

Criminal Disparity in Decisions in Cases of Theft With Violence in the Demak District Court

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Abstract. *Article 37 paragraph (1) of PP No. 24 of 1997 requires that land sales and purchases must be proven by a deed from a PPAT. However, in Demak Regency, the practice of buying and selling land underhand is still common without an authentic deed, thus complicating the initial land registration process. This study uses a juridical-sociological approach and aims to examine the implementation and obstacles of land registration due to underhand sales in Demak Regency. The results show that although land registration requirements are formally regulated, people often only have unofficial evidence such as receipts or statements. This results in land registration applications being rejected due to not meeting legal requirements. The proposed solution is the need for special regulations to accommodate underhand sales and increased legal education so that the public understands the importance of authentic deeds for legal certainty over land.*

Keywords: *Buying and Selling; First Time; Land Registration; Under Hand.*

1. Introduction

The legal certainty of land ownership was regulated by the government through Government Regulation No. 10 of 1961, which marked the beginning of the land registration system in Indonesia. However, due to suboptimal implementation, this regulation was replaced by Government Regulation No. 24 of 1997, which simplified the registration mechanism. This change also shifted the public's perspective on land, from merely a social asset to an asset of economic value. Subsequently, this provision was updated with Government Regulation No. 18 of 2021, which regulates more modern land registration, including electronic systems, digital document management, mortgage registration, sale and purchase and lease agreements, and land rights conversion. Further technical provisions are regulated in relevant ministerial regulations.

From these provisions, it can be seen that there is a requirement that all legal actions relating to land must be carried out by and before a land deed official. This provision is binding and has legal consequences that a transaction involving land objects if carried out privately is threatened with cancellation, because it is contrary to regulations that require every transaction to be carried out by and before a Land Deed Official. However, in reality, land acquisition today is more often carried out through the transfer/assignment of rights, namely through a sale and purchase based on Article 1457 of the Civil Code. The legal implication of land sales and purchases that are not based on Article 99 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration is that there are land sales and purchases carried out with a land sale and purchase agreement under the law.¹

Many residents of Demak Regency engage in land sales and purchases based on customary practices that violate Article 99 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. This can also be interpreted as underhand sales and purchases without a deed drawn up by a Land Deed Official. This then creates problems in the form of underhand sales and purchases becoming unclear regarding their validity, and the land being the object of the sale and purchase also becomes unclear when it is first registered because the land sale and purchase is only based on rights in the form of a deed of sale drawn up underhand. This clearly results in an imbalance in the fulfillment of rights in a sale and purchase agreement and leads to issues of legal injustice.²

Legal uncertainty in land registration occurs when a sale and purchase is conducted underhand, as in the case between MS (seller) and DS (buyer). Land rights cannot be registered with the Land Office because they do not comply with regulations. Even if the buyer acts in good faith, the transfer of title cannot be carried out because the seller cannot be located. Consequently, the only resolution is through a lawsuit, in this case the Demak District Court. Therefore, a more in-depth study is needed regarding the initial land registration of land acquired through underhand sales in Demak Regency.

2. Research Methods

This study uses a juridical-sociological approach. The research specification is descriptive analytical. The data sources used are primary and secondary data, which include primary legal materials, secondary legal materials, and tertiary legal

¹Saprida, Zuul Fitriani Umari, & Fitri Raya, "Legalitas Transaksi Jual Beli Online Di Indonesia", *Ekonomika Sharia*, Volume 8, Nomor 2, 2023, p. 320.

²Pan Mohamad Paiz, (2009), "Teori Keadilan John Rawls", *Jurnal Konstitusi*, Volume 6, Nomor 1, p. 139-140.

materials. Primary data collection methods utilize observation and interviews, while secondary data are collected through literature and documentation studies. The analysis is conducted descriptively qualitatively with data validity tests through credibility and confirmability to ensure the objectivity of the results.

3. Results and Discussion

3.1. Implementation of First-Time Land Registration for Land Objects Obtained Through Underhand Sale and Purchase in Demak Regency

Initial land registration for land acquired through private sales in Demak Regency is still possible through the land registration procedure at the National Land Office (BPN). However, this process needs additional evidence in the form of a statement from the village, witnesses familiar with the history of land ownership, and other supporting documents. However, registration based on a private sale and purchase still carries legal risks, such as the possibility of disputes or claims from other parties due to weak proof of ownership that is not supported by an authentic deed from the PPAT. Therefore, it is recommended that every land sale and purchase transaction be carried out in accordance with applicable provisions, namely by preparing a sale and purchase deed by the PPAT and immediately registering it with the BPN so that the land ownership status obtains full legal force and protection from potential future disputes.

The publication system adopted in registration in Indonesia is a negative publication system with a positive tendency. This system was chosen because the character of Indonesian land law is communal, meaning that land can be owned individually, but its use must still have a social function, meaning that a person must truly cultivate their land according to its intended use and such cultivation must not harm others. The government, through Article 32 of Government Regulation Number 24 of 1997 concerning Land Registration, began to implement that land certificates that have been issued for 5 years are strong evidence. In line with that, according to Urip Santoso, a land ownership certificate can be used as strong, even absolute, evidence of rights if it meets the following criteria:³

- a. The land ownership certificate is legally issued in the name of a person or legal entity;
- b. That the land was acquired in good faith;
- c. That the land is actually worked; and
- d. That within 5 (five) years since the issuance of the certificate, no one has submitted a written objection to the certificate holder and the head of the

³Urip Santoso, (2010). *Pendaftaran dan Peralihan Hak Atas Tanah*, cet 2, Jakarta : Kencana, p. 261.

local district/city land office or has filed a lawsuit with the court regarding control or issuance of the certificate.

In its development, the strength of land ownership rights depends on the registration of the registered land object. While in the land registration process, the origin of the procedure for obtaining land ownership is very decisive, especially land originating from a sale and purchase. The urgency of land registration is to obtain a land certificate as proof of land rights from a legal perspective. Legal certainty obtained from land registration serves to obtain legal protection. The absence of legal certainty will give rise to land disputes that are very detrimental to the disputing parties. In its development, the community in Demak City often conducts underhand land sales based on customary law between local communities.

Land sales and purchases conducted under underhand agreements are in fact contrary to Article 86 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration. Article 86 of Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units, and Land Registration states that "the creation of deeds by Land Deed Making Officials can be done electronically."

The legal force of the sale and purchase of land ownership rights under the law is in accordance with the provisions of Article 1338 of the Civil Code, that a legally made agreement shall be valid as law for the parties who made it, which is known as the principle of *Pacta Sun Servanda*. With this principle, the parties who enter into an agreement are given the freedom to create the contents of the agreement according to their needs and desires. The law regulates the law of contracts, but does not interfere with the main points or conditions that will become the agreement of the parties. Thus, it means that the contents of the agreement made must be implemented as per the law, that is, if one of the parties reneges, they can be subject to sanctions according to the law. Therefore, the parties who will make an agreement must be based on good faith. Good faith in the subjective sense can be interpreted as a person's honesty, namely what is in a person at the time of the legal act. Meanwhile, good faith in the objective sense is that the implementation of a legal agreement must be based on the norms of compliance or what is deemed appropriate in society.

The transfer of land ownership rights through a sale and purchase with a private deed does not obtain legal certainty. This is because a private deed only has formal and material evidentiary power. Therefore, the transfer of land ownership rights through a sale and purchase with a private deed that is recognized (by the person against whom the deed is intended to be used) has perfect and binding power only for the people who signed it, their heirs, and the person who received the rights

from them. Meanwhile, for third parties, a sale and purchase with a private deed has independent evidentiary power (based on the judge's assessment). This means that the agreement on the legal act (*rechts handling*) or legal relationship (*rechts betterkkin*) in the form of a sale and purchase of land ownership rights is not valid and binding in general, but only for the parties. Therefore, the transfer of land ownership rights through a sale and purchase with a private deed is not a strong means of proof. This is because there is still the possibility of denial by a third party (not generally binding).⁴

The problem of legal uncertainty in land registration where the sale and purchase agreement is carried out through an underhand agreement can be seen in the case of a land sale and purchase that is carried out underhand by MS as the seller and DS as the buyer that the registration of land rights from C Village No. 858 Ps. 27 Class S.II L cannot be registered at the local Land Office, because the sale and purchase is not in accordance with statutory regulations. Buyers who have good intentions can basically take care of the transfer of the certificate by complying with the applicable regulations, but in the case of the land sale and purchase above, it turns out that the seller can no longer be found, making it difficult for the buyer to process the transfer of the land rights, with. This situation results in the only way to complete the transfer of the land name must use a lawsuit and court decision. The lawsuit can be filed at the location of the land being traded, which is the location of the land in the Demak district area so that the buyer can file a lawsuit at the Demak District Court.⁵ However, the lack of legal certainty in proof of land ownership obtained through land sales with underhand agreements will clearly result in the buyer having little opportunity to obtain his rights in court decisions related to land sales disputes with underhand agreements.⁶

Formally, the Government's authority to regulate the land sector grows and is rooted in Article 33 paragraph (3) of the 1945 Constitution which states that the earth, water and natural resources contained therein are controlled by the State to be used for the greatest prosperity of the people. Then it was firmly established in Law Number 5 of 1960 concerning Basic Agrarian Principles (State Gazette 1960-104) or also known as the Basic Agrarian Law (UUPA). Subsequently, it spread to various organic regulations in the form of Government Regulations, Presidential Decrees, Presidential Regulations and Regulations issued by the heads of technical agencies in the land sector. Meanwhile, substantively, the Government's authority to regulate the land sector, especially in terms of legal traffic and land utilization, is based on the provisions of Article 2 paragraph (2) of the UUPA, namely in terms of the authority to regulate and organize the allocation, use, supply and

⁴*Ibid*

⁵Interview with Koes Darjanti KKS, Land Rights Data Maintenance and PPAT Development, National Land Agency, Demak Regency, May 12, 2025.

⁶Pan Mohamad Paiz, (2009), "Teori Keadilan John Rawls", *Jurnal Konstitusi*, Volume 6, Nomor 1, p. 139-140.

maintenance of land, including determining and regulating legal relationships between people and legal acts concerning land. With these provisions, the Government has been given legal authority to make rules and regulations (bestemming) in the agrarian field in the form of land, as well as to implement these rules (execution) concerning subjects, objects and legal relationships between these subjects and objects as long as they concern agrarian resources.⁷

The position of land sales and purchases with underhand agreements in reality clearly has a negative impact on legal certainty regarding the recognition of the basis of land ownership rights due to the inability of land objects resulting from sales and purchases with underhand agreements to be registered according to Article 64 of the Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, Apartment Units. Bambang Irjanto as Head of the Demak BPN Office said that throughout 2023 to 2024, there were 137 parties who were unable to change the name of the land certificates that had been purchased because the sale and purchase deed did not exist, and the status of land ownership before the sale and purchase was also not controlled by the seller, this occurred due to the problem of sales and purchases carried out with underhand agreements.⁸

The first land registration process is a legal step to change the status of unregistered land to officially registered land at the Land Office, as stipulated in Government Regulation Number 24 of 1997. In practice, applicants are required to submit an application accompanied by documents such as a girik or letter C, proof of physical possession, land history, and personal identification. However, since the issuance of Government Regulation Number 18 of 2021, there is an important provision that limits the use of certificates such as girik or letter C to only five years from the regulation's enactment, namely until February 2026. This means that after this deadline, girik can no longer be used as legal evidence in land title applications.⁹

According to Untung Sugiarto, SH, MKn, a Notary/PPAT in Demak Regency, the initial land registration process for uncertified land, particularly land that was acquired before 1997, is still possible through a witness report. This is done by presenting two witnesses from the village or parties with direct knowledge of the history of the land ownership. For land that has not been recorded and mapped in the land book or plot map at the Land Office, the registration process before 1997 can be supported by various informal documents such as seals, village sales and purchase deeds, gift letters, inheritances, or joint rights distribution based on wills. However, since 1997, land registration must be carried out through an authentic deed drawn up by a PPAT as a form of strengthening legal evidence. The issue that

⁷Soedjono, P. (1996). *Hukum Agraria Indonesia*. Jakarta: Pradnya Paramita, p. 100–110

⁸Interview with Bambang Irjanto as Head of the Demak BPN Office on January 12, 2025.

⁹Interview with Faris Helmy Rasyad, SH, MKn, Notary/PPAT in Demak Regency

states that uncertified land will be directly controlled by the state after 2026 is not entirely true. As long as the land is still physically controlled, is not in dispute, and there is evidence of legal ownership, land rights are still recognized. Nevertheless, the public is strongly encouraged to register their land before 2026 to avoid difficulties in proving their rights later. This is in accordance with the principle of legal certainty and serves as a preventative measure against potential agrarian conflicts, as frequently emphasized in practice by notaries and PPATs.¹⁰

According to Muchsin, legal protection is an activity to protect individuals by harmonizing the relationships of values or rules that are embodied in attitudes and actions in order to create order in social interactions between fellow human beings. In line with this, Muchsin also states that legal protection is something that protects legal subjects through applicable laws and regulations and enforces their implementation with sanctions. Legal protection can be divided into two, namely:

- a. Preventive Legal Protection
- b. Repressive Legal Protection

Based on the description above, it is concluded that Letter C and girik as proof of land ownership can still be used in the initial land registration process, however, based on Articles 84 and 99 of Government Regulation Number 18 of 2021, their validity is limited to only five years from the date the regulation comes into effect, namely until February 2026. After this time limit, the two documents are no longer recognized as a legal basis for submitting land rights, unless supported by other evidence such as an authentic deed from a Land Owner (PPAT), a certificate of physical possession for more than 20 years, or a court decision. In the Indonesian agrarian legal system, certificates as regulated in Articles 1 and 32 of Government Regulation Number 24 of 1997 are proof of rights that have strong evidentiary force, as long as the physical and legal data are in accordance with the land book and measurement letter. Certificates provide legal certainty for land rights owners, and if obtained legally and in good faith and not contested within five years of issuance, they cannot be simply revoked. In this context, preventative legal protection is provided through laws and regulations governing land registration requirements and procedures to help the public avoid disputes. Meanwhile, repressive legal protection applies when disputes or violations occur, which can be resolved through the courts or other legal mechanisms. Therefore, to ensure legal land ownership and protect themselves from potential disputes, the public is urged to register their land immediately before the 2026 deadline to ensure comprehensive legal protection.

¹⁰ Interview with Untung Sugiarto, SH, MKn as Notary/PPAT in Demak Regency

3.2. Obstacles in the Implementation of First-Time Land Registration for Land Objects Obtained through Private Sale and Purchase in Demak Regency and Their Solutions

The first land registration in Indonesia aimed to provide legal certainty over land ownership, a vital hope for the community. However, when land is acquired through underhand transactions, or without an official deed from a Land Deed Official (PPAT), the registration process in Demak Regency is often fraught with obstacles. Solutions related to the obstacles in implementing the initial land registration for land objects obtained through underhand sales and purchases in Demak Regency can be achieved through several strategic steps involving synergy between the Land Office, village government, and community empowerment efforts. Based on the explanation regarding the obstacles in implementing the first land registration for land objects obtained through underhand sales and purchases in Demak Regency, it can be seen that the existing obstacles consist of:

- a. The absence of regulations regarding underhand land sale and purchase agreements in Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, and Apartment Units.
- b. The legal counseling provided by the Demak National Land Agency (BPN) regarding the risks of land sales and purchases with underhand agreements to the community in Demak Regency is not optimal.
- c. People do not have sufficient knowledge regarding the risks of buying and selling land with underhand agreements.

The solution steps that can be taken regarding the problem of the lack of legal certainty regarding the sale and purchase of land with an underhand agreement which results in the land obtained from the sale and purchase with an underhand agreement not being able to be registered for the first time at the BPN are:

- a. Adding regulations regarding land registration from sales and purchases with private agreements in Government Regulation of the Republic of Indonesia Number 18 of 2021 concerning Management Rights, Land Rights, and Apartment Units.
- b. The government is conducting outreach and monitoring specifically for those engaging in land sales and purchases under underhand agreements, and is seeking effective ways to resolve land disputes arising from underhand agreements.
- c. The public needs to play an active role in seeking information regarding land ownership status and information regarding the risks of buying and selling land

with underhand agreements before carrying out land buying and selling with underhand agreements which can be obtained through the BPN Office.¹¹

4. Conclusion

Initial land registration for land acquired through private sales in Demak Regency is still possible, but carries high legal risks due to the lack of an authentic deed from a Land Deed Official (PPAT). This process often leads to disputes, especially if the seller is difficult to find or proof of ownership is weak. With Government Regulation No. 18 of 2021, the use of documents such as girik (land title) or Letter C (land title) is only valid until February 2026. Therefore, the public is encouraged to immediately register land through official procedures to obtain legal certainty and protection. Regulatory strengthening, legal counseling, simplification of registration procedures, and community assistance and empowerment are also needed to prevent potential disputes.

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¹¹ Interview with Faris Helmy Rasyad, SH, MKn Notary/PPAT Demak Regency