

Legal Analysis of the Implementation of Underhand Sale and Purchase of Uncertified Land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City and its Legal Consequences

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Abstract. Every registration of land rights as a result of a sale and purchase transaction of land rights, regulated in Article 37 of Government Regulation Number 24 of 1997, is required to be required to register land rights through a sale and purchase that can only be registered, if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations, while in reality, in Sialang Munggu Village, Tuah Madani District, Pekanbaru City there is a practice of buying and selling land that has not been certified. Land that has not been certified in this case based on brief interviews with several communities that most of them prefer the practice of buying and selling under the hand on the grounds that the buying and selling carried out is shorter and more efficient and does not require a lot of costs. The purpose of this study is to examine the implementation of buying and selling land under the hand that has not been certified in Sialang Munggu Village, Tuah Madani District, Pekanbaru City and to examine the legal consequences of buying and selling land under the hand that has not been certified in Sialang Munggu Village, Tuah Madani District, Pekanbaru City. This study was compiled using empirical juridical research methods. The type of research used is empirical legal research. The data sources in this study come from primary data and secondary data consisting of primary legal materials, secondary legal materials, and tertiary legal materials. The data collection method is by interview and observation, and then analyzed qualitatively. The results of the study indicate that in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, there are still some people who conduct land buying and selling transactions underhand. They carry out buying and selling transactions with several procedures, namely The practice of buying and selling is often carried out with several procedures. First, here the seller and the buyer conduct land transactions on the basis of mutual trust, this verbal sale and purchase transaction is usually carried out by parties who already know each other through kinship. Second, this land sale and purchase transaction is also carried out verbally but there is evidence of a receipt containing the amount of money they have agreed upon. Third, the land

sale and purchase transaction is carried out in the presence of the village head and there is evidence of a statement where the contents of the letter are the land sale and purchase transaction from the seller to the buyer, the land area, the signatures of the parties, witnesses and the village head that has been affixed with a stamp. The legal consequences of underhand sales of uncertified land in Sialang Munggu Village, namely the transfer of land ownership through underhand sales, remain valid under customary law. However, to ensure legal protection and certainty for such sales, the land must be registered to obtain a certificate as proof of ownership.as regulated in the Basic Agrarian Law because the statement letter made by the community is only a basis for land ownership rights to obtain a certificate and is not proof of ownership of land rights as is the case with a certificate.

Keywords: Land; Legal Consequences; Pekanbaru City; Sale and Purchase; Underhand.

1. Introduction

Land is closely related to humans in their daily lives. Given its importance, its use needs to be regulated by the state. Article 33, paragraph 3 of the 1945 Constitution states that "The land, water, and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people." (Article 33 paragraph (3), 1945 Constitution). Therefore, it is appropriate that the utilization of the functions of the earth and water, and the wealth contained therein, is aimed at achieving the greatest prosperity for all Indonesian people. As a social asset, land is a means of binding unity among Indonesian people in social, national and state life, while as a capital asset, land is a capital factor in development and land must be used and utilized as much as possible for the welfare of the people in a fair and equitable manner. (Achmad Rubaie; 2007). Every registration of land rights as a result of a sale and purchase transaction of land rights, regulated in Article 37 of Government Regulation Number 24 of 1997, is required to register land rights through a sale and purchase which can only be registered if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations.

The primary principle of land transfer is the inherent rights of the owner, meaning that a person has the legal authority to own the land. This ownership right carries legal consequences, so the sale is legal if the legal subject is the legitimate owner and the sale is made through an agreed-upon mechanism established by law. (C. P. Andriani; 2020). In reality, however, in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, uncertified land is being traded. Based on brief interviews with several community members, most of them prefer underhand land trading, arguing that it is quicker, more efficient, and less expensive. This practice often involves several procedures. First, the seller, who owns the land, and the buyer simply agree on a price. The buyer then pays a sum of money as payment, and the seller hands over the land without a receipt. This is done on the basis of mutual trust, and the buyer immediately occupies and cultivates the land. This verbal transaction is usually carried out by parties who already know each other through kinship.

Second, this land sale and purchase transaction is also conducted verbally, but as a token of payment, the buyer hands over a receipt containing the agreed-upon amount of money to the seller. The buyer then occupies or begins working on the land. Third, the land sale and purchase transaction takes place in the presence of the village head or sub-district head. Here, the seller and buyer agree on the price of the land to be sold and meet with the village head to complete the sale. After the time and date are determined by the village head, the village head or sub-district head, along with village officials, arrives at the land sale site. The land is then measured by village officials, witnessed by the village head, the seller, the buyer, and neighbors. Given the importance of land registration for obtaining proof of land rights, the government issued Government Regulation Number 24 of 1997, which was replaced by Government Regulation Number 18 of 2021 concerning Land Registration. Under Government Regulation Number 24 of 1997, any change in land ownership or status must be registered. The Land Deed Official (PPAT) is obligated to register these rights, and the Head of the Land Office is responsible for the registration. By registering land, a person will obtain proof of land ownership, commonly known as a land certificate. By issuing a land certificate, a person can avoid potential disputes regarding land ownership, especially with third parties.

2. Research Methods

The type of research used in this thesis is empirical legal research using an empirical juridical approach supported by interviews with the community and village heads. The data used are primary and secondary, using primary, secondary, and tertiary legal materials. After the data was collected, a qualitative analysis was conducted.

3. Results and Discussion

3.1. Implementation of Land Sale and Purchase Underhand for Uncertified Land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, Riau.

Underhand land transactions, also known as informal transactions without government-regulated legal processes, are still common in many regions. While these transactions are often conducted for convenience and speed, they carry significant legal risks. This explanation will outline the general procedure for underhand land transactions, including the steps typically taken, as well as the risks and potential consequences.

Observations with the Head of Sialang Munggu Village in Pekanbaru City revealed that, to the villagers' knowledge, most underhand transactions are conducted because this practice has long been practiced, making it a habit and part of the local culture. Furthermore, the process is quick and inexpensive. (Interview with the village head). The village head urged anyone wishing to purchase or sell land,

especially for a large sum of money, to do so before a Land Deed Official (PPAT). However, most people still do so in the presence of the Village Head.

The buying and selling process in Sialang Munggu Village is quite simple, requiring only a sales and purchase agreement, which both parties must sign. This agreement is then witnessed by witnesses, including village officials. Once all the agreements have been signed, it is then signed by the Village Head. Briefly, the transaction requires prior agreement between the parties. Second, a land measurement is conducted, witnessed by village officials. Third, the sales and purchase agreement is then drawn up. (Interview with the community in Sialang Munggu Village).

According to Article 1457 of the Indonesian Criminal Code, a sale and purchase agreement is an agreement in which one party commits to handing over an item and the other party pays a predetermined price. Meanwhile, according to Abdulkadir Muhammad, a sale and purchase agreement is one in which the seller agrees to transfer ownership of the item to the buyer in exchange for a sum of money called the price. (Abdulkadir Muhammad; 2010). Apart from that, one of the legal actions that people often carry out is buying and selling. (Aribowo, AN; 2020). The implementation of buying and selling can create a reciprocal legal relationship between the seller and the buyer. (Ahmad, A., Pransisto, J., & Syahril; 2023). And the sale and purchase of land is regulated in the Overschrijving Ordonnantie, namely a land sale and purchase agreement which is made with a notarial deed or a private deed at which time the land rights have not been transferred from the seller to the buyer and the legal transfer is carried out by making a deed of change of name in advance and by the Head of the Land Registry Office as Overschrijvings Ambtenaar at this time the transfer of land rights from the seller to the buyer occurs. (Ambarwati, A; 2021). The object of a sale and purchase can be movable, immovable, tangible, or intangible property. Buying and selling is one way to acquire land rights. (Rosadi, AG; 2020).

A land sale and purchase that is considered valid is a land sale and purchase conducted before a land deed official or a sale and purchase with an authentic deed authorized by an authorized official. This is in accordance with Government Regulation No. 24 of 1997 concerning Land Registration in Article 37 number 1 states that the transfer of land rights and ownership rights to apartment units through sale and purchase, exchange, grants of income in companies and other legal acts of transfer of rights. Except for the transfer of rights through auction can only be registered if evidenced by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations. Therefore, the public should conduct sales and purchases with an authentic deed or a deed authorized by an authorized official so that the sale and purchase carried out is legally valid. (Saleh Adiwinata; 1976).

The legal requirements for a land sale and purchase under customary law are the fulfillment of three elements: clear, cash, and real. This can be seen in the way of life of the community, which still practices underhand land sales. Underhand means a land sale and purchase agreement under customary law where the legal act involves the transfer of rights with cash or partial payment made by agreement of each party (seller and buyer) in the presence of the Village Head. The transfer of land rights is a legal act carried out by a land owner to another party, resulting in the transfer of rights and obligations over the land. The transfer of land rights can be carried out through a customary sale and purchase agreement carried out underhand. This underhand transfer of land rights is carried out in front of the village head by the parties involved in the sale and purchase, which is carried out in the presence of witnesses, relatives, and neighbors. (Sudargo Gautama and Abdul Rahman; 1980).

In the implementation of underhand land transactions for uncertified land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, some people still conduct underhand land transactions. They carry out the sale and purchase transactions with several procedures, namely the practice of buying and selling is often carried out with several procedures. First, here the seller and the buyer conduct land transactions based on mutual trust, this verbal sale and purchase transaction is usually carried out by parties who already know each other through kinship. Second, this land sale and purchase transaction is also carried out verbally but there is evidence of a receipt containing the amount of money they have agreed on. Third, the land sale and purchase transaction is carried out in the presence of the village head or sub-district head and there is evidence of a statement where the contents of the letter are the land sale and purchase transaction from the seller to the buyer, the land area, the signatures of the parties, witnesses and the village head that has been affixed with a stamp. Based on the Legal Certainty Theory according to Hans Kelsen, the implementation of underhand sale and purchase of land that has not been certified in Sialang Munggu Village, Tuah Madani District, Pekanbaru City is not yet appropriate, because according to Government Regulation Number 24 of 1997, it is mandatory to register land rights through sale and purchase which can only be registered, if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations. By carrying out land registration, a person will obtain or get proof of land ownership which we commonly call a land certificate. By issuing a land certificate, a person can avoid the possibility of disputes regarding land ownership, namely with third parties.

Observations with the Head of Sialang Munggu Village, Pekanbaru City, revealed that, to the best of the villagers' knowledge, most of the transactions were conducted underhand because this practice has existed for a long time and has become a habit and culture among the Sialang Munggu population. Furthermore, the process is quick and inexpensive. 108 The village head urged anyone wishing

to sell or purchase land, especially those for large sums of money, to do so in the presence of a Land Deed Official (PPAT). However, most residents still did so in the presence of the Village Head. (Interview with the head of Sialang Munggu Tuah Madani village).

3.2. Legal Consequences of Underhand Land Purchases on Uncertified Land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City

Legal consequences are derived from two words: consequence and law. A consequence is the impact of an event that has occurred or been carried out, giving rise to a cause later or after the event. Meanwhile, law itself is defined as a binding rule for the subjects within it for a specific purpose. Legal consequences themselves are actions taken to achieve a desired result, as regulated by law. (Dermina Dsalimunthe; 2017).

The legal consequences of this underhand land sale and purchase are that the buyer is disadvantaged because it is not carried out before a Notary and PPAT because it does not have legal force because it does not comply with the applicable procedures, namely according to the provisions of Government Regulation Number 24 of 1997 concerning Land Registration, so that the underhand land sale and purchase does not have strong legal force because it is not carried out before a Land Deed Making Officer (PPAT) and there is no proof of ownership in the form of a certificate.

Land sales and purchases underhand at the Sialang Munggu Village Office, Tuah Madani District, Pekanbaru City are still occurring. This can be seen from the practice of underhand land sales and purchases. Residents of Sialang Munggu Village, Tuah Madani District, Pekanbaru City still use the practice of buying and selling land using a receipt and through the Village Head. Based on the results of the author's interview with the Sialang Munggu Village Head, that the people of Sialang Munggu Village still choose to use the practice of underhand land sales and purchases because the process is easy, fast to complete and costs little. In fact, he has advised the community, to conduct land sales and purchases before a Notary and PPAT (Land Deed Making Official) in accordance with applicable regulations to obtain legal certainty and legal protection. However, the community still chooses to buy and sell land underhand. (Interview with the Head of Sialang Munggu Village). From the results of the author's interview with the Head of Sialang Munggu Village, he provided an example of a case of underhand land buying and selling practices that occurred in Sialang Munggu Village as contained in the table below:

Cases of underhand land transactions in Sialang Munggu Village still occur. This is demonstrated in the table above, showing several examples of land transactions conducted by residents of Sialang Munggu Village. The examples above also show

the types of transactions carried out by the buyers and sellers, some of which involve a receipt, stating the amount of money owed by the buyer to the seller, and the full names of each party.

While the type of transaction carried out through the Village Head is a sale and purchase agreement, to strengthen that the land sale and purchase has taken place, the process is attended by each party, the seller and buyer, the Village Head and witnesses presented from the village apparatus, as well as neighbors around the land to be sold. As evidence that the land sale and purchase has taken place, one sheet of evidence is made, the first sheet is a land sale and purchase statement signed by the parties and stamped by the village. The results of an interview with a community member named Eriwanto who sold his land to Mrs. Novie, he said that he preferred to sell his land with a receipt because the cost is cheap, the process is fast and does not take a long time. Because he sold the land because he needed money for his child's school fees, so the receipt is considered sufficient, this is also the reason for Mrs. Novie. Meanwhile, another community interview, Mrs. Mela Caniago who sold her land to Mr. Aldo Patria through the Village Head, said that the land sale and purchase was carried out in the presence of the Village Head because of the agreement of both parties. The choice was made in the presence of the Village Head because the cost is cheap and the process is completed quickly. Likewise, Mr. Irwandi, who bought land from Mr. Delnov Tanjung, said that the land sale and purchase process in front of the Village Head was fast and the costs were not expensive and Mr. Irwandi did not have a problem if the sale and purchase was carried out underhand, namely in front of the village head.

Legal consequences of buying and selling under the hands of land that has not been certified In Sialang Munggu Village, Tuah Madani District, Pekanbaru City, the transfer of land ownership through an underhand sale and purchase process remains valid according to customary law. However, in order for the sale and purchase to receive legal protection and certainty, the land that is the object of the sale and purchase must be registered to obtain a certificate as proof of ownership of land rights, as regulated in the Basic Agrarian Law and Government Regulation No. 24 of 1997 concerning Land Registration. Because the land certificate issued by the village head is only a basis for land ownership rights to obtain a certificate and is not proof of ownership of land rights as a certificate does. Other legal consequences in the implementation of the sale and purchase of land under the hand that has not been certified are that the buyer cannot register his land at the local Land Office, does not get a strong means of proof if the land he bought is disputed in the future, the buyer cannot guarantee his letter to obtain the credit applied for, Based on the theory of legal protection according to Satjipto Rahardjo, the legal consequences of the sale and purchase under the hand of land that has not been certified in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, the community must get legal protection because if a dispute

occurs in the future regarding the implementation of the sale and purchase of land under the hand, the community gets the legal protection it should.

4. Conclusion

In the implementation of underhand land transactions for uncertified land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, some people still conduct underhand land transactions. They conduct the sale and purchase transactions with several procedures, namely the practice of buying and selling is often carried out with several procedures. First, here the seller and the buyer conduct land transactions based on mutual trust, this verbal sale and purchase transaction is usually carried out by parties who already know each other through kinship. Second, this land sale and purchase transaction is also carried out verbally but there is evidence of a receipt containing the amount of money they have agreed upon. Third, the land sale and purchase transaction is carried out before the village head or sub-district head and there is evidence of a statement where the contents of the letter are the land sale and purchase transaction from the seller to the buyer, the land area, the signatures of the parties, witnesses and the village head or sub-district head that has been affixed with the stamp. Based on the Legal Certainty Theory according to Hans Kelsen, the implementation of underhand sale and purchase of uncertified land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City is not yet appropriate, because according to Government Regulation Number 24 of 1997, it is mandatory to register land rights through sale and purchase which can only be registered, if proven by a deed made by an authorized PPAT according to the provisions of applicable laws and regulations. By carrying out land registration, a person will obtain or get proof of land ownership which we commonly call a land certificate. With the issuance of the land certificate, a person can avoid the possibility of disputes regarding land ownership, namely with third parties. The legal consequences of underhand sale and purchase of uncertified land in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, namely the transfer of ownership rights to land through underhand sale and purchase, the process according to customary law remains valid. However, in order for the sale and purchase to obtain legal protection and certainty, the land that is the object of the sale and purchase must be registered to obtain a certificate as proof of ownership of land rights, as regulated in the Basic Agrarian Law and Government Regulation No. 24 of 1997 concerning Land Registration. Because the land certificate issued by the village head is only a basis for land ownership rights to obtain a certificate and is not proof of ownership of land rights as is the case with a certificate. Other legal consequences in the implementation of the sale and purchase of land underhand that does not have a certificate are that the buyer cannot register his land with the local Land Office, does not get a strong means of proof if later the land he bought is disputed, The buyer cannot guarantee his letter to obtain the credit applied for. Based on the theory of legal protection according to Satjipto Rahardjo, the legal consequences

of underhand sales and purchases of land that has not been certified in Sialang Munggu Village, Tuah Madani District, Pekanbaru City, the community must receive legal protection because if a dispute occurs in the future regarding the implementation of underhand land sales and purchases, the community will receive the legal protection they should. It is hoped that the practice of buying and selling land under the hand can be minimized, thus providing better legal protection and legal certainty to all parties involved and ensuring that the land buying and selling process runs legally and transparently. It is hoped that the people of Sialang Munggu Village will register their land before authorized officials to obtain legal proof of ownership. It is hoped that the people of Sialang Munggu Village will have a better understanding of the regulations on land buying and selling transactions, increase legal awareness, and reduce the risk of legal disputes.

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