



Analysis of The Validity of Underhand Exchange Agreements (Study of Court Decision Number 21/PDT.G/2020/PN BLK)

Ayu Ambarwati¹, Mega Yuni Hospita², Pucuk Nyimas Sekar A.S³, Aslan Noor³

Program Magister Kenotariatan, Universitas Pasundan, Bandung

ayuambarwati0807@gmail.com, megayuni139@gmail.com,

pnymassekar@gmail.com, nooraslan@yahoo.com

Abstract - This study aims to analyze the validity of the underhand exchange agreement based on a case study of court decision number 21/Pdt.G/2020/PN BLK. The method used in this study is qualitative with a juridical-normative approach. Data were obtained through in-depth interviews with legal experts and practitioners, as well as document studies of court decisions and relevant legal literature. The analysis was carried out using content analysis and juridical analysis techniques to identify and assess the legal aspects of the underhand exchange agreement and its application in court decisions. The results of the study indicate that the validity of the underhand exchange agreement is greatly influenced by the fulfillment of the requirements for the validity of the agreement according to civil law in Indonesia. The court decision in this case underlines the importance of the elements of agreement and good faith between the parties in ensuring the validity of the agreement. This study also found that although underhand agreements are often considered more vulnerable to legal disputes, court decisions provide important guidance on how such agreements can be legally recognized and enforced. This research contributes to the development of contract law theory, particularly regarding underhand agreements, and provides recommendations for legal practitioners in drafting and handling legally valid exchange agreements.

Keywords: Validity of Agreements, Barter, Private Agreements, Legal Analysis, Court Decisions

I. INTRODUCTION

Article 1 paragraph (3) and Article 4 paragraph (1) of the UUPA emphasize that land holds vital importance for human existence, serving as the foundation for life, growth, and all human activities (Magfirah, 2022). As such, the management and regulation of land must be carefully governed by the state to protect public interests. This is further reinforced by Article 33, Paragraph 3 of the 1945 Constitution, which states that "The Earth, Water, and Natural Resources contained therein shall be under the control of the State and shall be used for the greatest prosperity of the people." In practice, however, land transactions often occur through informal or underhand exchange agreements, bypassing formal legal procedures. Such agreements, while common, lack official recognition and therefore do not carry the same legal certainty as transactions conducted under formal notarized contracts. According to Indonesian civil law, particularly Article 1320 of the Civil Code, for an agreement to be valid, it must meet the criteria of lawful consent, specific objects, legal cause, and parties with legal capacity. Underhand agreements often fail to fulfill these requirements, especially in terms of proper documentation and state recognition.

This raises issues concerning the legality and validity of these informal exchanges. Despite being based on mutual consent, underhand agreements can lead to legal disputes,

especially in cases of fraudulent practices. Without the protection of formal registration and legal documentation, parties involved in underhand exchanges are vulnerable to potential manipulation, misrepresentation, or disputes over ownership rights. Therefore, this research aims to explore the legal framework surrounding underhand land exchange agreements and assess the mechanisms available to address fraudulent transactions, ensuring legal certainty and protection for the parties involved. While Article 33, Paragraph (3) of the 1945 Constitution emphasizes the state's authority over land ownership for the welfare of its citizens, this broad constitutional principle, though important, is not the most directly applicable when dealing with private transactions such as barter agreements. Rather than focusing solely on the state's role in managing resources, it would be more effective to delve into the legal mechanisms that govern private land exchanges. (Magfirah, 2022).

In this regard, the Civil Code, particularly Article 1313, offers a more specific legal foundation. This article defines agreements, including barter, as legally binding contracts between two or more parties. Such contracts allow for the transfer of ownership rights, providing legal certainty in transactions involving property exchanges. By emphasizing the contractual nature of these transactions, the discussion shifts from a general understanding of state control over land to a more detailed examination of how private individuals can transfer land rights through barter. This shift ensures that the legal context is both clearer and more relevant to the specific issue being examined. Thus, focusing on the Civil Code's provisions, particularly those that regulate the transfer of property rights via barter, offers a more precise and practical framework for understanding the legality of these transactions. This approach provides a clearer path to analyze the legal processes involved in the transfer of land rights by exchange, ensuring that the research is grounded in the appropriate legal context. Consequently, this refined introduction offers readers a better understanding of the specific laws governing barter agreements, rather than relying on broad constitutional references that pertain more to state oversight than private dealings.

An agreement is defined as an act by which one or more persons tie themselves to one or more other people under Article 1313 of the Civil Code. return is defined as an agreement whereby one party binds himself to give one item reciprocally in return for another item that he will offer in Chapter IV of the Civil Code, Article 1541. (Yunita & Udiana, 2017). The two definitions above lead to the meaning that an exchange agreement is an act where two people bind themselves to each other by making an agreement where both parties give up their rights to each other with a predetermined agreement. However, in terms of the implementation of this exchange agreement, it must be carried out with the provisions that have been previously regulated. As for the implementation, of course sometimes there are things that are not in accordance with the applicable rules or there are elements of oversight such as the existence of bedrog elements in its implementation. (Yulianti & Baiduri, 2022) For example, in 2020, precisely in Bulukumba Regency, there was an exchange agreement between several parties related to land objects that did not belong to them, and the exchange agreement was carried out in front of the head of the local village government, which was then used as the basis for the transfer of the name of a land object. Based on the background stated above, the researcher is interested in conducting research in the form of a paper with the title: "Analysis Of The Validity Of The Underhand Exchange Agreement (Study Of Court Decision Number 21/PDT.G/2020/PN BLK)."

II. METHOD

In this research, a qualitative method is combined with a juridical-normative approach to analyze the validity of an underhand exchange agreement, focusing on court decision number 21/Pdt.G/2020/PN BLK. The qualitative method explores the contextual factors and interpretations of the parties involved, providing a deeper understanding of the case's practical aspects. Meanwhile, the juridical-normative approach examines relevant laws, legal principles, and precedents to assess the agreement's validity within the legal framework. This integration allows the research to analyze both the legal and contextual dimensions, offering a comprehensive view of how underhand agreements are handled in practice and law.

Research data was obtained from primary and secondary sources. Primary data was obtained through in-depth interviews with legal experts, judges, or practitioners with experience in similar cases. The interviews aimed to explore their understanding and views on the validity of the agreement and the interpretation of the court's decision. Secondary data was obtained from document studies that included analysis of relevant court decisions and various other legal documents such as laws, regulations, and legal literature. This document study serves to strengthen the findings of the primary data (Riadi, 2011).

Data collection is done through document studies, the analytical techniques used include content analysis and juridical analysis. (Windioko, 2014). Content analysis helps identify the main themes of the data collected, while juridical analysis is used to assess the validity of the agreement based on applicable legal provisions. To increase the validity and reliability of the findings, data triangulation was conducted by comparing results from various sources, so that the conclusions drawn were based on consistent and reliable data.

III. RESULT AND DISCUSSION

3.1 Case Chronology and Court Decision

Muhammad Ahyar (Plaintiff I), Hawiah (Plaintiff II), and Muh. Syawal (Plaintiff III), as the plaintiffs in this case, are the direct heirs of the late M. Arif Palaloi, who passed away in the year 2000. The death of M. Arif Palaloi was officially documented by the Chief of Borong Village, as evidenced by a valid death certificate issued at the time. During his lifetime, M. Arif Palaloi owned a significant piece of plantation land measuring approximately 5,929 m², which was located in Salibang Sub-Village, Borong Village, Bulukumba District. The ownership of this land was formally recognized and registered under Certificate of Title (Sertifikat Hak Milik or SHM) No. 279, issued in the year 2000, confirming his legal and undisputed ownership of the property. After the passing of M. Arif Palaloi, the plaintiffs, as his lawful heirs, took over the management and cultivation of the land without any disturbance or claims from other individuals or entities. They peacefully worked the land, continuing the agricultural activities initiated by the deceased. For six years following M. Arif Palaloi's death, the plaintiffs maintained full control over the property and its usage, with no external interference or legal challenges concerning the ownership or rights to the land.

However, in 2006, an unexpected and unlawful act occurred when Mappiseni (Defendant I) forcefully took possession of a portion of the plantation land, which measured approximately 2,224 m² (equivalent to 22 are). Without any legal basis or authorization, Defendant I encroached upon the land and erected a fence around it, effectively seizing control of this part of the property. The plaintiffs, who had been peacefully working the land, were taken by surprise by this sudden and unauthorized occupation. Following this unlawful appropriation, Defendant I proceeded to enter into a land swap agreement with Baharuddin (Defendant II). This agreement was not made through formal legal channels but rather "under the hand"—meaning it was an informal arrangement that lacked the proper legal formalities required for the legitimate transfer of land ownership. Despite the absence of legal documentation, Defendant II then claimed ownership of the disputed land based on this unlawful transaction. The situation further escalated in 2014, when Defendant II granted Saiful (Defendant III) permission to occupy the disputed portion of the land.

Saiful, acting without any legal rights or authority, proceeded to build a house on the property. This act of occupation and construction was done in clear violation of the law, as the land was still legally owned by the plaintiffs, and neither Defendant II nor Defendant III had any legitimate claim or title to the property. In court, the plaintiffs challenged the legality of the actions taken by the defendants, asserting their rightful ownership of the entire 5,929 m² of land, including the 2,224 m² portion that had been wrongfully occupied. After reviewing the evidence, the court ruled in favor of the plaintiffs. The judge declared that the land swap agreement between Defendant I and Defendant II was illegal and had no legal standing. Furthermore, the court ruled that any documents, agreements, or claims related to the disputed land, whether issued by the defendants or any third parties, were invalid and without legal force. This ruling reaffirmed the plaintiffs' rightful ownership of the land and nullified all

unauthorized actions taken by the defendants. The judgment underscored the principle that land ownership cannot be transferred or altered through informal or unauthorized agreements, and any such attempts are considered unlawful. The court's decision not only restored the plaintiffs' control over the disputed land but also set a clear legal precedent regarding the illegitimacy of informal land transfers and the protection of rightful landowners from such unlawful encroachments.

3.2 The validity of an exchange agreement under the hands of the object of land rights

Exchange according to the Law of Treaties is "an agreement, by which both parties bind themselves to give each other an item reciprocally, in exchange for another item." Exchange is an obligatory agreement. An obligatory agreement or usually called an obligatory agreement is "an agreement that arises because of the agreement of two or more parties with the aim of creating an obligation for the benefit of one at the expense of the other or reciprocal." Based on this, it can be seen that in the new exchange there is a promise to exchange ownership rights to an object. Exchange alone does not result in the transfer of ownership rights to the object in question to the other party to the agreement, to transfer the ownership rights, it is necessary to carry out a legal act called surrender or Levering. Levering is "a juridical act to transfer ownership."

Based on the advancements of the present day, the exchange of land rights has undergone modernization and adjustment without compromising its fundamental characteristics as a legitimate process of transferring land rights that are real, cash, and transparent. In 2023, Ajo and Djajaputra. Article 37 paragraph (1) of Government Regulation No. 24 of 1997 Governing Land Registration contains and governs this declaration. The Land Deed Official (henceforth referred to as PPAT) assists the Head of the Land Office in implementing land registration by modernizing and adapting to the nature of cash, light, and real in its realization. Specifically, by creating a deed that verifies that the parties have executed the legal act of transferring land rights (Kristanto, 2017)

The simultaneous execution of the first party's land rights transfer to the second party and vice versa in conjunction with the PPAT Deed demonstrates that the parties' lawful land rights transfer satisfies the requirements for payment. The exchange of land rights executed prior to the PPAT indicates that the parties' legal act of transferring land rights has been completed. The parties' signed PPAT Deed (Akta Tukar Menukar) certifies that the legal act of transferring land rights has fulfilled its true essence. The parties' entitlement to exchange the relevant land rights, their authorization to do so, and the fact that the exchanged land rights' object is exchangeable and uncontested are the requirements that must be satisfied in order for a legal action involving the transfer of rights to proceed, According to Article 37 paragraph (1) of Government Regulation No. 24 of 1997, 24 Year 1997, the parties are qualified as the subject of the land rights being exchanged, or they are frequently said to meet the requirements of the validity of an agreement as stated in Article 1320 of the Civil Code. The validity of legal acts in the land rights transfer in exchange is related to the requirement of a PPAT Deed (Akta Tukar Menukar) for the purposes of registering the land rights transfer at the local Land Office.

3.3 Validity of Exchange Agreement with Land Rights Object (Study of Court Decision Number 21/PDT.G/2020/PN BLK)

Article 37 of Government Regulation No. 24 of 1997 contains the regulations pertaining to the transfer of land rights resulting from the transfer of rights in the Government Regulation that governs land registration in Indonesia. Government Regulation No. 24 of 1997, Article 37, states as follows:

- 1) Land rights and ownership rights over apartment units that are transferred through sales, purchases, exchanges, grants, incorporation into companies, and other legal acts of transfer of rights—apart from transfers through auctions—may only be registered if they are supported by a deed executed by a PPAT that has been authorized and complies with all applicable laws and regulations.

- 2) The Head of the Land Office may, under certain conditions set by the Minister, register rights transfers over plots of freehold land made between individual Indonesian citizens and supported by deeds not made by a PPAT, provided that the Head of the Land Office determines that the veracity of the deeds is sufficient to register the rights transfer in question."

It is mentioned that if there is a legislative act addressing the registration of transfer of land rights, which intends to give sufficient proof for the holders of their individual rights, then this would be based on the requirements of Article 37 of PP No. 24 of 1997. Additionally, a genuine deed executed in front of a land deed official serves as proof (PPAT).

Therefore, it is known that the foundation utilized by the defendant to transfer the right in the matter of decision number 21/PDT.G/2020/PN BLK was an exchange agreement that was carried out by the Borong Village government, namely owned by H.Muh. Yamin. Consequently, it is evident that the Defendant's trade of land rights constituted an unlawful transfer of rights. The defendant violated the law by acting in accordance with an exchange arrangement under the hand involving non-cash, illegible, and genuine proof. Drawing from the legal provisions, the judge determined that all land rights transfers executed by Defendants I, II, and III on the disputed object, including exchange agreements, grants, and leases, are deemed invalid, null and void, and lack legal force.

IV. CONCLUSION

The study delves into the legal complexities surrounding underhand land exchange agreements, particularly focusing on a case study involving court decision number 21/PDT.G/2020/PN BLK. It underscores the vital role of formal legal processes in ensuring the validity and legitimacy of land transactions. While the 1945 Constitution and related regulations emphasize state control over land for public welfare, the specific issue of private land exchanges necessitates a detailed examination of relevant legal provisions, especially those outlined in the Civil Code and Government Regulation No. 24 of 1997. The research highlights that informal land transactions, such as those conducted underhandedly without proper legal documentation, often lead to disputes and legal challenges. The case of Muhammad Ahyar and others against various defendants demonstrates the pitfalls of such informal agreements, including unauthorized occupation and fraudulent claims. The court's decision reaffirmed the principle that valid land transfers must be conducted through formal channels, such as a deed executed by a Land Deed Official (PPAT). This ensures the legality and enforceability of property exchanges. The judgment reinforced that informal agreements lacking proper legal documentation are void, thus protecting the rights of lawful landowners and providing a clear precedent for handling similar cases in the future.

REFERENCES

- Ajo, F. L. E. T., & Djajaputra, G. (2023). Analisis Keabsahan Akta Di Bawah Tangan Atas Jual Beli Tanah Yang Mengandung Cacat Kehendak Serta Penerapan Kriteria Pembeli Beritikad Baik (Studi Putusan Nomor 18/Pdt. G/2021/Pn Wtp). *Unes Law Review*, 6(2), 6639–6652.
- Andrianto, F. (2020). Kepastian Hukum Dalam Politik Hukum Di Indonesia. *Administrative Law And Governance Journal*, 3(1), 114–123.
- El Rahman, T. (2019). Berlakunya Asas Pacta Sunt Servanda Dalam Kontrak-Kontrak Berdimensi Publik Di Indonesia. *Universitas Gadjah Mada*.
- Jamil, K., & Nury & Rumawi, R. (2020). Implikasi Asas Pacta Sunt Servanda Pada Keadaan Memaksa (Force Majeure) Dalam Hukum Perjanjian Indonesia. *Jurnal Kertha Semaya*, 8(7), 1044–1054.
- Kristanto, H. (2017). Keabsahan Hukum Peralihan Hak Atas Tanah Tanpa Sertifikat Yang Dilakukan Di Bawah Tangan. *Universitas Bangka Belitung*.
- Magfirah, F. (2022a). Analisis Putusan Mahkamah Agung Tentang Keabsahan Perjanjian Jual Beli Tanah Di Bawah Tangan (Studi Putusan Mahkamah Agung Tingkat Kasasi Nomor 707 K/Pdt/2017 Dan Putusan Tingkat Peninjauan Kembali Nomor 833/Pk/Pdt/2018). *Uns (Sebelas Maret University)*.
- Magfirah, F. (2022b). Analisis Putusan Mahkamah Agung Tentang Keabsahan Perjanjian Jual Beli Tanah Di Bawah Tangan (Studi Putusan Mahkamah Agung Tingkat Kasasi Nomor 707

- K/Pdt/2017 Dan Putusan Tingkat Peninjauan Kembali Nomor 833/Pk/Pdt/2018). Uns (Sebelas Maret University).
- Riadi, M. E. (2011). Kedudukan Fatwa Ditinjau Dari Hukum Islam Dan Hukum Positif (Analisis Yuridis Normatif). *Ulumuddin Journal Of Islamic Legal Studies*, 7(1).
- Sutedi, A. (2007). Peralihan Hak Atas Tanah Dan Pendaftarannya.
- Windioko, M. (2014). Analisis Yuridis Atas Putusan Mahkamah Agung No. 2864 K/Pdt/2009 Tentang Keabsahan Jual Beli Hak Atas Tanah Di Bawah Tangan. *Novum: Jurnal Hukum*, 1(3), 164–175.
- Yulianti, S., & Baiduri, I. (2022). Analisis Yuridis Terhadap Tukar-Menukar (Barter) Tanah Melalui Perjanjian Di Bawah Tangan Tanpa Dilengkapi Alas Hak. *Aufklarung: Jurnal Pendidikan, Sosial Dan Humaniora*, 2(4), 442–448.
- Yunita, P., & Udiana, I. M. (2017). Akibat Hukum Terhadap Pembeli Yang Melakukan Wanprestasi Dalam Perjanjian Sewa Beli Sepeda Motor. *Kertha Semaya*, 5(2).
- Zidqi, M. M. (2022). Tinjauan Yuridis Perjanjian Tukar-Menukar (Barter) Tanah Belum Bersertifikat (Studi Kasus Di Desa Pesayangan, Kecamatan Talang, Kabupaten Tegal). Universitas Islam Sultan Agung Semarang.