates civil rights and obligations, but does not change the legal ownership status. Therefore, to obtain full legal force, this type of sale and purchase agreement should be followed up with the creation of an authentic deed by a Land Deed Official (PPAT), in order to fulfill the principles of publicity and legal certainty as required by the Indonesian land law system.¹⁹

Conceptually, a power of attorney to sell has legal consequences within the realm of contract law (*verbintenissenrecht*), not within the realm of property law (*zakelijk recht*). This means that a power of attorney to sell only grants the recipient the authority to act, but does not necessarily transfer ownership of the object being sold. The legal transfer of rights only occurs when a transfer (*levering*) has been carried out as regulated in Article 612 of the Civil Code for movable objects and Article 616 of the Civil Code for immovable objects. Therefore, even though the power of attorney to sell has been exercised, ownership rights are only transferred after a valid legal transfer has been carried out.²⁰

Power of sale contained in the case Decision Number 50/PDT.G/2023/PN PkI concerns a power of attorney (power of sale) executed underhand, a type of pure power of attorney, meaning a power of attorney executed underhand without any basis in a sales and purchase agreement. The seller grants a power of attorney to a third party to legally transfer the title from the seller to the buyer.

Problems arise when a sale and purchase is conducted based on a private power of attorney, that is, a power of attorney not drawn up before a notary or authorized official, as occurred in the case above. The legal issue that arises is whether the private power of attorney can be used as a valid basis for the sale and purchase, and whether such legal acts have fulfilled the principle of legal certainty as stated by Hans Kelsen in Pure Theory of Law.

¹⁹Mariam Darus Badruzaman, 1993, *Compilation of Contract Law*, Citra Aditya Bakti, Bandung, pp. 22–23.

²⁰Philipus M. Hadjon, 2012, *Legal Reasoning and Legal Discovery*, Faculty of Law, Airlangga University, Surabaya, pp. 56–58.

Hans Kelsen in his theory of *Reine Rechtslehre* or Pure Legal Theory argues that law is a system of norms that is structured hierarchically, where each norm obtains its validity from a higher norm (*Stufenbau des Recht*).²¹In this framework, legal certainty is achieved if:

- 1) Every legal action has a legitimate normative basis.
- 2) Lower norms do not conflict with higher norms.
- 3) Law enforcement is carried out consistently and impersonally, without interference from politics, morality, or extra-legal considerations.²²

Hans Kelsen rejected the view that justice or morality are the basis for legal validity. For him, what determines the validity of a legal action is whether it conforms to the prevailing legal system. Legal certainty, he argued, is a state in which the law is predictable and consistently applied, thus providing protection against uncertainty for the parties involved in the legal system.

Referring to the context of land law, the validity of a power of attorney to sell underhand is limited by Government Regulation Number 24 of 1997 concerning Land Registration, specifically Article 37 paragraph (1), which stipulates that the transfer of land rights can only be registered if proven by a deed made by a Land Deed Making Official (PPAT). This means that a power of attorney to sell underhand cannot be used as a direct basis for the transfer of land ownership rights, but only has evidentiary value in civil relations between the grantor and the recipient of the power of attorney. This means that, formally, a power of attorney underhand does not have the power to give rise to legal consequences in the form of the transfer of land rights.

The evidentiary value of a private power of attorney is determined by the parties' acknowledgement and authenticated evidence. Under Article 1875 of the Civil Code, a private deed only has the same evidentiary force as an authentic deed if its authenticity is acknowledged by the signing party. In judicial practice, this acknowledgement is often a crucial factor in determining whether the power of attorney is valid as evidence. Therefore, although a private power of attorney remains valid as a civil agreement, its binding force in the court process depends on the acknowledgement and proof of the validity of the signatures and the legal intent of the parties.²³

²¹Hans Kelsen, 1967, *Pure Theory of Law*, trans. Max Knight, University of California Press, Berkeley, pp. 5–6

²²Hans Kelsen, 1945, *General Theory of Law and State*, Harvard University Press, Cambridge, p. 110–115.

²³Perelman, C., & Olbrechts-Tyteca, L, 1969, *The New Rhetoric: A Treatise on Argumentation*. University of Notre Dame Press, Notre Dame, Indiana, p. 65–67

Case Number 50/PDT.G/2023/PN Pkl which has been inkraht based on the statement issued by the Clerk of the Pekalongan District Court dated July 11, 2025 number 1527 / PAN.04 / HK 2.1 / VII / 2025. Based on Hans Kelsen's theory of legal certainty, the judge's decision has permanent legal force, but theoretically it is not in line with the principle of legal certainty. The judge decided that the power of attorney to sell underhand was legally valid because it was signed by the parties, and was in accordance with Article 1320 of the Civil Code. And determined that the decision was used as the basis for the process of transferring rights from the second defendant to the plaintiff. So the judge's decision has legal force equivalent to an authentic deed.

Therefore, the author's personal opinion based on the perspective of Hans Kelsen's theory of legal certainty, this decision does not reflect the normative order that is the basis of legal validity, but rather shows a shift from the rule of law towards rule by discretion, where the judge's interpretation is more prominent than adherence to the legal hierarchy.

3.2. Legal Reasoning of the Pekalongan District Court Judge in Deciding on the Case of Power of Attorney to Sell Underhand as a Condition for the Validity of a Sale and Purchase (Study of Decision Number 50/PDT.G/2023/PN Pkl)

Legal reasoning is at the heart of the decision-making process in judicial practice. Each judge's decision essentially represents not only the application of legal norms to a given fact, but also the result of a rational thought process that connects norms, values, and social reality.²⁴In the context of Indonesian civil law, particularly in cases concerning the validity of underhand sales powers, legal reasoning is a crucial instrument for ensuring substantive justice is achieved without compromising formal legal certainty. Judges are not merely mouthpieces of the law, but also responsible interpreters of the legal meaning behind the text, as mandated by normative legal reasoning theory.

The use of Philip M. Hadjon's theory in this analysis is based on the view that legal reasoning must be rational, systematic, and based on positive norms. Hadjon emphasizes that in assessing a case, a judge must go through three main stages: norm identification, norm interpretation, and norm construction. With this approach, legal reasoning is not trapped in moral subjectivity or mere rhetoric of justice, but is rooted in legal logic that can be scientifically justified. In the case of Pekalongan District Court Decision Number 50/Pdt.G/2023/PN Pkl, Hadjon's theory is used to examine the extent to which the judge's considerations reflect legal rationality in deciding whether or not a sale and purchase conducted under a private power of attorney is valid.

²⁴Philip M. Hadjon, 2012, *Legal Reasoning and Legal Discovery*, Faculty of Law, Airlangga University, Surabaya, pp. 56–58.

Furthermore, legal reasoning has a close relationship with the formation of the *ratio decidendi*, namely the legal reasons which are the main basis for the judge's decision.²⁵ *Ratio decidendi* is a concrete manifestation of a systematic and multi-layered legal reasoning process: from the discovery of legal norms, interpretation of the meaning of the norms, to the application of the norms to the concrete facts of the case. Therefore, the analysis in this sub-chapter aims to assess how the Pekalongan District Court judges construct legal arguments rationally in deciding the case of underhand power of attorney to sell, whether the considerations used have met the standards of rational legal reasoning according to Hadjon, and the extent to which the decision reflects a balance between legal certainty and substantive justice.

Legal reasoning, according to Philip M. Hadjon, is a rational and systematic juridical thinking process that aims to bridge legal norms and concrete events.²⁶ In Hadjon's view, the law does not operate automatically; it requires a judge capable of methodical thought processes so that legal norms can be applied appropriately to the facts at hand. Legal reasoning is not an intuitive or subjective activity, but rather a scientific activity based on legal logic and legal rationality. Therefore, a judge deciding a case must go through a series of sequential thought processes so that his or her decision is not only formally valid but also substantively correct.

In the context of Pekalongan District Court Decision Number 50/Pdt.G/2023/PN Pkl, Hadjon's theory provides an ideal framework for assessing the extent to which a judge has pursued a systematic legal reasoning process. Has the judge correctly identified the norm, interpreted the norm contextually, and established a justifiable legal construct? Through these three stages of legal reasoning, it can be measured whether the judge's consideration meets the standards of legal rationality and logical consistency as desired by Hadjon, or whether it contains elements of subjectivity that could undermine the legal validity of the decision.²⁷

According to Philip M. Hadjon, the first stage of legal reasoning is norm identification. Judges are expected to accurately determine the legal norms relevant to the case being examined. This process involves not only listing articles deemed relevant but also demonstrating a logical connection between these norms and the facts at hand. Hadjon emphasizes that this stage is the foundation of the entire legal reasoning process; errors or inaccuracies in selecting legal norms will directly impact the quality of the resulting *ratio decidendi*. Therefore, judges must first map the structure of the norms that will be used as major premises within the framework of deductive legal logic.

²⁵Shidarta, 2013, *Legal Reasoning and Legal Reasoning: Philosophical Roots Book 1*, Genta Publishing, Yogyakarta, p. 45.

²⁶Philip M. Hadjon, *Op. Cit.*, p. 60.

²⁷R. Setiawan, *Opcit*, p. 215.

Based on the Pekalongan District Court Decision Number 50/Pdt.G/2023/PN Pkl, the judge did cite several relevant norms, such as Articles 1320 and 1338 of the Civil Code concerning the conditions for the validity of an agreement and the principle of freedom of contract, Article 1792 of the Civil Code concerning the granting of power of attorney, and Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. However, from a legal reasoning perspective, the selection of these norms appears to be formalistic, not preceded by systematic reasoning that explains the functional relevance between one norm and another. The judge did not outline the hierarchical relationship between the norm on “granting power of attorney” and the norm on “transfer of property rights,” even though the differences in character between the two legal regimes greatly determine the validity of land sale and purchase transactions.

Another weakness is evident in the judge's failure to conceptually differentiate between an obligation (*verbintenis*) and the transfer of property rights (*zakelijke overeenkomst*). In fact, in classical civil law theory and according to Hadjon's view, norm identification must separate the two layers of law to prevent overlapping reasoning. The judge immediately combined civil norms with administrative provisions regarding land registration without explaining the dogmatic relationship between the two. As a result, there is a lack of clarity in the major premise used in legal reasoning. This ambiguity indicates that the judge has not conducted the norm identification process with the correct methodological principles as taught by Hadjon.²⁸

Furthermore, the judge in his consideration did not address relevant legal principles as a basis for interpretation, such as the principle of publicity and the principle of formalism in land law. In fact, these principles are important in explaining why the transfer of land rights requires an authentic PPAT deed as stipulated in Article 37 of Government Regulation Number 24 of 1997. By ignoring these principles, the judge seemed to place the entire issue within the realm of contract law, without considering the legal consequences of property. This indicates that the norm identification stage was not carried out comprehensively and ignored the structure of the applicable legal system.

Thus, it can be concluded that at the norm identification stage, the Pekalongan District Court judge did not fully comply with the principles of rational legal reasoning as outlined by Philip M. Hadjon. The partial selection of norms, the neglect of important legal principles, and the absence of a logical relationship between norms and facts indicate that the judge's legal thought process is not yet systematic and tends to be formalistic. This error will impact subsequent stages, particularly in the process of legal interpretation and construction, where the judge should develop meaning and construct legal arguments rationally, but

²⁸Philip M. Hadjon, *Op. Cit.*, p. 63.

will have difficulty because the normative foundation is already fragile from the start.²⁹

The second stage in the legal reasoning framework according to Philip M. Hadjon is norm interpretation, namely the process of interpreting the meaning of legal norms so that they can be applied appropriately to concrete events. In Hadjon's view, interpretation is the core of a judge's legal thinking activity, because this is where the legal text is translated into a living legal meaning. Judges are required to interpret rationally, not merely textually, by considering the social context, legal principles, and the purpose of the norm (teleological interpretation). Thus, legal reasoning must not stop at reading the law word for word, but must move towards substantive meaning without deviating from the corridor of positive law.

Based on Pekalongan District Court Decision Number 50/Pdt.G/2023/PN Pkl, the judge's interpretation process appears to have fallen short of these principles. The judge did interpret Article 1792 of the Civil Code concerning the granting of power of attorney and linked it to Article 1320 of the Civil Code concerning the requirements for a valid agreement. However, this interpretation was merely grammatical and linear, ignoring the broader context of land law. The judge failed to distinguish between the meaning of "power of sale" as an agreement granting authority (the realm of contract law) and "deed of sale" as a legal act concerning property that results in the transfer of rights. In fact, these two types of legal acts have fundamentally different legal consequences. Within Hadjon's theoretical framework, the failure to distinguish between the realms of normative meaning demonstrates the judge's weak interpretative power in interpreting the law systematically and teleologically.³⁰

Furthermore, the judge should interpret Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration with a systematic approach, namely by placing it within the entire national land law system. This article emphasizes that every transfer of land rights must be carried out with an authentic PPAT deed in order to have full legal force. However, the judge instead interpreted this provision flexibly on the grounds of substantive justice for parties acting in good faith. This kind of interpretation goes beyond the limits of legal rationality emphasized by Hadjon, because it ignores the intention of the regulator who wanted to guarantee legal certainty through the formalization of land administration. In other words, the judge interpreted the norm not based on its purpose (*ratio legis*), but rather on moral values that he considered fair, so that the results were subjective and legally inconsistent.

Furthermore, the judge failed to interpret the provisions on private deeds as stipulated in Articles 1874–1875 of the Civil Code. Historically, this article was

²⁹Abdulkadir Muhammad, 2000, *Indonesian Civil Law*, Citra Aditya Bakti, Bandung, p. 213.

³⁰Abdulkadir Muhammad, 2000, *Indonesian Civil Law*, Citra Aditya Bakti, Bandung, p. 213.

intended to differentiate the evidentiary power of attorney between authentic and private deeds, not to equate them. By failing to trace the historical intent of the article, the judge lost legal ground in assessing the validity of a private power of attorney as a basis for the transfer of rights. According to Hadjon, historical interpretation is crucial to avoid misinterpretation due to changes in social context or legal practice. Therefore, the absence of historical reasoning in the judge's deliberations indicates a weak hermeneutical approach, which should be a key characteristic of rational legal reasoning.³¹

Based on the analysis presented, the author is of the opinion that the judge's legal reasoning in this case has not demonstrated the expected methodological perfection, especially in terms of logical consistency and proportional application of norms, based on the ideal standard of legal rationality according to Philip M. Hadjon. The judge's thought process does not demonstrate a clear methodological structure, logical legal argumentation, or consistency between norms and conclusions. Thus, although the decision appears morally just, it is legally weak and has the potential to create legal uncertainty in the future.

4. Conclusion

Based on the analysis of the legal force of land sale and purchase based on the power of attorney to sell underhand as stated in the Pekalongan District Court Decision Number 50/PDT.G/2023/PN Pkl, it can be concluded that the power of attorney to sell underhand only has limited legal force, namely it is valid as a civil agreement that binds the parties as long as it meets the requirements of Article 1320 of the Civil Code, but does not have perfect legal consequences for property because it does not meet the formal requirements as stipulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. Thus, even though the agreement is valid in civil law and shows an agreement and good faith from the parties, in positive law the transfer of land rights can only be carried out through an authentic deed made by a Land Deed Making Officer (PPAT). Therefore, the judge's decision which recognized the validity of a sale and purchase based on a power of attorney to sell underhand without an authentic deed was deemed not to be fully in line with the principle of legal certainty as put forward by Hans Kelsen in his pure legal theory, because it ignored the hierarchy and formal procedures which are the basis of legal validity in the Indonesian legal regulatory system.

Based on the analysis of Pekalongan District Court Decision Number 50/Pdt.G/2023/PN Pkl, it can be concluded that the legal reasoning used by the judge does not fully reflect the ideal legal rationality as stated by Philip M. Hadjon. Although the judge attempted to realize concrete justice for parties

³¹Lawrence M. Friedman, 2002, *The Legal System: A Social Science Perspective*, Russell Sage Foundation, New York, p. 55–57.

acting in good faith, the reasoning process used showed methodological weaknesses, particularly in maintaining consistency between positive legal norms and their application to concrete facts. The judge did not clearly distinguish between the validity of civil agreements and the validity of the transfer of property rights, thus giving rise to the potential for conceptual errors and inconsistencies in legal logic. The pattern of thinking displayed was more moralistic and casuistic than deductive-rational, resulting in the emergence of temporary justice, rather than legally measurable systemic justice. Thus, the legal reasoning in the decision needs to be methodologically corrected to align with the principles of legal rationality, certainty, and justice as emphasized by Hadjon, so that future judges' decisions not only reflect substantive justice, but also have strong legal legitimacy within the framework of the national legal system.

Policymakers need to provide normative affirmation and legal updates regarding the status of private power of attorney in land sales and purchases by strengthening the implementing regulations of Government Regulation Number 24 of 1997, to prevent legal uncertainty. Law enforcement officials, especially judges and Land Deed Officials (PPAT), are expected to maintain a balance between legal certainty and substantive justice and increase public education regarding the importance of authentic deeds in land transactions. The public needs to understand that private power of attorney is not a valid means of transferring rights, so transactions must be conducted before a PPAT to ensure legal protection. For academics, this research can serve as a basis for developing legal reasoning theory and requires comparative studies of court decisions to formulate a more balanced jurisprudential doctrine.

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