

THE APPLICATION OF TRANSPARENT AND IMMEDIATE PRINCIPLES IN LAND SALE AND PURCHASE AGREEMENT (STUDY OF COURT DECISION NUMBER 50/Pdt.G/2022/PN.Smn; 102/PDT/2022/PT.YYK, AND 89/PDT.G/2022/PN KLN)

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Abstract

Pursuant to established norms within customary law, the buying and selling of land constitutes a transfer of land rights that is both transparent and immediate. This transfer of right occurs simultaneously upon the buyer's payment following the principle of direct exchange or concrete transaction. The principle of land transactions shares similarities with general contractual agreements, necessitating adherence to Article 1320 of the Indonesian Civil Code. The sale and purchase of land under customary law are often witnessed solely by relatives, kin, and close neighbors, without the involvement of government officials. Claims may arise asserting that the process of transferring land rights was conducted in violation of regulations, particularly on the lack of official witnesses. This article employs a qualitative approach, involving the processing and analysis of data with a profound understanding of the researched issue. The normative juridical approach draws the prevailing legal provisions or employs the doctrinal legal method, and encompasses legal theories and expert opinions relevant to the discussed matter. The findings of this research underscore the prevailing agrarian law in Indonesia, which is rooted in customary law, as long as it aligns with national and state interests. Therefore, as long as the sale and purchase process is conducted genuinely, transparently, and immediately, and adheres to the principles of clarity and immediacy it is considered legally valid and is thereby irrevocable.

Keywords: Agreement, Immediate, Transparency.

A. Introduction

Land² plays a significant role in human life. It serves as a vital resource for human existence, as it fulfills various functions, such as providing a habitat

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² According to Black Law Dictionary: "Land" May Include any estate or interest in land, either legal or equitable. As well as easement and conpreal berediitaments. See Mustofa and Suratman, *Penggunaan hak*

for living and serving as a foundation for diverse sectors, including agriculture, horticulture, animal husbandry, fisheries, and industries.³ Article 33, paragraph (3), of the Constitution of the Republic of Indonesia of 1945 (hereafter referred to as the 1945 Constitution) stipulates that "The land, water, and natural resources contained therein are controlled by the state and utilized for the utmost welfare of the people." The achievement of the people's prosperity is realized when their needs are met, particularly their basic necessities of clothing, food, and shelter. One of the means by which humans attain prosperity is through land ownership, which provides a place of residence.⁴

One of the rights bestowed upon humans is the entitlement to a place of residence, representing a manifestation of human rights. This is explicitly asserted in Article 28H, paragraph (1), of the 1945 Constitution, which states: "Every person has the right to lead a prosperous physical and spiritual life, to have a residence, and to acquire a good and healthy living environment, as well as the right to obtain health services." The Republic of Indonesia Law No. 5 of 1960 on Basic Principles of Agrarian Regulation (hereafter referred to as Basic Agrarian Law) in Article 4 Paragraph (2) stipulates that land shall only be utilized or exploited for purposes directly related to its use, within the limits set forth by this law and higher regulations⁵. The land is conferred to and possessed by individuals with rights established by Basic Agrarian Law for the purpose of utilization and exploitation.⁶

Human beings exist by conducting various activities on the land; thus, humans are nearly always in contact with land, either directly or indirectly. This extends to indigenous legal communities⁷ whose way of life depends on their customary territories. An indigenous

atas tanah untuk industri (1st edn, Sinar Grafika 2013); Henry Campbell Black and Bryan Andrew Garner, *Black's Law Dictionary* (9th edn, West 2009).

³ Ni Nyoman Putri Satrianingsih and AA Ngurah Wirasila, 'Peralihan Hak Milik Atas Tanah Melalui Perjanjian Jual Beli Dibawah Tangan' (2019) 7 *Kertha Semaya: Journal Ilmu Hukum* 14; Ketut Utami, 'Perlindungan Hukum Pemegang Hak Atas Tanah Berdasarkan Jual Beli Di Bawah Tangan (Kajian Terhadap Putusan Nomor: 1860K/Pdt/2005)' (2014) 7 *Arena Hukum* 287 <<http://arenahukum.ub.ac.id/index.php/arena/article/view/160>>.

⁴ Brian Adiputra Permana, 'Asas Terang Dan Tunai Dikaitkan Dengan Proses Jual Beli Tanah Secara Elektronik Di Indonesia' (Undergraduate Thesis, Universitas Katolik Parahyangan 2019); Nur Hayati, 'Peralihan Hak Dalam Jual Beli Hak Atas Tanah (Suatu Tinjauan terhadap Perjanjian Jual Beli dalam Konsep Hukum Barat)' (2016) 13 *Lex Jurnalica*; Deasy Soeikromo, 'Pengalihan Hak Milik Atas Benda Melalui Perjanjian Jual Beli Menurut KUH Perdata' (2013) 1 *Jurnal Hukum Unsrat*.

⁵ Boedi Harsono, *Hukum Agraria Indonesia: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi Dan Pelaksanaannya : Jilid 1 Hukum Tanah Nasional*, vol 1 (12th edn, Djambatan 2008).

⁶ M Arba, *Hukum Agraria Indonesia* (1st edn, Sinar Grafika 2015).

⁷ The concept of customary law society refers to a community that emerges spontaneously in a specific area, its establishment not being prescribed or mandated by higher authorities or other rulers. Such a society exhibits a strong sense of solidarity among its members, distinguishing them from outsiders, and

community holds rights over the environmental land of its territory, which grants it the authority to manage and regulate the resources within it. Indigenous communities are entitled to derive benefits from the land, water bodies, plants, and animals within their customary territories. This is known as customary land rights or "*hak ulayat*."

Due to the close relationship between individuals and land, there frequently occur transitions of land rights and transfers of land ownership in life. These two processes are distinct; the transition of land rights can transpire due to legal events, such as the passing of an individual leading to the transfer of land to their heirs. Conversely, the transfer of rights occurs through deliberate legal actions with the intention of acquiring ownership over the land.⁸ Forms of land ownership transfer encompass methods like donation, sale and purchase, lease, and others.

Article 22 of the Basic Agrarian Law stipulates that ownership rights over land can be established through three distinct methods: based on the law; through government decree; and in accordance with customary law. The establishment of ownership rights based on customary law will be regulated by Government Regulation. However, up until the present time, the Government Regulation mandated by Article 22 paragraph (1) of the Basic Agrarian Law has not been enacted. Nevertheless, this "gap" in the legal framework does not imply that the establishment of ownership rights according to customary law lacks a legal foundation. The provision in Article 5 of the Basic Agrarian Law declares that:

“The prevailing agrarian law governing land, water, and airspace is customary law, as long as it does not contradict national and state interests, is based on national unity, Indonesian socialism, and the regulations stipulated in this Law, as well as other legislative regulations, while adhering to elements grounded in religious law.”

Land transactions (immovable property) are one of the methods to acquire land, facilitating the transfer of ownership from one party to another, namely from the seller to the buyer. Essentially, land transactions involve the transfer of land rights from one party or individual, the seller, to another, the landowner or buyer.⁹ Within the context of Customary Law, land transactions represent an act of transferring land rights that is transparent and

utilizes its territory as a source of wealth that can be fully exploited solely by its members. See: Stefanus Laksanto Utomo, *Hukum Adat* (1st edn, PT RajaGrafindo Persada 2016).

⁸ Utomo (n 7).

⁹ Harun Al Rashid, *Sekilas Tentang Jual Beli Tanah (Berikut Peraturan-peraturannya)* (1st edn, Gahlia Indonesia 1987); Bernhard Limbong, *Pengadaan Tanah Untuk Pembangunan* (3rd edn, Margaretha Pustaka 2015); Urip Santoso, *Pendaftaran dan Peralihan Hak Atas Tanah* (1st edn, Kencana Prenada Media 2011).

immediate. This involves the simultaneous transfer of land rights as soon as the payment is handed over to the buyer, in accordance with the principle of direct exchange or concrete transaction, known as '*asas konkrid/kontan*' or '*riil*'.¹⁰ Land transactions share the same principles as general agreements, whereby In principle, a transaction involves an agreement between two or more parties, requiring mutual consent between the seller and the buyer and complying with the elements set forth in Article 1320 of the Indonesian Civil Code.¹¹ Land transactions in Indonesia are subject to the Indonesian agrarian legal system.¹²

The transfer of land rights resulting from land transactions conducted in accordance with customary law¹³ typically involves the creation of a document stating that the seller has transferred the land and received payment. However, this transfer is not substantiated by an official land transaction deed executed before an authorized official as stipulated by prevailing legislative regulations. Nevertheless, such a model of land transaction persists in certain rural communities, where the transactions are often deemed sufficiently proven

¹⁰ I Gusti Ayu Widiadnyani, Ratna Artha Windari and Ketut Sudiarmaka, 'Implikasi Yuridis Jual Beli Tanah Adat Melalui Perjanjian Dibawah Tangan Dalam Perspektif Undang-Undang Pokok Agraria' (2020) 1 Jurnal Komunitas Yustisia 45; See also, According to Western law, a land sale and purchase transaction must meet formal and delivery requirements. Formal entails the sale and purchase of rights over land being documented in writing in the form of an authentic deed prepared by and in the presence of an authorized official, namely a PPAT (Land Deed Official) or an acting PPAT (sub-district head), Giovanni Rondonuwu, 'Kepastian Hukum Peralihan Hak Atas Tanah Melalui Jual Beli Berdasarkan PP Nomor 24 Tahun 1997 Tentang Pendaftaran Tanah' (2017) 5 Lex Privatum 114 <<https://ejournal.unsrat.ac.id/index.php/lexprivatum/article/view/16104>>; Adrian Sutedi, *Peralihan Hak Atas Tanah Dan Pendaftarannya* (1st edn, Sinar Grafika 2007).

¹¹ Arie S Hutagalung and Suparjo Sujadi, 'Pembeli Beritikad Baik Dalam Konteks Jual Beli Menurut Ketentuan Hukum Indonesia' [2005] Jurnal Hukum dan Pembangunan 27 <https://www.researchgate.net/publication/318650134_PEMBELI_BERITIKAD_BAIK_DALAM_KONTEKS_JUAL_BELI_MENURUT_KETENTUAN_HUKUM_INDONESIA/fulltext/5975471baca2728d0254585f/PEMBELI-BERITIKAD-BAIK-DALAM-KONTEKS-JUAL-BELI-MENURUT-KETENTUAN-HUKUM-INDONESIA.pdf>.

¹² The regulation of land sale and purchase in Indonesia, in general, remains pluralistic due to the fact that the society still relies on two different legal systems, namely customary law provisions concerning non-movable transactions including land, and the provisions of Law No. 5 of 1960 on the Basic Agrarian Principles (UUPA) regarding immovable property, particularly land. See Wagirin and Teo Christopher Limbong, 'Aspek Hukum Jual Beli Tanah di Bawah Tangan dan Pendaftaran Tanah Yang Berasal dari Jual Beli di Bawah Tangan' (2019) 1 Jurnal Ilmu Hukum Prima 186; Adrian Sutedi, *Sertifikat Hak Atas Tanah* (1st edn, Sinar Grafika 2011).

¹³ Customary law, as an unwritten legal system embedded within the society, reflects the intrinsic characteristics of the Indonesian nation, deriving its essence from the nation's cultural heritage. Each ethnic group and region possesses distinct customary laws, yet these differences paradoxically serve as a unifying force for the nation (Bhinneka Tunggal Ika). See Bambang Daru Nugroho, *Hukum Adat: Hak Menguasai Negara Atas Sumber Daya Alam Kehutanan Dan Perlindungan Terhadap Masyarakat Hukum Adat* (1st edn, Refika Aditama 2015); Customary law is a technical and scientific term, referring to customary rules and practices that prevail within a community and are not in the form of regulations enacted by governmental authorities. See Dewi Sulastri, *Pengantar Hukum Adat* (Pustaka Setia 2015); Rosnidar Sembiring, *Hukum Pertanahan Adat* (1st edn, Rajawali Pers 2017). Rosnidar Sembiring, *Hukum Pertanahan Adat* (1st edn, Rajawali Pers 2017).

through self-drafted deeds or mere records of payment receipts. Instances of land transactions of this nature are commonly encountered within society.

Relying on mutual trust and good faith between the parties, both the seller and the buyer, grounded in an agreement concerning the subject matter (land) and the price, a process of buying and selling takes place. These land transactions are usually witnessed only by family members, relatives, and close neighbors, without involving governmental officials such as the Head of the Neighborhood Association (*Ketua Rukun Tetangga* or RT), the Head of the Community Association (*Ketua Rukun Warga* or RW), Village Chief, and others, although there are cases where governmental officials may be involved. Such land transactions have been a longstanding practice within the community, proceeding smoothly without legal complications.

However, it is worth noting that an agreement for the sale and purchase of land between the parties does not eliminate the possibility of legal issues arising in the future. Claims might arise asserting that the process of transferring land rights was not executed correctly and contravened regulations, often due to a lack of official witnesses and other factors. Despite this, the sale and purchase agreement is essentially based on the consensus reached by both the seller and the buyer.

Dispute Case No. 89/Pdt.G/2022/PN.KIn can become an illustration of this Land Sale (Immovable Property) problem. The case originates from an unregistered land sale transaction involving Lot C, Village Number 544, Tijayan Hamlet, with an approximate area of 750 m², dating back to the year 1962. The land sale process was conducted by Plaintiff and Defendant in accordance with customary law practices, encompassing transparency and immediate payment, and fulfilling the requisite conditions for a legally valid agreement, as mandated by Article 1320 of the Indonesian Civil Code. The Buyer tendered a specified amount of money as per the mutual agreement of the parties, which was disbursed and duly received by the Seller. The transfer (levering) of the sale object was duly effected by the Seller to the Buyer, and the latter has been in possession of the property since 1962 up to the present day. Consequently, for nearly 60 years, no party has raised objections regarding the subject matter of the land sale.

However, following the land sale transaction, the Buyer was unable to process the transfer of ownership. This was due to the fact that the Seller, since 1962, has been absent and never returned, with no clear information regarding their current residence address. As a result, the Buyer indirectly incurred a loss since the land could not be processed to obtain

a certificate as evidence of ownership, in accordance with the provisions of the prevailing legislative regulations.

A similar case arose within the jurisdiction of Sleman District Court, with case registration number 50/Pdt.G/2022/PN.Smm¹⁴ The fundamental issue remained consistent, involving the sale of three (3) parcels of land without certification and still designated as Letter C Number 1022 in Dhuri Hamlet, covering an area of 75 m², Letter C Number 1094, covering an area of 75 m², and Letter C Number 1016, covering an area of 75 m², all owned by three (3) individuals acting as the Sellers. The land sale transactions took place at the Buyer's residence, with a pre-agreed price settled by the parties and fully paid by the Buyer to the Seller, accompanied by evidence of payment completion in the form of payment receipts. Subsequent to the land sale transactions, ownership of the aforementioned land parcels was transferred to the Buyer. This was substantiated by the fact that the Buyer paid property and building tax for the lands they had acquired.

Considering that these lands do not possess valid proof of ownership in accordance with the provisions of the prevailing legislative regulations, the Buyer intends to initiate the process of transferring the ownership into their name for the several land parcels. This intent is particularly noteworthy given that during this transfer process, one of the Sellers has already deceased. However, the Buyer's intention to carry out this transfer of ownership encounters several obstacles. Among these challenges, there are heirs of the deceased Seller who are requesting the annulment of the sale and purchase agreement, aiming to independently sell the land and provide compensation to the Buyer. Furthermore, these heirs are unwilling to relinquish evidence of their land rights in the form of the Letter C document to the Buyer. Additionally, the heirs assert that the sale and purchase transaction conducted between the Buyer and the Seller at that time was invalid as it was not conducted in the presence of the authorized officials, specifically the Head of the Neighborhood Association (*Ketua RT*), Head of the Community Association (*Ketua RW*) or Village Chief. Furthermore, some heirs of the deceased Seller have adopted a passive stance, refraining from assisting the Buyer in transferring ownership.

As a result, the Buyer is unable to execute the conversion and transfer of ownership process for these lands. The Buyer contends that the land sale transaction fulfilled the valid agreement requirements as stipulated in Article 1320 of the Indonesian Civil Code.

¹⁴ This case has already been appealed in conjunction with the Verdict of Yogyakarta High Court, Case Number 102/PDT/2022/PT.YYK.

Moreover, the land sale process was conducted in accordance with customary law practices, executed transparently and with immediate payment. The sale and purchase agreement was also accompanied by supporting evidence, such as payment receipts for the sale price and witnesses who attest to the occurrence of the transaction between the Buyer and the Seller.

B. Methodology

The formulated research question, arising from the background of the issue at hand, centres on the inquiry: How does the agreement of land sale occur "transparently" and "immediately"?

This research employs a qualitative approach, characterized by the comprehensive processing and analysis of data, rooted in a profound understanding as it investigates the research problem. Customary rules and practices to construct land and purchase agreements shall be compared to Indonesian positive law regulating the particular matter. The researcher utilizes a normative juridical approach, which involves the utilization of prevailing legislative provisions, or employs the doctrinal legal method, encompassing legal theories and opinions from experts, particularly those pertaining to the addressed issues on land and purchase agreement.

C. Discussion and Results

1. Land's Sale and Purchase Agreement Practice

The process of land sale and purchase adheres to the same principles as general contractual agreements. In essence, a sale and purchase is an agreement between two or more parties, where consensus must be reached between both sides, namely the seller and the buyer, and must fulfill the elements outlined in Article 1320 of the Indonesian Civil Code¹⁵.

The legal conditions for contractual agreements in Indonesia fall under the regulatory regime of Article 1320 of the Indonesian Civil Code. A contract is acknowledged as valid by the law if it fulfils the criteria given by this article. To establish a valid contract, four elements are required under Article 1320 of the Indonesian Civil

¹⁵ Ghazahra Vesti Rana and Tiurma Mangihut Pitta Allagan, 'Keabsahan Jual Beli Tanah Tanpa Pembaruan Data Sertipikat Ditinjau Berdasarkan Sifat Terang Dan Tunai' (2021) 36 *Jatiswara* 262 <<https://jatiswara.unram.ac.id/index.php/js/article/view/339>>; Jayadi Setiabudi, *Panduan Lengkap Mengurus Tanah Rumah Serta Segala Perizinannya* (1st edn, Buku Pintar 2013); Desi Apriani and Arifin Bur, 'Kepastian Hukum dan Perlindungan Hukum Dalam Sistem Publikasi Pendaftaran Tanah di Indonesia' (2020) 5 *Jurnal Bina Mulia Hukum* 220 <<https://jurnal.fh.unpad.ac.id/index.php/jbmh/article/view/11>>.

Code. These elements namely: mutual consent of the parties; legal capacity to contract; a certain subject matter, and legal cause. The first two elements, mutual consent and legal capacity, are famously called subjective requirements. The unfulfillment (dissatisfaction) of subjective requirement causes a contract to become voidable. Voidable means that a contract is still valid before judges make annulment and as long as the ground for annulment is not invoked by contracting parties, the contract is still valid.

Basic Agrarian Law fundamentally asserts that every informal land sale transaction carried out by the parties involved still adheres to the customary legal principles in effect.¹⁶ In a simplified understanding, customary law-based land sale signifies a legal act of transferring ownership rights that are executed immediately, indicating that the jointly agreed-upon price is fully paid at the time of the corresponding sale. Within customary law, the sale and purchase of land constitutes a legal action of transferring land rights, with the payment of its price executed simultaneously in a cash transaction. This land sale transaction is frequently conducted verbally within the community. In practical and straightforward terms, it entails the transfer of rights over a piece of land with a jointly agreed-upon price, which is paid during the actual sale.

This implies that the act of buying and selling land within the framework of the Indonesian Agrarian Law is grounded in customary law. This is due to the fact that customary law represents the original legal tradition of Indonesia and aligns with the cultural identity of the Indonesian nation. Nevertheless, customary law still needs to be cleansed of its non-authentic aspects and subsequently refined to meet the demands of contemporary times¹⁷.

Hence, by transferring the land to the buyer and effecting the payment of its price to the seller at the time of the sale, the act of sale is concluded, signifying that the buyer has become the new holder of rights. From that point onward, the ownership rights to the land have shifted from the seller to the buyer. In cases where the payment for the land sale remains incomplete (partially paid), the outstanding amount stands as a debt owed by the buyer to the seller. Should the buyer fail to make the payment, the seller may initiate legal proceedings based on debt collection, without affecting the completion of the sale which is considered concluded.

¹⁶ Law No. 5 of 1960 on Basic Principles of Agrarian Regulation Art 5.

¹⁷ Harsono (n 5).

2. The Application of Transparent and Immediate Principle in Land's Sale and Purchase Agreement

Land transactions carried out verbally or based on customary law practices are still prevalent in everyday practice among certain communities in Indonesia. This is especially true for communities with weak economic conditions and low educational levels. This phenomenon can be attributed to the enduring influence of customary law, which deems a land sale valid when the criteria of "transparency and immediacy" are met.¹⁸

Customary law in Indonesia possesses distinct characteristics and patterns that set it apart from other legal systems. Customary law exhibits a pragmatic-realistic nature, indicating its ability to fulfil the functional and religious needs of the community. There are four general characteristics of indigenous communities¹⁹, including transparency and immediacy (cash).²⁰ The attribute of transparency (concrete) is understood as the hallmark of customary legal communities that are overtly clear or evident, signifying that every legal relationship occurring within the community is not conducted secretly or ambiguously but rather openly.²¹

The cash (immediate) nature of this concept signifies spontaneity, primarily concerning the fulfillment of obligations. The cash nature conveys that action, be it tangible, symbolic, or verbal, instantly concludes a legal action in conjunction with its timing when undertaken by a legal subject according to customary law. In Indonesia's customary law, the belief is that the transfer or transition of rights and obligations must occur simultaneously, indicating that each event of transfer should coincide with the relinquishment of authority or power to maintain equilibrium within communal life. The

¹⁸ Amir Mahmud Brutu, 'Perlindungan Hukum Jual Beli Hak Atas Tanah Secara Lisan (Studi Putusan Nomor: 114/PDT/2015/PT.MDN)' (2019) 13 *Premise Law Jurnal* 1; Waskito and Hadi Arnowo, *Penyelenggaraan Pendaftaran Tanah Di Indonesia* (1st edn, Kencana 2019). See also Maria S Sumardjono, *Kebijakan pertanahan: antara regulasi dan implementasi* (Ed Rev C, Penerbit Buku Kompas 2007). According to Maria S.W. Sumardjono's viewpoint, land transactions must fulfill three elements, namely cash, actual, and transparent.

¹⁹ In his inaugural speech titled "De Commune Trek in het Indonesische Rechtsleven," F.D. Hollemann presented four distinct characteristics or general features of Customary Law that form a unified framework, as follows: magis religious (magisch-religieus), communal (collective), concrete (visual), and cash-based (tunai). See also A Suriyaman Mustari Pide, *Hukum Adat: Dahulu, Kini, Dan Akan Datang* (2nd edn, Kencana 2015).

²⁰ Laila M Rasyid, 'Penerapan Norma Adat Terang Dan Tunai Dalam Praktek Pe-Radilan Perdata (Kajian Putusan Pengadilan Nomor: 23/Pdt.g/2013/Pn.Bj)' (2019) 7 *REUSAM: Jurnal Ilmu Hukum* 1 <<https://ojs.unimal.ac.id/reusam/article/view/2244>>.

²¹ Pide (n 19).

transfer of rights and payment of the land's price occur simultaneously. Furthermore, this principle signifies that the payment is executed until fully settled in accordance with the agreed-upon price documented in the sale and purchase deed. "Cash" does not imply that the payment and settlement of the land's price must be made instantly but rather means conducting payments in accordance with the pre-established price. Therefore, the cash principle remains fulfilled even if a payment is made through an installment method.

The principle of clear and immediate is a fundamental legal principle within land transactions that cannot be disregarded. This is because, according to Satjipto Rahardjo, who perceives legal principles as the core of legal regulations, legal principles provide the broadest foundation for the creation of legal regulations. In essence, legal regulations can ultimately be traced back to these principles. Furthermore, legal principles can be considered as the rationale behind the birth of legal regulations or the "ratio legis" of legal regulations. The presence of legal principles implies that the law is not merely a collection of regulations; it contains values and ethical demands.²² Therefore, the principles of "cash" are at the heart of agrarian law, particularly in the context of land sale and purchase transactions.

The cases in this study are related to the customary law-based land sale process conducted verbally by the parties involved. In the first case within the jurisdiction of the Klaten District Court, it is evident that the sale and purchase agreement executed between the Seller and the Buyer is valid and possesses legally binding force. The land sale process conducted by the parties is not only based on their mutual agreement regarding the subject and its price but also satisfies the criteria of "transparency and immediacy". This land sale agreement is carried out transparently, distinctly, and explicitly. This indicates that the legal relationship established between the parties is not conducted secretly or ambiguously; in other words, it is open.

Transparent transactions in buying and selling land are very important to carry out. In practice, it is often found that there are agreements outside the contract between sellers and buyers only in order to reduce the amount of tax assigned to them. This activity can be categorized as legal smuggling and violates the principle of transparency in contracts.

The cash principle is that the transfer of rights and payment of the land price are made at the same time. Apart from that, this principle means that payment is made until

²² Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia, 'Rancangan Undang-Undang Tentang Hukum Acara Perdata'.

it is paid in full according to the agreed price as stated in the sale and purchase deed. Cash does not mean that payment and repayment of the land price must be made immediately, but it means making payment according to the agreed price. Hence, the cash principle is still fulfilled even if a payment is made using the installment method.²³

The principle of clarity means that the sale and purchase of land is carried out openly and is not hidden. This clear principle is fulfilled when the sale and purchase of land is carried out in the presence of the public notary because since the enactment of Government Regulation Number 24 of 1997 concerning Land Registration in conjunction with Government Regulation Number 18 of 2021 concerning Management Rights, Land Rights, Flat Units and Land Registration, buying and selling land must be carried out before public notary.²⁴

In addition to the attribute of "transparency," the attribute of immediacy (cash) carries the implication of simultaneity, particularly concerning the fulfillment of obligations. The immediacy attribute conveys that an action, whether manifested through tangible acts, symbolic gestures, or verbal utterances, promptly concludes a legal action concurrently with its timing when performed according to customary law. The Buyer has presented the money, and the Seller has delivered the goods simultaneously, and the agreement has been executed in the presence of third parties (witnesses) who observed the sale and purchase agreement.

To avoid a legal vacuum, Customary Law is used to fill the gap, this is also stated in Article 58 of the Basic Agrarian Law which is mentioned: "As long as the implementing regulations of this Law have not yet been formed, the regulations, whether written or what is not written regarding land and water and the natural resources contained therein and land rights, which exist at the time this Law comes into force, remain valid, as long as they do not conflict with the spirit of the provisions in this Law and interpreted accordingly."

The Panel of Judges examining Case Number 89/Pdt.G/2022/PN.Kln, provides a parallel legal rationale, asserting that a purchase of a piece of land owned by the Seller by the Buyer took place in June 1962. The land sale process was further supported by the

²³ Rana and Allagan (n 15).

²⁴ Government Regulation No. 24 of 1997 on Land Registration; Government Regulation No. 18 of 2021 on Management Rights, Land Rights, Flat Units and Land Registration; Auri, 'Aspek Hukum Pengelolaan Hak Pakai Atas Tanah Dalam Rangka Pemanfaatan Lahan Secara Optimal' (2014) 1 Jurnal Ilmu Hukum Legal Opinion.

testimony of two witnesses confirming the transfer of rights to the land. Moreover, the trial revealed the fact that the Buyer had possessed the land acquired for approximately 60 years,²⁵ despite the absence of valid ownership proof (certificate) for the land. The Panel of Judges examining the case also supplements that in order for the Buyer to apply for a land ownership certificate, it should be based on Article 24 paragraph (2) of Government Regulation No. 24 of 1997 on Land Registration (Land Registration Regulation).²⁶

A different case in the same ground as stated in a Court Decision Number 50/Pdt.G/2022/PN.Smn along with the Decision of the Yogyakarta High Court Number 102/PDT/2022/PT. YYK, it is a principle that the sale and purchase carried out by the Seller and the Buyer is legally valid according to Customary Law and based on the provisions of Article 1320 of the Civil Code regarding the requirements for a valid agreement. In the case of this legal decision, a sale and purchase agreement was executed at the Buyer's residence with mutual agreement regarding the land's subject, price, and complete cash payment by the Buyer. The sale and purchase agreement between the Seller and the Buyer was conducted in a manner that is "open and immediate."

The sale and purchase agreement was conducted in a "transparent," clear, and explicit manner. The legal relationship between the parties was not conducted in a secretive or ambiguous manner, but rather openly. Furthermore, the sale and purchase agreement between the Seller and the Buyer was executed in a cash (immediate) manner, implying that an actual action, symbolic act, or verbal declaration immediately completes the legal action concurrently with the action performed according to customary law. The Buyer handed over the money and the Seller handed over the goods simultaneously, and the agreement was made in the presence of other individuals (witnesses) who witnessed the sale and purchase agreement. After the occurrence of the sale and purchase, the Buyer

²⁵ Which stipulates that which stipulates that: "(2) In cases where the required evidence, as referred to in paragraph (1), is not available or no longer complete, registration of rights can be based on the physical possession of the respective land parcel for 20 (twenty) years or more in uninterrupted succession by the registration applicant and their predecessors, under the condition: a. Such possession is exercised in good faith and openly by the concerned party as the rightful owner of the land, further substantiated by credible testimonies from reliable individuals. b. Such possession, both prior to and during the announcement as stipulated in Article 26, is not contested by the customary or village community concerned, nor by other parties". See 'Court Decision Nomor 89/Pdt.G/2022/PN.Kln'.

²⁶ Court Decision (n 25)

gained possession of the lands. The Buyer also fulfilled their obligation to pay Land and Building Tax for the exchanged lands²⁷.

The Panel of Judges examining Case Number 50/Pdt.G/2022/PN.Smn., has declared the legal validity of the sale and purchase agreement between the Seller and the Buyer. Furthermore, the Panel of Judges has also issued a verdict stating that the sale and purchase between the Seller and the Buyer is legally valid and binding for all heirs of the Seller. In the verdict of case 50/Pdt.G/2022/PN.Smn., it is also stated that the heirs of the Seller who withheld the land documents, preventing the Buyer from processing them into valid ownership evidence (conversion and name change), have engaged in wrongful acts (*onrechtmatiggedaad*) that have caused harm to the Buyer.

The Case Number 50/Pdt.G/2022/PN.Smn has undergone an appeal process to the Yogyakarta High Court with Register Number 102/PDT/2022/PT. YYK. In the appellate memorandum, the Sellers (particularly the heirs) broadly assert that the sale and purchase conducted between the Sellers and the Buyers is not valid. Their argument is based on the premise that a valid sale and purchase should be accompanied by leveraging in the presence of the head of customary law (village head) and should be conducted before an official, specifically a Land Deed Making Official (PPAT). Therefore, the process of transferring land ownership rights is valid according to customary legal norms²⁸.

If the sale and purchase is not conducted before village officials or other authorities, the sale and purchase remain valid due to the Indonesian Basic Agrarian Law being grounded in customary law, and the concept of sale and purchase according to Basic Agrarian Law incorporates the principles of customary law, namely, being immediate and clear. Several Supreme Court jurisprudence that validate sale and purchase transactions without the involvement of a Land Deed Makers Official include the following:

1. Supreme Court Decision No. 153 PK/PDT/2005 regarding the status of land sale and purchase without utilizing the services of a Land Deed Makers Official was affirmed as valid by the court.
2. Supreme Court Decision Number 952/K/SIP/1975, in its legal considerations, stipulates that land sale and purchase transactions conducted without the presence of a Land Deed Makers Official remain valid. According to the Supreme Court's

²⁷ Case No. 102/PDT/2022/PT YYK (Yogyakarta High Court).

²⁸ Case No. 102/PDT/2022/PT YYK (Yogyakarta High Court).

jurisprudence, a sale and purchase agreement is considered valid if it fulfills the requirements stipulated in the Civil Code or customary law.

Based on the above description, a sale and purchase without the involvement of a Land Deed Makers Official is carried out according to customary law, wherein the process is conducted only in the presence of witnesses and adheres to the principles of immediacy and transparency.²⁹ A sale and purchase without a Land Deed Makers Official remain valid even though it is regulated by Government Regulation No. 24 of 1997 on Land Registration, as long as the substantive conditions are met, namely the presence of parties, land as the object of sale, and an agreed-upon price.

Within customary law, there is a principle of protecting buyer with good-faith intention. While in the Indonesian Civil Code, this principle of protecting the buyer with good-faith principle only applies to movable property, in customary law, it applies to the sale and purchase of all kinds of goods. This can be observed in the jurisprudence of the Supreme Court, including the Supreme Court Decision dated January 10, 1971, Number 210 K/Sip/1955 *jo.* Supreme Court Decision dated August 6, 1973, No. 663 K/Sip/1971.

Again, the sale and purchase of land remains valid in principle even if it is not documented in a sale and purchase deed and not conducted in the presence of a Land Deed Official. This is because land sale and purchase is essentially akin to general sale and purchase agreements, where an agreement must meet the legal requirements stipulated in Article 1320 of the Indonesian Civil Code. These requirements include the presence of mutual consent among the parties, legal capacity to undertake legal actions, the existence of an agreed-upon object, and compliance with legal provisions. However, the consequences for the buyer who engages in land sale and purchase without a deed in the presence of a Land Deed Makers Official include difficulties in the land title registration process since, according to the Regulations on Land Registration, the transfer of land rights can only be registered if supported by a Land Deed Official deed.

In addition to registration challenges, there is a more significant consequence, namely, in the event of legal issues arising concerning the land subject to the sale and purchase. The land buyer will face difficulties in providing evidence because an informal agreement carries lower legal standing than a sale and purchase deed prepared by a Land

²⁹ Kartina Pakpahan, Azharuddin, and Leviyanti, 'Problems Of Implementation Of Electronic Land Certificate Arrangements As Debt Guarantee' (2022) 4 Prophetic Law Review 70; Dyara Radhite Oryza Fea, *Buku Pintar Mengurus Sertifikat Tanah Rumah Dan Perizinannya* (Buku Pintar 2016).

Deed Official. It's important to note that a sale and purchase deed executed in the presence of a Land Deed Official is considered an authentic deed, which holds the highest level of legal authority regarding its contents and possesses absolute probative value.

D. Conclusion

The prevailing land law in Indonesia is customary law, as long as it is not in conflict with national and state interests. Thus, as long as the sale and purchase are carried out in a concrete, transparent, and immediate manner, the transaction is considered valid under the Basic Agrarian Law. Therefore, when the sale and purchase of land is executed transparently and immediately, the transaction is deemed valid according to the national land law, namely the Basic Agrarian Law, rendering it irrevocable unilaterally. According to customary law norms, the transfer of land rights through buying and selling involves a process that is both transparent and immediate. This transfer occurs concurrently with the buyer's payment of the agreed price, adhering to the principle of direct exchange or concrete transaction. This principle of land transactions shares similarities with general contractual agreements, necessitating compliance with Article 1320.

The findings indicate the predominant agrarian law in Indonesia, is rooted in customary law as long as it aligns with national and state interests. Hence, as long as the sale and purchase process is conducted in a genuine, transparent, and immediate manner, it holds legal validity as per the Basic Agrarian Law. Consequently, provided the land sale and purchase transaction adheres to the principles of clarity and immediacy, it maintains legal validity under the national land law, *i.e.*, Basic Agrarian Law, and is thus irreversible.

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