



## The Phenomenon of Land Sale and Purchase Practices Without Land Deeds

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### **Abstract:**

*This study aims to determine the phenomenon of land sale and purchase practices without land deeds. The research method used is empirical research method. The results obtained show that one of the problems that often occurs in buying and selling transactions as an activity of transferring land rights is buying and selling land without a certificate. In fact, land certificates are valid and strong evidence of land ownership as stated in Article 19 Paragraph 2 Letter c of the UUPA. Factors causing this practice include legal, economic, social, and administrative factors. Slow and confusing processing of land certificates, lack of availability of land with legal status, the high cost of processing land certificates, lack of supervision from the community and government, and lack of public awareness and attention.*

**Keywords:** *Phenomenon; Land Sale and Purchase; Certificate.*

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## Introduction

Human efforts in meeting the needs of daily life cannot be separated from their nature as economic beings (*homo economicus*). The purpose of this economic creature is that humans tend to never be satisfied with what they get and will always try continuously to meet their needs (Nasution 2022).

Phenomenon comes from the Greek word *phainomenon* "what is seen", Phenomenon can also mean a symptom, fact, reality, event and things that can be felt by the senses even mystical or occult things . extraordinary ." Phenomenon is a series of events and conditions that can be observed and assessed through a scientific lens or through certain scientific disciplines (Mirza and Ali 2020).



From a geographical point of view, Indonesia's area is so vast that Indonesia is known as a maritime country or a country of a thousand islands. We can see in terms of the area of Indonesia, which starts from Sabang to Merauke which is divided into several islands, with approximately 17,000 islands with a plain area of 1,922,570 km<sup>2</sup> and water area of 3,257,483 km<sup>2</sup>. Mainland Indonesia is recorded as having an area of approximately 125 million plots of land. and in use so that it can benefit the community, it is regulated in Article 33 Paragraph (3) in the 1945 Constitution of the Unitary State of the Republic of Indonesia which is a Constitutional basis in the land sector and also includes in agrarian law (Seldi Munandar and Junus, n.d.).

Indonesia is an agricultural country where most of the population depends on agricultural land for both farming and plantations. Therefore, land issues are considered important for Indonesia (Sauni 2016). Land is aspects that are very important in the role of aspects of community life in terms of economic aspects and also on non-economic aspects (Kadarisman, Gunawan, and Ismiyati 2016). Land is everything for an agrarian society because this is not only a factor of production but also related to dignity and dignity as an agrarian population, therefore land is a vital necessity (Al-Himni and Ratna, n.d.).

The government has its own authority in regulating the land sector, especially in legal traffic and land use based on the provisions of Article 2 Paragraph (2) of the UUPA, namely in terms of the authority to regulate and carrying out allotment, use, supply and maintenance of land including determining and regulating legal relations between people and land and also regulating and determining legal relations between people and legal actions regarding land (Limbong 2017).

Article 1 Point 1 of the Government Regulation on Land Registration states that: Land registration is a series of activities carried out by the Government continuously, continuously and regularly, including the collection, processing, bookkeeping, and presentation and maintenance of physical data and juridical data, in the form of maps and lists, regarding land parcels and housing units. flats, including the issuance of certificates of proof of title for land parcels that already have rights and ownership rights to flats units as well as certain rights that burden them (Ramadhani 2021).



One of the legal actions regarding the transfer of ownership rights to land is the sale and purchase of land. The practice of buying and selling land at this time is expected to have legal certainty that can guarantee the continuation of the buying and selling of land through land registration (Ekiawan and Lesmana 2023).

Legal certainty as one of the goals of law can be said as part of efforts to achieve justice. The real form of legal certainty is the implementation or law enforcement of an action regardless of who does it. With legal certainty, everyone can predict what will happen if they take certain legal actions. Certainty is needed to realize the principle of equality before the law without discrimination (Permadi 2016).

In the Civil Code, land is categorized as immovable property in accordance with Article 506 of the Civil Code. Therefore, when buying land, it is not the object that is transferred, but the ownership rights to the land (Badrulzaman and SH 2022). The Civil Code has regulated general provisions in buying and selling which also apply to land. Based on the Civil Code, buying and selling must be based on a binding agreement between one party who delivers the goods or the seller and another party who pays the price for the goods or as a buyer (Bokings 2022). Meanwhile, a land sale and purchase transaction is said to be valid if it fulfills the four conditions contained in Article 1320 of the Civil Code, including:

- 1) The agreement of the parties that binds him,
- 2) The ability to make an engagement,
- 3) A certain subject matter
- 4) A cause that is not forbidden

The main function of the certificate is to use it to strengthen evidence as stated in Article 19 Paragraph 2 Letter c of the UUPA (Urip Santoso 2019). By having a title certificate from the land, the owner will have no difficulty in proving the ownership right to the land if interference from other parties later occurs. With that, it is necessary to hold a land registration so that it can be used as collateral in legal certainty in the form of physical or juridical data from the land concerned (Widiadnyani, Windari, and Sudiarmaka 2018).

One of the reasons for the purpose of making laws in the Formation of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) is to lay the foundations for providing legal certainty and protection regarding land rights for all Indonesian people. For Such reason ultimately underlies the existence of Article 19 Paragraph (1) and (2) which reads as follows:

- 1) To guarantee legal certainty, the government will conduct land registration throughout the territory of the Republic of Indonesia according to the provisions stipulated in government regulations.
- 2) Land registration in paragraph (1) of this article includes:
  - a. Measuring, mapping and bookkeeping of land;
  - b. Registration of land rights and transfer of said rights;
  - c. Provision of documents proof of rights, which are valid as strong evidence (Arwana and Arifin 2019)

Land registration can be done without any specific legal actions or certain legal actions. Land registration without any specific legal action, namely land registration based on the conversion of the name of the landowner in book C of the village from 1960 until now is still the same name, meaning that there has been no transfer of land rights after that (Firmansyah and Jamilah 2022).

Another phenomenon that often occurs in the practice of buying and selling land is the practice of buying and selling land without proof of ownership in the form of land certificates, which is a thorny problem that often becomes a source of conflict in our society.

A phenomenon that often occurs in various regions in Indonesia, more specifically in the village of Hutokalo, Sulamata District, North Gorontalo Regency . As for using receipts that are used as proof of sales where these receipts can be ascertained to have weak legal force. There even is people who are determined to sell the land they have sold, in the term of their village, selling over selling. This means that buying and selling land without proof of ownership in the form of land certificates is a thorny problem that often becomes a source of conflict in our society.

The losses arising from the above activities are material losses, there are still many risks of other losses. For example, a weak legal basis, although later on it will be handled in an official institution, of course the legal force is not as strong as an authentic deed. Another risk is that the application for a certificate is rejected by the National Land Agency. What's more if you make a transaction without using the land sale and purchase deed from the land deed official.

The most dangerous risk of buying and selling land without a certificate is a dispute. In reality on the ground, disputes or conflicts related to land are very diverse and the entity and quality are increasing day by day as evidenced by the many conflicts involving violence. This is very common in various cases. Of course, the risk of buying and selling land without a certificate will be detrimental from various aspects. Starting from the material, time, to labor. Therefore, you should not be careless and have to think about it carefully. Not only disputes, can also fall into various other conflicts. Starting from legal conflicts due to illegal transactions, loss of the land, and various other unexpected conflicts (Yunus 2009).

In community activities, buying and selling land is an act that transfers land rights. A person who owns land rights needs money, so he can immediately sell his land and vice versa. Transferring rights is not as easy as transferring rights, such as in a supermarket, transferring land rights requires a separate evidence and the evidence must have the force of law at least the evidence must be known (Simbolon 2022).

In fact, in the community, especially in the village of Hutokalo, the regulations requiring certificates in buying and selling transactions are not well understood by the majority of the community. Because of that the role of the village head was very large before the Basic Agrarian Law issued provisions governing the transfer of rights over this land.

*Table 1.*

<b>The case of buying and selling land without certificates</b>	
<b>Year</b>	<b>Number of Cases</b>
2020	0



2021	2
2022	11

*Data Source: Hutokalo Village Office in 2023*

From the data presented in the table, of course it can be seen that there has been an increase in the sale and purchase of land without a certificate, this indicates that there is a gap between *das solen* and *das sein* or theory and practice. for this it is necessary to be informed again regarding the essence of the land certificate which is proof of land ownership. Because in the applicable regulations and regulations, one of them is the BAL, it is explained that a certificate is a letter of ownership that can prove the validity and truth or authority, control and ownership of land.

## Method

Based on the description of the background above, the purpose of this writing is to find out the factors that cause the practice of buying and selling land without a certificate in Hutokalo Village. Using empirical legal research methods. This type of empirical legal research, which is often referred to as field research or sociological legal research and analyzes how law is implemented in society. The researcher chose this type of empirical legal research because it allows researchers to go into the field and observe directly whether the law is applied consistently with how it is applied in society. This type of empirical research can help researchers conduct other types of research by providing the necessary data (Jonaedi Efendi, Johnny Ibrahim, and Se 2018).

## Discussion

Adi Putera Parlindungan stated that, prior to the enactment of the UUPA, our country still had dualism in Agrarian Law, this was based on the fact that two types of law were still in effect which became the basis for our land law, namely Customary Law and Western Law so that there were two types of land, namely customary land and western land. This was influenced by a legal system that was colonial and feudal in nature as a result of hundreds of years of being colonized by the Dutch, thus distinguishing the transfer of land ownership rights both according to Customary Law and Western Law in terms of buying and selling as well as ways of legal



protection and legal certainty for the land owner concerned (Santoso and SH 2017).

Since the promulgation of the Basic Agrarian Law (*UUPA*) on September 24, 1960 which abolished the dualism of land law in Indonesia, the meaning of buying and selling is not the same as buying and selling land as referred to in Article 1457 and Article 1458 of the Civil Code. Boedi Harsono also mentioned that, prior to the enactment of the Basic Agrarian Law (*UUPA*), there were known legal institutions for buying and selling land. Some are regulated in the Civil Code which is written and some are regulated by customary law which is not written.

Legal actions regarding the sale and purchase of land, regulated in Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration stipulates that each land sale and purchase agreement must be proven by a deed drawn up by the Land Deed Making Officer (*PPAT*).

As stipulated in Government Regulation Number 24 of 1997 concerning Land Registration in Article 37 paragraph (1) "Transfer of land rights and ownership rights to apartment units through buying and selling, exchange, grants, income in companies and other legal acts of transferring rights, except for the transfer of rights through an auction, it can only be registered, if proven by a deed drawn up by the authorized *Land Deed Official (PPAT)* according to the provisions of the applicable laws and regulations (*Nomor 24*)

The article states "Transition of Land Rights" in this case what is meant is land that already has land rights (already certified). The article does not explain whether the sale and purchase of land is valid or not because there is no *Land Deed Official (PPAT)* deed, but in that article there is a statement "can only be registered, if proven by a deed drawn up by the *Land Deed Official (PPAT)* It can be interpreted that land that has been certified can only be registered for the transfer of land rights if it is proven by a *Land Deed Official (PPAT)*. This is reinforced by Government Regulation Number 37 of 1998 concerning Regulations for Land Deed Officials *Land Deed Official (PPAT)* in Article 2 paragraph (1) " *Land Deed Official (PPAT)* has the main task of carrying out some land registration activities by making deeds as evidence that certain legal actions have been carried out regarding land rights or Ownership Right to the Flat Unit which will be used as the basis for the registration of changes in land registration data resulting from the said legal action."



The practice of buying and selling land that does not involve *Land Deed Official (PPAT)* in the land sale and purchase transaction is better known as the practice of buying and selling land privately. The practice of buying and selling land through private deed which is carried out is only proven by a receipt signed by both parties or in the form of a statement of sale and purchase made by the Village Head and signed by both parties and witnesses.

Interviews conducted with Mr. MB as the land seller said that in the land sale and purchase process only used receipts which were used as proof of sale and purchase witnessed by the Village Head and witnessed by both parties and village officials who were present. The reason for not having a certificate is because you don't have time to take care of it (*"Wawancara Pada Tanggal 3 Maret 2023 Dengan Bapak M.B Selaku Penjual Tanah Di Desa Hutokalo,"* n.d.)

The practice of buying and selling land without a certificate has basically taken place both before and after the enactment of the main Agrarian Law. The widespread practice of buying and selling land without a certificate especially in Hutokalo Village, because the community thinks that selling land without going through the process set out in the law is a quick, easy process and doesn't cost a lot. The community also thinks that obtaining land certificates is a complicated process, requires a lot of time and costs a lot. Even though the practice of buying and selling land without a certificate can be ascertained to have weak legal force, even the validity of buying and selling is questionable. Moreover, the practice of buying and selling land that occurred in Hutokalo village did not fulfill the administration that should have been, what is feared that in the future there will be a dispute, or the buyer will have difficulty in managing the transfer of rights over the land. The sale and purchase of the Civil Code is included in the agreement. The legal requirements for an agreement are regulated in article 1320 of the Civil Code.

A new land sale and purchase transaction is said to be valid if it fulfills the



four conditions contained in Article 1320 of the Civil Code, including:

- 1) The agreement of the parties that binds him,
- 2) The ability to make an engagement,
- 3) A certain subject matter
- 4) A cause that is not forbidden

In this case, the practice of buying and selling land that took place in Hutokalo Village can be said to be valid because in practice the buying and selling that took place met the requirements as stated in Article 1320 of the Civil Code.

The large number of cases of the practice of buying and selling land without a certificate, especially in Hutokalo Village, indicates that there is a lack of knowledge regarding prevention and corrective measures for the transfer of land from the seller to the buyer. Buying and selling land without a certificate creates problems for the buyer who then has difficulty maintaining land registration data at the Land Office.

Interviews conducted with the Head of Hutokalo Village said that the Village Officials had taken the initiative to carry out the land registration program up to basically the people themselves did not wish to register their land even though the registration program was free (*"Wawancara Pada Tanggal 1 Maret 2023 Dengan Bapak Yahya Mahmud Djauhari Selaku Kepala Desa Hutukalo,"* n.d.)

Interviews conducted with Mr. Alvin as a party from the North Gorontalo District Land Office said that the *BPN* had carried out its role in terms of the free certificate program. In 2020, *BPN* held socialization as well as the Complete Systematic Land Registration (*PTSL*) program for Hutokalo Village with a quota of 867 plots of land. In 2021, 642 land parcels will be registered, and in 2022 there will be 32 land parcels (*"Interview on 10 March 2023 with Mr Alvin as a party from the Land Office of North Gorontalo Regency,"* n.d.)

From the interview above, it can be seen that the total number of land parcels registered was 674 parcels. As for the number of cases of the practice of buying and selling land without certificates in 2022, there will be 12 cases. In fact, the registration quota is still less than the quota provided, which is 876 fields. This

illustrates that the desire of the community to register their land is still lacking. This can happen because there are several factors that cause cases of buying and selling land without a certificate still happening.

## Economy

The following are several economic factors that can cause the practice of buying and selling land without a certificate:

- 1) High land prices can be a factor causing the practice of buying and selling land without certificates. Sometimes, landowners who want to sell their land at a high price find it difficult to find a buyer who is willing to pay that price, so they choose to sell land without a certificate at a lower price.
- 2) The Difficulty of Obtaining Credit from Banks Having a land certificate is one of the requirements for applying for credit at a bank. Landowners without land certificates find it difficult to obtain credit from banks, so they choose to sell land without land certificates in order to obtain the money they need.
- 3) Difficult economic conditions can be a factor causing the practice of buying and selling land without a certificate. When economic conditions are difficult, many people need cash quickly, so selling land without a certificate is one of the solutions chosen.
- 4) The existence of urgent needs such as medical expenses or educational costs can also be a factor causing the practice of buying and selling land without a certificate. Landowners who need money quickly to meet these needs, choose to sell land without a certificate in order to get the money they need.

An interview conducted with Mr. YB said that the reason for selling the land was because he needed money for additional education costs for his son who would continue on to college. The reason for not being certified is because they don't have the money to take care of it (*"Wawancara Pada Tanggal 3 Maret 2023 Dengan Bapak Y.B Selaku Penjual Tanah Di Desa Hutokalo,"* n.d.).

## Administrative Factors

The following are several administrative factors that can cause the practice of buying and selling land without a certificate:

- 1) Delays and Confusion in Processing Land Certificates Some land owners experience difficulties in obtaining land certificates due to delays and confusion in processing administrative requirements. This can make landowners choose to buy and sell land without a certificate because it is considered easier and faster.
- 2) The lack of availability of land with legal status can be a factor causing the practice of buying and selling land without a certificate. Some people who want to buy land may find it difficult to find land with legal status, so they choose to buy and sell land without a certificate as an alternative.
- 3) The high cost of obtaining land certificates can also be a factor in the practice of buying and selling land without certificates. Some landowners may not be able to afford the expensive cost of obtaining a land certificate, so they choose to buy and sell land without a certificate as an alternative.
- 4) The lack of government oversight of the practice of buying and selling land without a certificate may also be a contributing factor to this practice. Without strict supervision from the government, the practice of buying and selling land without a certificate can continue and become more widespread.
- 5) Lack of Awareness and Attention from the Community Lack of awareness and attention from the community regarding the importance of having a land certificate can also be a factor causing the practice of buying and selling land without a certificate. Some people may not realize that having a land certificate is important and is seen as a mere formality, so they prefer to buy and sell land without a certificate.

## Social Factors

The following are several social factors that can cause the practice of buying and selling land without a certificate:

- 1) Lack of education about land in the community can be a factor causing the practice of buying and selling land without a certificate. Some people do

not realize the importance of having a land certificate and think that buying and selling land without a certificate is normal. From the interviews conducted, the average community thinks that whether they have or do not have a certificate is the same, basically the land belongs to them. Therefore, the essence of this certificate has not been understood by the community because on average they do not get an understanding of the importance of certificates, both from the educational bench and village officials.

- 2) Distrust of the government and land institutions can also be a factor causing the practice of buying and selling land without a certificate. Some people think that the process of obtaining land certificates through land institutions is very difficult and time-consuming, so they prefer to buy and sell land without certificates.
- 3) The culture of buying and selling land without a certificate that exists in certain communities can be a factor causing the practice of buying and selling land without a certificate. Some people are used to buying and selling land without a certificate as a way to facilitate the land transaction process and avoid the higher cost of obtaining a land certificate. From interviews conducted with the community, they also said that the buying and selling of land without a certificate had been going on for a long time. They were used to seeing or hearing directly when someone made the transaction. So they still think that these transactions are still happening today. Or it could be said to have become a hereditary culture.
- 4) Agrarian conflicts, namely conflicts related to land ownership and use, can be a factor causing the practice of buying and selling land without a certificate. Agrarian conflicts can make landowners not want to go through the lengthy process of obtaining land certificates and choose to buy and sell land without certificates so that the transaction process is faster and easier.
- 5) Limited access to information about the importance of having a land certificate can also be a factor causing the practice of buying and selling land without a certificate. Some people do not know the importance of

having a land certificate and think that buying and selling land without a certificate has no significant impact, so they prefer to buy and sell land without a certificate.

- 6) Unaffordable Land Services Land services that are geographically unreachable or not available in an area can be a factor causing the practice of buying and selling land without certificates. Landowners who do not have access to land services in their area find it difficult to obtain land certificates, so they choose to sell land without certificates.

## Legal Factors

The following are several legal factors that can cause the practice of buying and selling land without a certificate:

- 1) Delays in Issuance of Land Certificates by the Government Delays in the issuance of land certificates by the government can be a factor that triggers the practice of buying and selling land without certificates. This is because landowners who have completed the administrative process and paid land taxes, but have not yet received a certificate, find it difficult to sell or obtain a loan from a bank with land as collateral.
- 2) Government Policies That Can't Be Implemented Effectively Government policies that can't be implemented effectively can also be a factor that causes the practice of buying and selling land without certificates. For example, government policies stipulate that land can only be traded with certificates, but this is not accompanied by strict law enforcement against the practice of buying and selling land without certificates.
- 3) Lack of Clear Regulations Regarding Changes in Land Status The absence of clear regulations regarding changes in land status, such as from ownership to building use rights or usufructuary rights, can also trigger the practice of buying and selling land without certificates. This is because the process of changing the status of land that is not clear can lead to legal uncertainty which makes land owners choose to sell land without a certificate.
- 4) Society's Tendency to Accelerate the Land Sale and Purchase Process The community's tendency to speed up the land sale and purchase process can also



be a contributing factor to the practice of buying and selling land without a certificate. This is because the process of issuing a land certificate takes time and costs quite a lot, which can hamper the process of buying and selling land. Thus, people who want to make quick and easy transactions choose to practice buying and selling land without certificates.

## Conclusion

Based on the results of this research, it can be concluded that UUPA 1960 has an important role in regulating land sales by requiring the use of legal land title certificates. With the certificate, land sale transactions can be recognized and protected by law, providing legal certainty for land buyers and sellers. Therefore, it is important for the public to comply with the provisions of UUPA 1960 in carrying out land sales to avoid legal risks in the future.

The practice of buying and selling land without certificates still occurs in the community. Factors causing the practice include legal, economic, social and administrative factors. Slowness and confusion in the processing of land certificates, lack of availability of land with legal status, high cost of processing land certificates, lack of supervision from the government, and lack of awareness and attention from the community, can all be factors that cause the practice of buying and selling land without certificates.

## Recommendation

The government must increase supervision and law enforcement against the practice of buying and selling land without a certificate. This can be done by increasing the number of supervisors on duty in the field, as well as providing strict sanctions for the perpetrators of this practice. The government can provide convenience in obtaining land certificates at an affordable cost, so that it is easier for the community to obtain land certificates and avoid the practice of buying and selling land without certificates.

The government can establish education programs and outreach to the public about the importance of having land certificates, as well as the negative impacts of buying and selling land without certificates. Communities should be more aware of



the importance of having land certificates as proof of legal ownership and can prevent problems from occurring in the future.

Landowners must immediately take care of their land certificates so that the practice of buying and selling land without a certificate does not occur, and can obtain higher profits in buying and selling land legally and legally.

Prospective land buyers must always check the legitimacy of land certificates before making land sales transactions, so as to avoid the practice of buying and selling land without certificates. By taking these actions, it is hoped that the practice of buying and selling land without a certificate can be reduced or even eliminated in its entirety, so that a healthy legal environment can be created and can promote positive economic growth.

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