

Legal Analysis of Land Disputes Involving the Circumvention of Law in Land Sale and Purchase Transactions

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Abstract

Land is a strategic resource holding significant economic, social, cultural, and legal value; consequently, legal certainty regarding land rights is of paramount importance. In practice, disputes over land ownership rights frequently arise from the circumvention of the law during land sale and purchase transactions—such as the use of private deeds (*akta di bawah tangan*), document forgery, the use of nominees, or the transfer of rights without adhering to statutory procedures. Such conditions not only cause losses to the parties involved but also undermine legal certainty and erode public trust in Indonesia's land administration system. This study aims to analyze the implementation of land ownership dispute resolution based on statutory regulations and to identify the obstacles encountered during this process. It employs a normative legal research method supported by an empirical approach, utilizing statutory, conceptual, and field-based approaches. Data were analyzed qualitatively through a combination of literature review, interview results, and empirical data. The research findings indicate that a sufficient legal basis for land dispute resolution already exists, comprising Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the Civil Code, Government Regulation Number 24 of 1997 concerning Land Registration, and various other implementing regulations. However, implementation in the field faces numerous obstacles, including weak land administration, "land mafia" activities, low public legal awareness, suboptimal inter-agency coordination, and the continued circumvention of the law in land transactions. Therefore, regulatory harmonization, the digitalization of land administration, enhanced professionalism among law enforcement officials, and increased public legal awareness are essential to ensure legal certainty and legal protection regarding land rights.

Keywords: *Land Dispute, Legal Evasion, Land Sale and Purchase, Legal Certainty.*

INTRODUCTION

Land is a legal object of vital importance in the lives of the Indonesian people. Beyond its high economic value, land also serves a social function, as affirmed in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA). Land tenure and ownership require legal protection to ensure legal certainty for every rights holder. Within the framework of a state based on the rule of law—as stipulated in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia—all legal relationships concerning land must be conducted in accordance with applicable legal provisions. The progress of national development has heightened the public's demand for land. This situation has caused the economic value of land to rise steadily, thereby triggering various forms of land disputes. One increasingly prevalent type of dispute concerns land ownership rights arising from the circumvention of the law during land sale and purchase transactions. Such circumvention manifests in practices including the use of false identities, document forgery, private (unregistered) transactions,

the use of nominee agreements, and the transfer of rights in violation of legal requirements. These practices constitute deviations from the principles of legal certainty and good faith in contract law.

From a normative standpoint, Indonesia's land law system regulates the mechanism for the transfer of land rights through the provisions of the Basic Agrarian Law (UUPA), the Civil Code, and Government Regulation Number 24 of 1997 concerning Land Registration. The entire transfer process must be executed before a Land Deed Official (PPAT) to ensure legal certainty for the parties involved. However, in practice, many people still conduct "under-the-hand" (informal) transactions, which subsequently lead to disputes. This situation highlights a gap between normative regulations and actual implementation in the field. The situation is further complicated by the emergence of "land mafia" practices that exploit weaknesses in land administration—ranging from document forgery, land data manipulation, and the unlawful issuance of certificates to the abuse of authority by certain individuals. These practices not only harm land rights holders but also hinder the realization of legal certainty and justice within the national land administration system.

According to Lawrence M. Friedman, the effectiveness of a legal system is influenced by three key elements: legal structure, legal substance, and legal culture. These three elements are interconnected in determining the success of law enforcement. In the context of land disputes, a weakness in any of these elements hinders optimal dispute resolution, thereby preventing the full realization of legal objectives—namely certainty, justice, and utility. Furthermore, Soerjono Soekanto posits that the success of law enforcement is influenced by five factors: the law itself, law enforcement officials, facilities and infrastructure, the community, and legal culture. This view indicates that the resolution of land disputes depends not only on the existence of legislation but is also influenced by the professionalism of officials, the quality of land administration, and public legal awareness when engaging in land rights transactions.

Given these circumstances, this study focuses on the implementation of dispute resolution regarding land ownership rights in accordance with statutory regulations, as well as the obstacles encountered during the resolution process. It is hoped that this study will contribute to the development of land law and offer recommendations to the government, law enforcement agencies, and the public for achieving legal certainty in the land sector.

RESEARCH METHODS

This study employs normative legal research supported by an empirical approach. Normative legal research is used to examine the legal norms governing the resolution of land ownership disputes arising from the circumvention of the law during land sale and purchase transactions. The empirical approach is utilized to gain insight into the practical implementation of these legal provisions through

field data and the views of competent informants. The approaches employed include the statute approach, the conceptual approach, and the empirical approach. The statute approach involves cataloging all legal provisions governing land rights, land registration, land sale and purchase transactions, and the resolution of land disputes. The conceptual approach entails examining theories regarding the rule of law, legislation, law enforcement, and legal systems to serve as the basis for analysis.

The legal materials utilized consist of primary legal sources, namely the 1945 Constitution of the Republic of Indonesia, Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the Civil Code, Government Regulation Number 24 of 1997 concerning Land Registration, and various other implementing regulations. Secondary legal materials were obtained from books, scholarly journals, research findings, and the opinions of agrarian law experts. Meanwhile, tertiary legal materials were derived from legal dictionaries, legal encyclopedias, and other supporting sources. Legal materials were gathered through library research combined with interviews with experts in the field of land affairs. All data were then analyzed qualitatively using a descriptive-analytical method to explain the relationship between legal norms and their implementation in resolving land ownership disputes arising from the circumvention of the law in land sale and purchase transactions.

RESULTS AND DISCUSSION

Implementation of Land Ownership Dispute Resolution Based on Statutory Regulations

Land rights in Indonesia enjoy constitutional protection as mandated by Article 33, Paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which stipulates that the land, water, and natural resources contained therein are controlled by the state and utilized for the greatest possible prosperity of the people. This provision is further elaborated in Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles (UUPA), which serves as the national legal foundation for agrarian affairs. Article 19 of the Basic Agrarian Law (UUPA) mandates that the government conduct land registration to provide a guarantee of legal certainty regarding land rights. The implementation of this provision is realized through Government Regulation Number 24 of 1997 concerning Land Registration, which governs procedures for land registration, the issuance of certificates, the maintenance of land data, and mechanisms for the transfer of land rights. A land rights certificate serves as strong evidence, provided that its physical and juridical data correspond to the actual situation.

In practice, the transfer of rights through a sale and purchase transaction must be executed before a Land Deed Official (PPAT). The PPAT deed serves as the basis for the Land Office to process the change of title on the land certificate. This requirement aims to provide legal protection to both the seller and the buyer, while simultaneously preventing disputes arising from transactions that fail to

meet the formal or substantive requirements stipulated by prevailing laws and regulations. Nevertheless, this study finds that the implementation of these provisions has not yet been fully effective. Many people still conduct sales transactions privately—without the involvement of a Land Deed Official (PPAT). Such practices are generally based on family ties, cost considerations, or mutual trust. Yet, these private transactions carry significant legal risk, as they cannot serve as the basis for registering the transfer of rights at the Land Office.

In addition to informal, private transactions, forms of legal circumvention also manifest through the use of false identities, the forgery of ownership documents, the use of nominee agreements, and the manipulation of land records. Land mafia operatives frequently employ these methods to secure unlawful gains. Consequently, disputes over land ownership are on the rise, and their resolution requires lengthy processes involving either litigation or non-litigation avenues. According to Lawrence M. Friedman's legal system theory, the suboptimal implementation of land law is attributable to weaknesses in legal substance, legal structure, and public legal culture. Therefore, successfully resolving land disputes requires more than just the enactment of legislation; it must be accompanied by improvements in the quality of officials, the modernization of land administration, and an increase in public legal awareness.

Obstacles in Resolving Land Ownership Disputes Arising from the Evasion of Law

The implementation of dispute resolution regarding land ownership rights essentially rests on an adequate legal foundation provided by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the Civil Code, and Government Regulation Number 24 of 1997 concerning Land Registration. However, the effectiveness of its implementation still faces various obstacles, preventing the full realization of legal objectives such as certainty, justice, and utility. Research findings indicate that these obstacles can be classified into three main aspects: legal substance, legal structure, and the legal culture of the community.

1. Substantive Legal Obstacles

Legal substance encompasses the body of legal norms governing the rights and obligations of the public regarding land matters. In practice, however, disharmony persists among the provisions of customary law, civil law, and national agrarian law. This situation leads to divergent interpretations in the resolution of land disputes, particularly concerning the substantiation of land ownership rights derived from customary law or pre-existing rights that predated the enactment of the Basic Agrarian Law (UUPA). Furthermore, various land-related regulations remain scattered across different legislative instruments, frequently resulting in overlapping provisions. This lack of synchronization makes it difficult for law enforcement officers and land officials to

determine the appropriate legal basis when handling land disputes. Consequently, dispute resolution processes are often protracted, creating legal uncertainty for the public.

Another issue is the absence of comprehensive regulations addressing the circumvention of the law (*fraus legis*) in land sale and purchase transactions. Various schemes—such as the use of nominees, contrived agreements, identity fraud, and sham contracts—remain prevalent as perpetrators exploit legal loopholes that lack detailed regulation. Consequently, regulatory reform is urgently needed to ensure legal certainty for all land transactions.

2. Legal Structural Obstacles

According to Lawrence M. Friedman, legal structure pertains to the institutions and law enforcement officials that operate the legal system. In the land sector, the legal structure involves the National Land Agency, Land Deed Officials (PPAT), Notaries, the Police, the Public Prosecutor's Office, and the courts. The effectiveness of dispute resolution depends heavily on coordination among these institutions. This study indicates that inter-agency coordination is not yet functioning optimally. Issues such as delays in the exchange of land data, differing interpretations of land ownership documents, and slow administrative processing persist, resulting in lengthy dispute resolution periods.

Furthermore, the practices of "land mafias" remain a serious issue within the national land system. Their methods range from document forgery, the manipulation of land data, and the unlawful issuance of certificates to the abuse of authority by certain individuals. Such practices not only harm legitimate rights holders but also undermine public trust in the national land administration system. A shortage of personnel with expertise in land administration also affects the quality of public services. Inconsistent technical proficiency among officials in utilizing electronic land systems has resulted in land administration processes that are not yet fully effective or efficient.

3. Obstacles Related to the Public's Legal Culture

Legal culture refers to the attitudes and behavior of the public regarding applicable law. In land-related practices in Indonesia, many people still conduct sale and purchase transactions based on familial ties without adhering to the legal procedures stipulated in statutory regulations. This lack of legal awareness is reflected in the continued prevalence of land sale transactions conducted without a Sale and Purchase Deed (AJB) drawn up by a Land Deed Official (PPAT), as well as the failure to promptly transfer the title (change the name on the certificate) or report the transaction to the Land Office. Consequently, when disputes arise, the parties face difficulties in legally proving their ownership rights.

Furthermore, some members of the public still do not view land certificates as a primary necessity, provided their possession of the land is acknowledged by the local community. This

perspective runs counter to the principle of legal certainty, which is the primary objective of Indonesia's land registration system. According to Soerjono Soekanto, the success of law enforcement is heavily influenced by the level of public legal awareness; the higher the level of legal awareness, the less likely it is for legal violations or land disputes to arise. Therefore, fostering a culture of legal awareness must be an integral part of national agrarian reform policy.

Efforts to Ensure Legal Certainty in Land Dispute Resolution

Resolving land ownership disputes arising from the circumvention of the law cannot be achieved solely through court proceedings; it must also be accompanied by comprehensive efforts to reform the legal system. Such reform encompasses regulatory and institutional aspects, land administration, and the enhancement of public legal awareness.

1. First, the government needs to harmonize all land-related regulations to prevent overlapping legal norms. Synchronizing the Basic Agrarian Law (UUPA), the Civil Code, implementing regulations, and various land policies will provide greater legal certainty for both the public and law enforcement officials.
2. Second, the modernization of land administration through the digitization of land data must be continuously enhanced. An electronic land system enables the integrated storage of both physical and juridical land data, thereby minimizing document forgery, the issuance of duplicate certificates, and the manipulation of land data.
3. Third, the professionalism of law enforcement officials must be continuously improved through education and training in land law. Officials must possess the ability to distinguish between civil disputes and land-related criminal offenses to avoid the criminalization of disputes that are essentially matters of breach of contract or civil litigation.
4. Fourth, public legal awareness must be raised through continuous legal outreach and education. The public needs to understand the importance of using official Land Deed Official (PPAT) deeds, registering land, and conducting every transaction in accordance with statutory regulations. Such measures represent the most effective preventive approach to reducing future land disputes.

CONCLUSION

Based on the research findings and discussion, it can be concluded that the implementation of dispute resolution regarding land ownership rights arising from the circumvention of the law in land transactions—or "legal evasion"—already possesses an adequate normative legal basis. This foundation is provided by Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles, the Civil Code, Government Regulation Number 24 of 1997 concerning Land Registration,

and various other implementing regulations. These regulations govern procedures for the transfer of land rights, land registration, proof of ownership, and dispute resolution mechanisms—encompassing both litigation and non-litigation pathways. However, the implementation of these provisions has not been optimal; informal ("under-the-table") land transactions, the use of forged documents, the misuse of nominee agreements, the manipulation of land data, and other forms of legal evasion persist, leading to disputes over land ownership rights.

The primary obstacles in resolving land ownership disputes involve three aspects: legal substance, legal structure, and public legal culture. Regarding legal substance, there remains a lack of harmonization among certain land regulations, creating the potential for conflicting legal interpretations. Regarding legal structure, issues include weak inter-agency coordination, limited human resources, and the continued presence of "land mafia" practices that hinder the establishment of legal certainty. Meanwhile, regarding legal culture, the public's low level of awareness regarding conducting transactions in accordance with applicable legal procedures is a dominant factor contributing to the rising number of land disputes. Therefore, regulatory reform, the strengthening of digital-based land administration systems, enhanced professionalism among law enforcement officials, and increased public legal awareness are essential to ensure that land dispute resolution delivers legal certainty, justice, and sustainable utility.

Suggestion

Based on the research findings, the author offers the following recommendations:

1. To the Government—specifically the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency—it is necessary to continuously harmonize land-related regulations, strengthen the electronic land registration system, improve the quality of public services, and accelerate the digitalization of land administration to prevent the circumvention of the law in land sale and purchase transactions.
2. To the public, every land sale and purchase transaction should be conducted in accordance with statutory regulations—executed via a Deed of Sale and Purchase (AJB) drawn up by a Land Deed Official (PPAT)—and promptly registered with the Land Office. The public also needs to raise their legal awareness to avoid becoming involved in practices that circumvent the law, which could potentially lead to future disputes.

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