

The Validity of Oral Land Buying and Selling According to Indonesian Positive Law

¹Siti Misnar Abdul Jalil, ²Guswan Hakim, ³Ni Nyoman Triana Suskendariani

¹Universitas Lakidende Unaaha, ²Haluoleo University, ³Universitas Lakidende Unaaha
E-mail: sitimisar25@gmail.com

Land buying and selling is a legal act with significant legal consequences because it relates to land rights protected by the state. In practice, particularly in rural areas, land buying and selling is still frequently conducted orally based on local beliefs and customs. The question that arises is whether such oral land buying and selling is valid under Indonesian positive law and how strong its evidence is in the event of a dispute. This study aims to analyze the validity of oral land buying and selling from the perspective of civil law, the Basic Agrarian Law, and its implementing regulations. The research method used is normative juridical with a statutory and conceptual approach. The results indicate that oral land buying and selling, in principle, does not meet the formal requirements stipulated by statutory regulations and therefore does not provide legal certainty, although under customary law, land buying and selling can be conducted orally. Therefore, land buying and selling must be conducted in writing before a Land Deed Official (PPAT) to ensure legal certainty and protection for the parties.

Keywords: Land Buying and Selling, Oral Agreement, Validity, Agrarian Law.

This is an open access article under the [CC BY-NC](#) license



Corresponding Author:

Siti Misnar Abdul Jalil
Universitas Lakidende Unaaha
sitimisar25@gmail.com

1. Introduction

Land is one of the natural resources that has high strategic and economic value for people's lives. Land ownership and control are often a source of legal disputes due to the non-fulfillment of legal requirements in the transfer of land rights. One form of transfer of land rights is through buying and selling. Land has a very important role in the lives of the Indonesian people, both as a place to live, a means of business, and as a high-value economic asset. Along with the increasing need for land, various forms of transfer of land rights are increasingly occurring, one of which is through legal acts of buying and selling. In practice, the sale and purchase of land should be carried out in accordance with the applicable legal provisions in order to provide certainty and legal protection for the parties involved.

However, in people's lives, there is still the practice of buying and selling land that is carried out orally, without making a sale and purchase deed in front of the Land Deed Making Officer (PPAT). This practice generally occurs in rural areas or in communities that have close kinship relationships. The factor of belief, hereditary habits, and lack of understanding of land law are the main reasons why oral land buying and selling is still carried out to this day.

Problems arise when the verbal sale and purchase of land is faced with the provisions of positive Indonesian law. In general, civil law recognizes the existence of freedom of contract and does not require a specific form for the validity of an agreement, including a sale and purchase agreement. This is reflected in the provisions of Article 1320 of the Civil Code which regulates the conditions for the validity of the agreement. Thus, the oral sale and purchase of land can be considered legally valid in civil terms as long as these conditions are met.

However, these provisions cannot be separated from the special provisions in the national agrarian law. Law No. 5 of 1960 concerning Basic Regulations on Agrarian Principles and its implementing regulations, especially Government Regulation No. 24 of 1997 concerning Land Registration, expressly requires that the transfer of land rights through sale and purchase must be evidenced by a deed made by PPAT. This provision is intended to ensure orderly land administration and provide legal certainty for land rights holders.

The difference between the provisions of civil law and land law raises legal issues related to the validity of land buying and selling carried out orally. On the one hand, oral agreements can be considered legally valid, but on the other hand they do not meet the formal requirements required by land law. This condition has the potential to cause legal uncertainty, especially for the buyer, because the land rights he acquired cannot be officially registered.

In practice, people often buy and sell land simply, even only based on an oral agreement without an authentic deed. This practice is generally based on customary customs or laws that are still alive in the community. However, in the context of Indonesia's positive law, the transfer of land rights has been expressly regulated through laws and regulations. The problem that arises is the contradiction between customary law practice and positive legal provisions. This creates legal uncertainty, especially when disputes occur later on. Therefore, it is important to examine the validity of the oral sale and purchase of land according to Indonesia's positive law.

Buying and selling land is one of the main pillars in Indonesia's economic development. Land is a vital asset for investment and development of infrastructure, housing, and the business sector. Changes in land ownership can increase land values and provide economic benefits for new owners. Buying and selling land legally regulates and recognizes land rights in the eyes of the law. This is important to ensure legal certainty and dispute avoidance. The official sale and purchase process strengthens the land registration system, which supports transparency and clarity of ownership. Buying land provides an opportunity for individuals or groups, including underprivileged communities, to acquire land as an asset. Dispute Resolution: With clear legal regulations on the sale and purchase of land, disputes related to ownership can be resolved fairly and equitably. Buying and selling land that is carried out in accordance with the provisions of the law receives protection from the existing legal system.

Regulations regarding the sale and purchase of land strengthen law enforcement for transactions that are not authorized or not in accordance with procedures. Buying and selling land reflects social interaction and community relations in the community. This often involves diverse local traditions and norms. In some cases, the practice of buying and selling land is related to the preservation and management of land that has a certain historical or cultural value.

Buying and selling land plays a role in the implementation of national land policies, including agrarian reform and the regulation of land use for productive purposes. The regulated land buying and selling process also contributes to the achievement of sustainable development goals, including better resource management. In many regions of Indonesia, oral land buying and selling is still a common practice, especially in communities that uphold customary norms. It reflects social interaction and respect for local traditions. Verbal transactions often involve agreements that are based on trust between the parties involved, thus strengthening social relationships within the community. Many communities, especially in rural areas, have difficulty accessing the formal administrative process for buying and selling land. This encourages the practice of verbal buying and selling as an alternative solution. The costs associated with formally registering and legalizing buying and selling transactions can be a barrier for people with limited economies.

The practice of verbal land buying and selling risks giving rise to ownership disputes in the future due to the lack of documentary evidence. Without official documents, it is difficult to prove the legitimacy of a transaction. In various regions, there are often cases of land disputes arising from unregistered oral purchases, which may involve third parties or conflict with broader legal guidelines.

The government and related institutions are beginning to realize the importance of formalities in buying and selling land. Some regions have developed policies to facilitate legitimate land transactions, although there are still many oral practices in place. Legal Socialization: The public needs to be educated on the importance of conducting written and registered land transactions to protect their rights and reduce potential future disputes. The emergence of digital technology in the land sector provides opportunities to increase transparency and accessibility in land buying and selling transactions. However, many people still rely on oral practices due to limited understanding of technology.

Some online platforms are starting to offer services related to land registration, which can facilitate legality better than the oral practices that existed before. The community still needs to increase awareness of the importance of legality in buying and selling land. Education and information about land law are essential.

A responsive legal system is needed by providing access and support to the community to carry out formal land buying and selling transactions, so that oral practices can be minimized.

Based on this background, the formulation of the problem in this study is: (1) What is the validity of the oral sale and purchase of land according to Indonesia's positive law? and (2) What are the legal consequences of the sale and purchase of land carried out orally?

2. Methods

This research uses normative juridical research methods, namely legal research conducted by examining literature materials or secondary data. The approaches used include the statute approach and the conceptual approach. The legal materials used consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Constitution of the Republic of Indonesia in 1945, Law Number 5 of 1960 concerning the Basic Regulations of Agrarian Principles (UUPA), the Civil Code, and Government Regulation Number 24 of 1997 concerning Land Registration. Secondary legal materials are books, legal journals, and scientific articles relevant to the research topic. Data analysis was carried out qualitatively with deductive reasoning.

3. Results and Discussion

The Legality of Buying and Selling Land Orally

Based on the results of the research that has been conducted, it is known that the practice of verbal land buying and selling still occurs in the community, especially in rural areas. This practice is generally carried out on the basis of mutual trust between the seller and the buyer, kinship relationships, and hereditary habits that consider that a verbal agreement is enough to bind the parties. In addition, economic factors and lack of legal understanding are also the reasons why people do not buy and sell land in accordance with applicable legal procedures.

Viewed from the perspective of civil law, the oral sale and purchase of land can basically be considered valid if it meets the conditions for the validity of the agreement as stipulated in Article 1320 of the Civil Code, namely the existence of an agreement between the parties, the ability to perform legal acts, the existence of certain objects, and halal causes. In the practice studied, most of the oral land purchase and

sale transactions have met these elements, such as agreement on the price, the object of the land being sold, and the payment made by the buyer to the seller.

However, when viewed from the national agrarian law, especially based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Government Regulation Number 24 of 1997 concerning Land Registration, the sale and purchase of land must be carried out clearly and in cash in front of the Land Deed Making Officer (PPAT) and proven by an authentic deed. The deed is the basis for registering the transfer of land rights to the land office. Thus, the oral sale and purchase of land does not meet the formal requirements required by laws and regulations in the field of land.

The results of the study show that oral land buying and selling cannot be used as strong evidence to register land rights. As a result, the buyer does not obtain a certificate in his or her name, so that juridically his legal position is weak. This condition has the potential to cause legal problems in the future, such as land ownership disputes, denials by the seller, or claims from the seller's heirs.

In addition, the study also found that in some cases, even if the buyer has owned and used the land for a long period of time, this does not necessarily provide legal certainty for land ownership rights. Without a sale and purchase deed made by PPAT, the buyer will have difficulty in proving the transfer of rights if there is a dispute in court.

Thus, it can be concluded that the validity of the oral sale and purchase of land is limited. Civilly, the verbal sale and purchase of land can be considered valid if it meets the conditions for the validity of the agreement. However, in land law, the oral sale and purchase of land is illegal because it does not meet the formal provisions required by laws and regulations. Therefore, the oral sale and purchase of land does not provide optimal legal protection and legal certainty for the parties, especially for the buyer.

Civil Law Perspective

From a civil law perspective, the oral sale and purchase of land can be considered valid as long as it meets the legal requirements of the agreement as stipulated in Article 1320 of the Civil Code. The agreement of the parties, the ability to act, a clear object, and a halal causa can be fulfilled even if the agreement is not stated in written form. However, the civil validity is limited because it does not necessarily result in the transfer of land rights judicially. This shows that there is a difference between the validity of the agreement and the validity of the transfer of rights.

Based on the results of the research that has been conducted, the oral sale and purchase of land from the perspective of civil law needs to be analyzed by referring to the general provisions regarding agreements as stipulated in the Civil Code. Civil law basically adheres to the principle of freedom of contract, which gives the parties the freedom to determine the content and form of the agreement as long as it does not conflict with the law, public order, and morality.

In Article 1320 of the Civil Code, four conditions for the validity of the agreement are determined, namely the agreement of the parties, the ability to make an agreement, the existence of certain objects, and halal causes. Verbal buying and selling of land can be said to be legally valid if the four conditions are met. The results of the study show that in practice, oral land buying and selling generally has fulfilled the elements of agreement, which is reflected in the agreement on the land object and the selling price. In addition, the parties involved are generally capable legal subjects, so the proficiency requirements are also met.

The object of the agreement in the verbal sale and purchase of land has also been clearly determined, both regarding the location and the area of the land to be sold. Thus, the conditions regarding a particular object can be said to be met. Meanwhile, because the verbal land purchase and sale agreement is generally not

contrary to the law, so it meets the requirements for halal causes. Therefore, from a civil law point of view, the oral sale and purchase of land can be considered legal and binding on the parties as a law.

Furthermore, the sale and purchase of land is a consensual agreement, which means that the agreement has been born and binding since the agreement between the seller and the buyer was reached. In this context, no written form is required as a condition for the validity of the agreement. The legal consequence of the agreement is the emergence of rights and obligations for the parties. The seller is obliged to hand over the land object, while the buyer is obliged to pay the agreed price.

However, in practice, problems often arise related to proving in the event of a dispute. Civil law recognizes several pieces of evidence, including written evidence, witnesses, suspicions, confessions, and oaths. Buying and selling land orally does not produce strong written evidence, so the power of proof is limited. This puts the buyer in a weaker position if the seller of Tenginkai has an agreement.

The results of this discussion show that although the verbal sale and purchase of land is legal and legally binding, it does not provide optimal legal protection for the parties. The absence of written evidence can cause legal uncertainty and difficulties of proving in court. Therefore, from a civil law perspective, oral land buying and selling should be avoided and replaced with a written agreement that provides legal certainty and stronger protection for the parties.

Customary Law Perspective

In customary law, the sale and purchase of land is known as the principle of "light and cash", which is carried out in real terms in front of the community and payments are made in full. Buying and selling land according to customary law does not always require a written deed, but it is enough with agreement and social recognition. This principle is still widely practiced in various regions in Indonesia.

Although customary law is recognized for its existence, as far as land registration is concerned, customary law must conform to national law. Therefore, the oral sale and purchase of land according to customary law must still be stated in the PPAT deed in order to obtain positive legal recognition. Buying and selling land orally in civil law can be considered valid if it meets the requirements of Article 1320 of the Civil Code. However, in the context of agrarian law, the oral sale and purchase of land does not meet the formal requirements because it is not made before the PPAT.

As a result, the oral sale and purchase of land cannot be registered at the land office and does not provide legal certainty. In the event of a dispute, the buyer will have difficulty in proving his right to the land. From the perspective of customary law, land has a very important position because it is not only seen as an economic object, but also as part of the social, cultural, and spiritual life of indigenous peoples. Land is often associated with group identity, community survival, and the relationship between humans, nature, and ancestors. Therefore, the regulation regarding the transfer of land rights in customary law has different characteristics from written positive law.

Customary law generally does not require a written form in the implementation of land buying and selling. The transfer of land rights can be done orally, as long as it fulfills the customary principles that apply in the local community. The main principle in buying and selling land according to customary law is the existence of an agreement between the parties which is carried out in a transparent and cash manner. *Terang* means that the legal act is carried out openly and known by the community or customary officials, while *cash* means that payments are made in a lump sum and in full at the time of the transaction.

The results of the study show that in customary law practice, oral land buying and selling is considered legal if it has been carried out in front of the customary head or authorized community leaders. The presence of these parties functions as witnesses as well as guarantors of the validity of transactions according to

custom. Thus, even though it is not stated in written form, the oral sale and purchase of land still has a socially and morally binding power for the parties.

In addition, customary law emphasizes more on real land ownership and use than written evidence. If the buyer has controlled the land continuously and there are no objections from the indigenous people, then the right to the land is recognized customarily. This recognition is strengthened by the presence of witnesses from the community who know about the transfer of land rights.

However, the applicability of customary law cannot be separated from the national legal system. Law Number 5 of 1960 concerning the Basic Regulation of Agrarian Principles recognizes the existence of customary law as long as it is alive and does not contradict national interests and laws and regulations. In this context, the legal oral purchase and sale of land according to customary law is not necessarily fully recognized in positive law, especially in terms of registration of land rights.

The results of the discussion showed that although the oral sale and purchase of land has strong legitimacy in customary law, the transaction faces obstacles in obtaining juridical legal certainty. The incompatibility between the customary law mechanism and positive law can cause problems, especially when the land is about to be registered or when there is a dispute in court. In such situations, positive law tends to prioritize written evidence and authentic deeds.

Thus, from the perspective of customary law, the oral sale and purchase of land is a legal act that is valid and binding as long as it fulfills the principle of light and cash and is recognized by the local indigenous people. However, to ensure legal certainty in the national legal system, efforts are needed to harmonize customary law and positive law, so that the rights of indigenous peoples are protected without ruling out the need for formal legal certainty.

Legal Consequences and Evidentiary Strength

Based on the results of the research conducted, the practice of buying and selling land orally is still found in people's lives, especially in areas that have strong social and family ties. This kind of transaction is generally carried out without involving the Land Deed Making Officer (PPAT) and without the creation of an authentic deed, so it is only based on a verbal agreement between the seller and the buyer. This condition has various legal consequences, especially related to legal certainty and evidentiary strength in the event of a dispute.

In terms of legal consequences, the verbal sale and purchase of land creates an agreement between the seller and the buyer as long as it meets the requirements for the validity of the agreement as stipulated in Article 1320 of the Civil Code. In this context, the parties are bound to carry out their respective achievements, namely the seller is obliged to hand over the land, while the buyer is obliged to pay the agreed price. Civilly, the agreement can give rise to rights and obligations for the parties.

However, the legal consequences of the oral sale and purchase of land are different when viewed from land law. Based on Law Number 5 of 1960 concerning Basic Regulations on Agrarian Principles and Government Regulation Number 24 of 1997 concerning Land Registration, the transfer of land rights must be proven by a deed made by PPAT. Without the deed, the transfer of land rights cannot be registered with the land office. As a result, the buyer does not obtain juridical recognition as the holder of the right to the land in question.

The results of the study show that the most significant legal consequence of oral land buying and selling is the weak legal position of the buyer. Even though the buyer has paid in full the price of the land and physically controls the land object, legally the land rights are still recorded in the seller's name. This has the

potential to cause disputes, both between the seller and the buyer and with third parties, such as the seller's heirs or other parties claiming the rights to the land.

In addition to the legal consequences, this study also highlights the evidentiary power aspect of oral land buying and selling. In civil procedure law, evidence that is recognized includes written evidence, witnesses, suspicions, confessions, and oaths. Oral buying and selling of land is generally not supported by written evidence in the form of an authentic deed, so the power of proof becomes weak. In the event of a dispute, the buyer must rely on other evidence, such as witness statements or indirect evidence in the form of payment receipts.

Witness testimony in the oral sale and purchase of land can indeed be used as evidence, but its strength is independent and highly dependent on the judge's judgment. In addition, testimony is often influenced by certain kinship relationships or interests, thus casting doubt on its objectivity. Unlike an authentic deed which has perfect evidentiary power, oral land buying and selling does not provide strong evidentiary certainty before the law.

This study also found that in judicial practice, judges tend to prioritize written evidence that is valid and in accordance with the provisions of laws and regulations. Therefore, a party that bases its claim solely on an oral agreement is at a disadvantage. This shows that the oral sale and purchase of land not only causes legal consequences in the form of uncertainty of rights, but also causes difficulties in proving in the event of a dispute.

Based on this description, it can be concluded that the legal consequence of the verbal sale and purchase of land is the emergence of a civil relationship of engagement without being followed by a transfer of land rights judicially. In addition, the evidentiary power of the oral sale and purchase of land is very weak because it is not supported by an authentic deed required by land law. Therefore, the oral sale and purchase of land does not provide optimal legal protection for the parties, especially for the buyer.

1. Legal Consequences for the Parties

The legal consequences of verbal land buying and selling are very significant for the parties, especially the buyer. The buyer does not obtain adequate legal protection because he does not have strong written evidence. Under certain conditions, the seller or his heirs can still claim the land even if payment has occurred. For sellers, buying and selling land orally also has the potential to cause legal problems, especially in the event of a default or ownership dispute in the future. Therefore, a written agreement is an urgent need to protect the interests of both parties.

2. Evidentiary Power in Court

In civil procedure law, valid evidence includes written evidence, witnesses, suspicions, confessions, and oaths. Authentic deeds occupy the highest position in the hierarchy of evidence. In contrast, an oral agreement can only be proven through witnesses or conjectures whose evidentiary strength is relatively weak. Judicial practice shows that judges are more likely to grant lawsuits from parties who can show written evidence in the form of certificates or deeds of PPAT. This further emphasizes the importance of the formal aspect in buying and selling land.

Analysis of Court Decisions Related to Oral Land Sale and Purchase (Supreme Court Decision Number 147 K/SIP/1970). The Supreme Court Decision Number 147 K/Sip/1970 discusses the oral sale and purchase of land and affirms that the sale and purchase of land that is not carried out with the PPAT Deed (Land Deed Making Official) is legal according to the law, as long as it meets material requirements, such as: Material Requirements:

1. The seller is the person who has the right and authority to sell the right to the land.

2. The buyer qualifies as a subject of land rights (Indonesian citizen, Government Bank, religious body, or social body).
3. The land object is not a disputed land or is being confiscated by the Court.

In this case, the Supreme Court stated that the oral sale of land can be considered valid if it meets the above conditions and is done in good faith. However, keep in mind that oral land buying and selling can cause difficulties in proving and potentially lead to disputes. To avoid problems, it is better to buy and sell land with the PPAT Deed to ensure legality and legal certainty.

4. Conclusion

Based on the results of the research, it can be concluded that the oral purchase and sale of land does not meet the formal requirements according to Indonesia's positive law. Although it can materially meet the legal requirements of the agreement, without a PPAT deed, the sale and purchase of land does not provide legal certainty and cannot be registered. Therefore, the sale and purchase of land must be carried out in writing in front of PPAT.

5. References

- Harsono, Boedi. (2008). *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. Jakarta: Djambatan.
- Harsono, Boedi. (2013). *Hukum Agraria Indonesia: Himpunan Peraturan-Peraturan Hukum Tanah*. Jakarta: Djambatan.
- Santoso, Urip. (2015). *Hukum Agraria dan Hak-Hak Atas Tanah*. Jakarta: Kencana Prenadamedia Group.
- Sembiring, Sentosa. (2016). *Hukum Pertanahan*. Bandung: Pustaka Setia.
- Subekti. (2003). *Hukum Perjanjian*. Jakarta: Intermasa.
- Subekti. (2005). *Pokok-Pokok Hukum Perdata*. Jakarta: Intermasa.
- Prodjodikoro, Wirjono. (2011). *Asas-Asas Hukum Perjanjian*. Bandung: Mandar Maju.
- Salim HS. (2014). *Hukum Kontrak: Teori dan Teknik Penyusunan Kontrak*. Jakarta: Sinar Grafika.
- Fuady, Munir. (2013). *Hukum Perdata*. Bandung: Citra Aditya Bakti.
- Mertokusumo, Sudikno. (2010). *Hukum Acara Perdata Indonesia*. Yogyakarta: Liberty.
- Soekanto, Soerjono. (2012). *Pengantar Penelitian Hukum*. Jakarta: UI Press.
- Soekanto, Soerjono & Mamudji, Sri. (2014). *Penelitian Hukum Normatif: Suatu Tinjauan Singkat*. Jakarta: RajaGrafindo Persada.
- Marzuki, Peter Mahmud. (2016). *Penelitian Hukum*. Jakarta: Kencana Prenadamedia Group.
- Ali, Achmad. (2012). *Menguak Teori Hukum dan Teori Peradilan*. Jakarta: Kencana.
- Rahardjo, Satjipto. (2010). *Ilmu Hukum*. Bandung: Citra Aditya Bakti.
- Undang-Undang Nomor 5 Tahun 1960 tentang Peraturan Dasar Pokok-Pokok Agraria.
- Kitab Undang-Undang Hukum Perdata.
- Peraturan Pemerintah Nomor 24 Tahun 1997 tentang Pendaftaran Tanah.
- Peraturan Pemerintah Nomor 37 Tahun 1998 tentang Peraturan Jabatan Pejabat Pembuat Akta Tanah.
- Peraturan Menteri Agraria dan Tata Ruang/Kepala BPN Nomor 3 Tahun 1997 tentang Ketentuan Pelaksanaan PP Nomor 24 Tahun 1997.
- Putusan Mahkamah Agung Republik Indonesia Nomor 179 K/Sip/1961.
- Putusan Mahkamah Agung Republik Indonesia Nomor 1234 K/Pdt/2003.
- Putusan Mahkamah Agung Republik Indonesia Nomor 1539 K/Pdt/2008.
- Jurnal Hukum IUS QUIA IUSTUM. (2017). "Kepastian Hukum Peralihan Hak Atas Tanah dalam Praktik Jual Beli." Fakultas Hukum Universitas Islam Indonesia.