
The Power of Deed of Sale and Purchase of Land Under Hand

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ABSTRACT

The practice of under-the-table land transactions, also known as "jual beli tanah dibawah tangan" in Indonesian, refers to the buying and selling of land without the involvement or oversight of official channels, such as government agencies or legal professionals. This phenomenon has gained significant attention due to its implications on land ownership, property rights, and the overall stability of the real estate market.¹ This abstract aims to explore the various aspects of under-the-table land transactions, including the motivations behind such transactions, the methods used to conduct them, and the potential consequences for both buyers and sellers. It will examine the factors that contribute to the prevalence of this practice, such as legal complexities, bureaucratic inefficiencies, and cultural attitudes toward land ownership. The study will utilize a combination of qualitative and quantitative research methods, including interviews with real estate professionals, legal experts, and individuals involved in under-the-table land transactions. It will also analyze existing literature, case studies, and relevant legal frameworks to provide a comprehensive understanding of the issue. The findings of this research will contribute to a deeper understanding of the under-the-table land transactions phenomenon and its impact on land markets, governance, and socio-economic development. The study will shed light on potential policy interventions and regulatory measures that can be implemented to mitigate the negative consequences associated with these informal land transactions.

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I. INTRODUCTION

An underhand land sale and purchase agreement is a contract used to conduct a land sale and purchase transaction between two parties. This agreement is done privately without involving government institutions or agents. In this context, the seller and buyer agree to carry out the land sale and purchase process directly, without going through an auction mechanism or other formal procedures.

Underhand land sale and purchase agreements can be made in a variety of situations. Some of the reasons why parties engage in these transactions include the desire to maintain confidentiality, avoid bureaucratic red tape, or reach a more flexible and speedy agreement. However, it is important to remember that although these transactions are private, underhand land purchase agreements still require legal validity to protect the interests of both parties.

¹ udha Tri Dharma Iswara dan I Ketut Markeling, 2016, "Kekuatan Pembuktian Surat Di Bawah Tangan Dalam Akta Perjanjian Jual Beli", *Jurnal Kertha Semaya*, Fakultas Hukum Universitas Udayana, Denpasar, h.5.

In this agreement, the parties involved should describe in detail the information related to the land being sold, including the location, size, and boundaries of the land involved. In addition, the agreement should also include provisions regarding the sale price, method of payment, and date of delivery of land ownership.

As a contract, an agreement for the sale and purchase of land under the hand must meet the legal requirements applicable in the region or country where the transaction takes place. The parties involved are advised to obtain competent legal advice before signing this agreement. This will help ensure that all legal aspects and interests of both parties are properly protected.

However, it is important to keep in mind that underhand land purchase agreements come with certain risks. As this process does not involve the role of government institutions or agencies that regulate land transactions, there are potential issues regarding land ownership, document validity or third-party claims that may arise later on. Therefore, it is imperative for the parties involved to conduct a thorough check and ensure that all necessary requirements and preparations have been made before signing this agreement.

II. RESEARCH PROBLEMS

1. What is the legal force of the deed of land sale and purchase agreement?
2. What is the binding legal force of the sale and purchase agreement under the hand?

III. RESEARCH METHODS

This type of journal research uses a normative approach method. Normative legal research is research in the form of collecting legal materials in writing which is done by examining existing library materials. According to Soerjono Soekanto, normative legal research is identified as library legal research which includes research on legal principles, legal systematics, comparative law, and legal history.

IV. RESULT AND DISCUSSION

1. First Research Problem Discussion

In activity of transferring land rights, it is often done by transferring rights. Transfer of rights in this case means that it is done through buying and selling activities. Buying and selling is an activity carried out through a process of transferring property rights in the form of goods or assets to other parties by using money as one of the means of exchange. Buying and selling activities in the economic and business fields are considered the most important part because they are directly related to consumers, in terminology buying and selling activities are defined as exchange transactions other than with facilities and enjoyment.²

The term sale and purchase comes from the translation of the contract of sale, which based on the provisions of Article 1457 of the Civil Code, what is meant sale and purchase is: "an agreement by which one party binds himself to give up the right to an item and the other party pays the promised price". Effendi Perangin states that: "Sale and purchase of land rights is a legal act in the form of transfer of property rights (transfer of land forever).

(transfer of land in perpetuity) by the seller to the buyer who at that time also hands over the price to the seller.

The legal force of a land deed refers to the legality and validity of a document used to transfer ownership or rights to land from one party to another. Land deeds play an important role in maintaining legal certainty in property transactions and providing legal protection to landowners.

In many countries, including Indonesia, the legal force of a land deed is governed by the applicable property law or land law. Here are some things to consider regarding the legal power of land deeds;

1. Form of Land Deed: Usually, a land deed must be in writing and signed by the parties involved. Some countries also require a notary or public official to validate the land deed to ensure its validity.
2. Registration: Registration of the land deed at the local land office or land registration agency is often a requirement to certify the validity of the deed. With this registration, the land deed becomes strong evidence of legal land ownership.
3. Applicable Law: The laws governing the legal force of land deeds may vary between countries and jurisdictions. Therefore, it is important to refer to the applicable property laws in the region where the land is located.

² Ni Kadek Ditha Angreni dan I Gusti Ngurah Wairocana, 2018, "Legalitas Jual Beli Tanah Dihadapan Pejabat Pembuat Akta Tanah", *Jurnal Kertha Semaya* Fakultas Hukum Universitas Udayana, Denpasar, h.2.

4. **Payments and Considerations:** In order to maintain the legal force of the land deed, there must usually be consideration given in exchange for the transfer of land ownership. This is often in the form of payment of the land price or some other agreement in favor of the seller.
5. **Authorized Parties:** The land deed should include the identity of the parties involved clearly, i.e. the legal seller and buyer as well as the legal representative holding the necessary authority.
6. **No Fraud or Coercion:** To maintain the validity of the land deed, there must be no element of fraud or coercion in the process of making it. The transaction must be done with the free awareness and consent of all parties involved.
7. **In buying and selling land in Indonesia,** it is mandatory that the transaction involves a notary or other official institution. However, it is important to understand that there are risks and drawbacks associated with underhand land transactions. Here are some things to consider:
8. **Unclear Proof of Ownership:** In an underhand land transaction, it may be difficult to verify the exact ownership of the land by the seller. In the absence of an official registration or validation process, the proof of ownership may be unclear, which may cause problems in the future.
9. **Risk of Fraud:** Underhand transactions increase the risk of fraud. Without a third party involved to verify and secure the transaction process, there is the potential for fraud or data manipulation that could harm either party.
10. **Legal Uncertainty:** Without the involvement of an official institution, there is the possibility of differing legal interpretations regarding the validity and legal force of an underhand land sale and purchase transaction. This can lead to legal uncertainty and potential disputes in the future.
11. **Unable to Access Legal Protection:** In some cases, underhand land transactions may not be able to access the same legal protections as transactions involving notaries or other official institutions. This may affect the rights and interests of the parties involved in the transaction.

2. Second Research Problem Discussion

Agreement in the Civil Code is contained in Article 1313 which states that: "an agreement is an act by which one or more people bind themselves to one or more other people". R. Wirjono Prodjodikoro argues that "a contract is a legal relationship regarding property between two parties in which one party promises to do something or not do something, while the other party is entitled to demand the contract". is entitled to insist on that contract". Based on the description above, the most important source of engagement carried out through buying and selling activities is an agreement. Because through an agreement, the parties can make all kinds of obligations in accordance with the principle of freedom of contract contained in Article 1338 of the Civil Code. Agreements may not be made freely, meaning that the agreement must meet certain requirements, for the validity of an agreement.³

Based on Article 1320 of the Civil Code, the conditions for the validity of an agreement are:

1. Agreement between the two parties.
2. Capacity to make an obligation.
3. The existence of a certain thing.
4. The existence of a lawful cause.

Based on the four cumulative requirements above, in an agreement, the requirement for an agreement is a very important thing to fulfill. Agreements made in writing are made by authentic deed and deed under hand. An underhand deed is a deed made by the parties without being made before a notary or public official. The binding force of the parties in an underhand deed is the same as an authentic deed, so the agreement is valid in the sense that it does not conflict with the Law. This is in accordance with Article 1338 of the Civil Code which states that "all agreements made legally shall apply as a law to those who make them". So, if an agreement has fulfilled these requirements, then the agreement is valid. Except based on the agreement of both parties and based on the reasons stipulated by law. which are stipulated by law.

Article 1459 of the Civil Code states that: "the right of ownership of the goods sold does not pass to the buyer as long as the delivery has not been made (according to the relevant provisions). This shows that the nature of the underhand sale and purchase agreement is only obligatory, which means that the sale and purchase has not

³ Muhammad Syaifuddin, 2002, *Hukum Kontrak, Memahami Kontrak dalam Perspektif Filsafat, teori, Dogmatik, dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)*, Mandar Maju, Bandung, h. 22.

transferred the property rights, it only gives rights and obligations to both parties, namely, giving the buyer the right to demand the delivery of the property rights to the goods sold. In the implementation of the transfer of property rights to land, the property agreement is the executor of the obligatory agreement. This means that since the agreement occurs, the rights and obligations of the parties arise. The buyer has the right to demand delivery of the goods while the seller has the right to payment of the price. Based on this, the binding force of the agreement under the hand is that the transfer of land rights does not occur while the agreement remains valid. That is because the validity of the sale and purchase agreement does not absolutely have to be with a deed made by PPAT.

V. CONCLUSION

A land sale and purchase deed is an important legal instrument in property transactions. This deed is a written proof that contains an agreement between the seller and the buyer regarding the transfer of land ownership. Through a land sale deed, the title to the land is officially transferred from the seller to the buyer. This provides legal certainty to the buyer that they own the rights to the land. The strength of the land sale and purchase deed also serves as protection for both parties. In this deed, the various terms, conditions and conditions of the land purchase are clearly set out, including the price, restrictions on the use of the land and other relevant provisions. The binding force of the sale and purchase has fulfilled the legal requirements of an agreement contained in Article 1320 of the Civil Code. In this case, the transfer of land rights does not but the agreement is still valid.

REFERENCES

- Yudha Tri Dharma Iswara dan I Ketut Markeling, 2016, "Kekuatan Pembuktian Surat Di Bawah Tangan Dalam Akta Perjanjian Jual Beli", Jurnal Kertha Semaya Vol. 04 no.01, Fakultas Hukum Universitas Udayana, Denpasar.
- Ni Kadek Ditha Angreni dan I Gusti Ngurah Wairocana, 2018, "Legalitas Jual Beli Tanah Dihadapan Pejabat Pembuat Akta Tanah", Jurnal Kertha Semaya Vol.06 No.09, Fakultas Hukum Universitas Udayana, Denpasar.
- Hukum Online, 2012, "Dapatkah Mengurus Sertifikat Tanah Hanya Dengan Kuitansi?", URL:<https://www.hukumonline.com/klinik/detail/lt50728e333143b/dapatkah-mengurus-sertifikat-tanah-hanyadengan-kuitansi> diakses tanggal 1 April 2019.
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan PokokPokok Agraria.
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- Peraturan Pemerintah Nomor 24 Tahun 2016 tentang Perubahan Atas Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.