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The Validity of Land Purchase Agreements by Credit in Indonesia: A Case Study of Judges' Consideration in East Kalimantan

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Abstract

Sale and purchase agreements of land in Indonesia are, normatively, subject to the clear and cash principle as recognized in national land law, which requires that the transfer of land rights be carried out openly before the Land Deed Official and followed by full payment of the land price in order to issue a Sale and Purchase Deed. However, in practice, land sale and purchase transactions are still found to be carried out privately with a credit payment mechanism without issuing a Sale and Purchase Deed, thus raising issues regarding their legal validity. This article aims to analyze the validity of private land sale and purchase agreements carried out using the credit payment method and examine the judge's considerations in deciding disputes arising from this practice. This research employs a normative legal research method with a statutory and conceptual approach, and refers to Decision Number 25/Pdt.G/2024/PN.Sgt and Decision Number 218/PDT/2024/PT.SMR, which are land dispute cases that happened in East Kalimantan Province, as the object of analysis. The results show that judicial interpretation still plays a significant role in resolving land purchase disputes by credit due to the ambiguity of norms regarding the validity of transactions conducted privately. On one hand, Article 1320 of the Civil Code emphasizes the principle of consensualism, which recognizes the validity of agreements based on the consensus of the parties. On the other hand, land law, through the principle of clear and cash, requires payment in full and the transfer of rights before a Land Deed Official. These differences in legal construction create room for interpretation that has the potential to impact legal certainty in land purchase practices in Indonesia.

Keywords: agreement, credit, indonesia, land purchase.

Introduction

Land is a strategic resource with significant economic, social, and cultural significance in Indonesia. As a legal object, land is prone to disputes, especially in sales and purchase agreements. Land's high value and its function as a transgenerational asset make it a complex object of dispute, particularly when the transfer of rights

is not carried out in accordance with applicable legal procedures. Population growth is one factor associated with the increasing number of land ownership disputes, as the amount of land needed also increases. Consequently, land values continue to rise, often leading to disputes, particularly in sales transactions. The

Indonesian government has enacted land ownership in Law Number 5 of 1960 concerning Basic Agrarian Regulations as a form of *lex specialis* to ensure legal certainty regarding land issues in Indonesia. The main objective of this regulation is to eliminate the differences between the old land laws—customary law and Western law—and to ensure that land ownership has clear legitimacy (Ramadhiansa et al., 2025).

The provisions regarding sales and purchase agreements must essentially be in accordance with the Civil Code as a *lex generalis* that regulates agreements and contracts in general. Based on Article 1458 in conjunction with Article 1320, the validity of a sales and purchase agreement is based on the principle of consensualism. This means that a sales and purchase agreement can be said to be legally valid from the moment an agreement is reached regarding the goods and price (Verdiyansyah & Wahyuni, 2025). This type of agreement is valid as an obligatory agreement that gives rise to rights and obligations for the parties without requiring certain formalities. Based on Article 1320 of the Civil Code, the conditions for the validity of a sales and purchase agreement are based on four elements: 1) The existence of an agreement, there must be no element of coercion; 2) The capacity between the seller and the buyer that indicates both, seller and buyer, are capable of making transaction; 3) Concerning a specific object that is clear and can be determined in type and quantity; 4) A lawful cause, which states that the content and purpose of the agreement must not conflict with the law, morality, or public order. These four elements are the basis of all sales and purchase agreements, including land sale and purchase agreements (Siregar, 2025).

On the other hand, Law Number 5 of 1960 concerning Basic Agrarian Regulations as *lex specialis* adheres to the principle of clear and cash (*contante handeling*), which is based on the principles of customary law. Clear means that the transfer of land rights must be carried out before a chief, or an authorized party, who serves as an official responsible for ensuring that the procedure for transferring land rights has been carried out in an orderly and legal manner, so that everyone can be informed. Meanwhile, cash means that the transfer of land rights and payment are carried out simultaneously to avoid losses or disputes in the future. When the sale and purchase of land is carried out before the Land Deed Official, the clear principle must be fulfilled (Muslim & Arsin, 2023). This principle emphasizes that legal acts regarding the sale and purchase of land are carried out openly to the public and paid in full. This payment method related to land objects is supported by Article 37 paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration, which emphasizes that the transfer of land rights through a sale and purchase can only be registered if evidenced by a deed drawn up by a Land Deed Official.

In practice, land sale and purchase agreements are carried out in accordance with applicable legal procedures in accordance with Article 1458 of the Civil Code, which stipulates that a sale and purchase agreement is considered valid from the moment an agreement is reached between the seller and the buyer, even if the land has not been handed over or payment has not been made (Yuliyanti & Navisa, 2024). However, the principle of consensualism in the Civil Code does not apply absolutely to land transactions, because it must fulfill formal aspects, including the preparation of a Sale and Purchase Deed by a Land Deed Official and registration of the land that has been bought and sold before

the National Land Agency. Without going through these procedures, land transactions are vulnerable to legal disputes and difficult to obtain legal recognition, so many disputes are brought before the court for legal resolution.

Land dispute resolution doesn't always involve the court. There's an alternative way to resolve land sale disputes, namely through mediation at the National Land Agency, as a non-litigation approach. During the mediation process, parties can reach an agreement on the land's status, allowing all land disputes to be resolved without involving the courts. If the mediation process is successful, land ownership rights can be legally recognized. This agreement can be written down in an official, legally binding document (Ramadhan & Sukirno, 2022). This is crucial to avoid similar conflicts in the future.

Although a non-litigation way can be taken, litigation resolution involving the courts is an issue worthy of discussion as a legal analysis, since it involves the judge's considerations. Differences in the interpretation of the law by judges regarding the same case can be seen concretely in the land sale and purchase dispute case between Harjun (plaintiff) and Yusri Yusuf (defendant) registered at the Sangatta District Court in Decision No. 25/Pdt.G/2024/PN.Sgt, which has different legal interpretations by judges when appealed to the East Kalimantan High Court, specifically in Samarinda City, written in Decision No. 218/PDT/2024/PT.SMR. These two decisions show a difference in interpretation of the same case, thus indicating unclear norms that can result in legal uncertainty, especially regarding payment methods in land sales and purchases.

Based on the background described above, this article is mainly aimed to analyze two judges' consideration within Decision No. 25/Pdt.G/2024/PN.Sgt and Decision No. 218/PDT/2024/PT.SMR, regarding the validity of land purchases using a credit scheme that is not carried out before a Land Deed Official. This study is focused on the High Court's decision, stating that land sales and purchases in installments are not permitted because, in principle, they must be carried out in cash. This consideration is interesting to discuss because land payments in stages or installments are common in community practice and in the land business.

Research Method

This article employs a normative legal research method, which is conducted by examining library materials or secondary data consisting of primary legal materials, namely applicable legislation, and secondary legal materials, in the form of previous research. Normative legal research is often referred to as library legal research because this research is conducted with extensive reference to previous research (Fuady, 2018). The approaches used in this research are the statutory, conceptual, and case approaches. The conceptual approach means referring to and identifying legal principles, legal doctrines, and the views of legal scholars that have developed in legal science. Meanwhile, the case approach is carried out by referring to an actual case, in the form of two judges' decisions in Indonesia regarding similar cases, but resulting in different decisions, so that all similarities and differences can be analyzed to draw research conclusions.

Results and Discussion

1. The Validity of Purchasing Land by Credit in Indonesia

Normatively, land purchases in Indonesia should be conducted based on the principle of transparency and cash, which is a basic principle in customary law and national land law. The principle of transparency implies that the legal act of buying and selling land must be carried out openly before authorized officials so that it is known and recognized by law. Meanwhile, the principle of cash means that payment of the land price and the transfer of land rights are carried out simultaneously during the transaction. Provisions regarding the implementation of land sales and purchases are accommodated in Article 37, paragraph (1) of Government Regulation Number 24 of 1997 concerning Land Registration. This article emphasizes that the transfer of land rights through a sale and purchase can only be registered if evidenced by a deed made by an authorized Land Deed Official (Murtadho & Assaris, 2024).

The existence of a Land Deed Official plays a very important role in every land sale and purchase transaction because he acts as an authorized public official to create authentic deeds for land. Based on Article 37 paragraph (1) in conjunction with Article 38 of Government Regulation Number 24 of 1997 concerning Land Registration, a Land Deed Official is authorized to create a Deed of Sale and Purchase, which serves as the basis for registering the transfer of land rights. Through this deed, the Land Deed Official ensures that the identities of the parties, the land object, and the transaction requirements have met applicable legal provisions. In addition, the Land Deed Official also functions to provide legal certainty and prevent future disputes (Putri et al., 2025). Therefore, the involvement of a Land Deed Official is not merely an administrative formality, but rather an important instrument in realizing orderly land administration.

In the implementation of land sales and purchases, the Land Deed Official is also obliged to check the completeness of the documents, ensure the legal status of the land, and express the wishes of the parties in a Deed of Sale and Purchase (Putri et al., 2025). The Deed of Sale and Purchase is an authentic deed prepared by the official as evidence that the legal act of buying and selling land between the seller and the buyer has been carried out. The existence of a deed is very important because it has perfect evidentiary force as recognized in civil evidence law. If a dispute arises in the future regarding ownership or transfer of land rights, the deed can be used as strong evidence in court. Once the deed is signed, the document becomes the basis for the National Land Agency to register the transfer of rights and issue a certificate in the name of the new rights holder. Thus, there is a close relationship between the Land Deed Official and the National Land Agency, which plays a vital role in ensuring legal certainty and protection of land rights.

However, several cases in the field show non-compliance with legal norms. Even though, normatively, land buying and selling should be done through the Land Deed Official, in practice, illegal land buying and selling transactions are still often found in the community. This phenomenon generally occurs because the process is considered simpler, faster, and does not require relatively high administrative costs. In addition, in some cases, this type of transaction allows payments to be made in stages or on credit according to the agreement of the parties. This practice is basically based on the principle of consensualism in contract law, which is regulated in Article 1320 and Article 1338 of the Civil Code. Based on this principle, an agreement is considered to be born and binding on the parties from the moment an agreement is

reached, as long as it fulfills the legal requirements of the agreement determined by law.

Although private land sales are often evidenced by receipts or statements signed by the parties, the legality of these documents remains weak. Under civil law, private deeds have less evidentiary power than authentic deeds drawn up by public officials. Their evidentiary power depends heavily on the signature of the party signing the document (Ajo & Tjempaka, 2026). If one party denies the signature or the contents of the document, additional evidence is required to prove its validity. This situation has the potential to create difficulties in the dispute resolution process in court, so using receipts or ordinary agreements as the basis for land sales carries significant legal risks for the parties.

In principle, a private purchase without involving a Land Deed Official can be considered legally valid under civil law if it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code (Ajo & Tjempaka, 2025). This means that the legal relationship between the seller and buyer remains recognized as long as there is an agreement, the capacity of the parties, a specific object, and a lawful cause. However, from the perspective of agrarian law and land administration, such a transaction does not meet the formal requirements for registering the transfer of land rights. Consequently, the buyer cannot directly obtain legal recognition in the form of a change in the name of the rights holder on the land certificate without first fulfilling the specified procedures. This situation weakens the buyer's legal position, especially if claims arise from other parties or disputes arise regarding the land's ownership status. Therefore, even though it is legally valid under civil law, a private purchase does not provide optimal legal certainty regarding future land ownership.

2. Comparative Analysis of Judges' Consideration regarding Land Disputes based on Indonesia's Civil Code

The case in Decision No. 25/Pdt.G/2024/PN.Sgt began with a sale and purchase agreement for a plot of land located on Jalan Inpres, Sangatta, East Kalimantan Province, between Harjun as the buyer and Yusri Yusuf as the seller, made on September 22, 2023. In the agreement, the land price was agreed at IDR 1,000,000,000.00 (one billion rupiah) with a first payment of IDR 300,000,000.00 (three hundred million rupiah) and the remaining land price was paid through a credit mechanism of IDR 15,000,000.00 (fifteen million rupiah) per month for 48 months. After the first payment, followed by four months of payment were made by the buyer, at the time of the fifth payment, the seller, Yusuf, refused to accept the payment and returned all funds that had been paid by the buyer. The refusal was preceded by a statement from the seller stating that the land would be transferred to another party. Feeling aggrieved, Harjun, the buyer, then sent a warning letter to the seller, but received no response whatsoever. Based on this, the buyer filed a breach of contract lawsuit against the Sangatta District Court, demanding that the agreement be declared valid and that the seller be required to accept the payments as stated in the agreement.

Long story short, the plaintiff's lawsuit was rejected in its entirety by the Sangatta District Court, and an appeal was then filed against the Samarinda High Court. The appeal was filed within the statutory time limit and accompanied by an appeal memorandum containing objections to the legal considerations of the first instance panel of judges. In the appeal memorandum, the Appellant essentially requested that the Sangatta District Court's decision be

annulled and the lawsuit granted in its entirety. Conversely, the Respondent filed a counter-appeal memorandum requesting that the first instance decision be upheld as it was deemed to be in accordance with the facts and applicable law. After examining the case files, appeal memorandum, and counter-appeal memorandum, the High Court judges, in Decision No. 218/PDT/2024/PT.SMR were of the opinion that the District Court's legal considerations were appropriate and correct. Therefore, the High Court decided to uphold the Sangatta District Court's decision and charge the Appellant with the costs of the appeal.

Analyzing these two decisions, it can be observed that the Sangatta District Court's decision essentially focused on assessing the contractual relationship between the parties and the alleged breach of contract filed by the Plaintiff. In this case, the judges neither explicitly state that paying for the land in credit was prohibited nor render the agreement null and void. Instead, the panel of judges focused more on examining the existence of additional agreements submitted by the Defendant regarding the possibility of increasing the first payment or credit if necessary. From a contract law perspective, the credit payment mechanism is essentially a form of freedom of contract that is permitted as long as it meets the requirements for a valid agreement as stipulated in Article 1320 of the Civil Code (Zei et al., 2023). Furthermore, a private sale and purchase agreement can still create a legally binding relationship for the parties even though it has not been followed up with a Deed of Sale and Purchase before a Land Deed Official. Based on this analysis, it can be understood that the District Court's considerations were more oriented towards the implementation aspect of the agreement rather than questioning the validity of the credit payment method.

Unlike the District Court, the High Court provided additional considerations that directly address the validity of land sales made through credit payments. In its considerations, the High Court stated that the sale and purchase of certified land should be conducted before a Land Deed Official and paid for in cash, since the sale and purchase of uncertified land must meet the principles of clear and cash (Pratama et al., 2025). Based on these considerations, the High Court is of the opinion that land sales cannot be conducted using a credit payment system as agreed by the parties. However, this argument is still debatable because Indonesian positive law distinguishes between a preliminary sale and purchase agreement and the implementation of the transfer of land rights through a Deed of Sale and Purchase. In land practice, installment payments are commonly made through a Sales and Purchase Agreement before full payment and the preparation of the deed before the Land Deed Official. The High Court's considerations appear to equate private sales and purchase agreements with the act of transferring land rights, even though the two are separate legal stages.

A comparison of the two decisions reveals a difference in the focus of legal considerations between the Sangatta District Court and the East Kalimantan High Court. The District Court focused more on analyzing the implementation of the parties' rights and obligations in the contractual relationship, particularly regarding any alleged breach of contract arising during the implementation of the agreement. Meanwhile, the High Court not only assessed the breach of contract but also assessed the validity of the payment mechanism and the nature of the land sale and purchase transaction conducted on credit. From a civil law perspective, particularly in land sale and purchase agreements, payments in credit do not

necessarily invalidate the agreement made by the parties as long as it meets the legal requirements and is not intended to constitute a direct transfer of land rights. Therefore, the High Court's consideration of the prohibition on payments in credit of land remains open to academic debate when linked to the practice of Sale and Purchase Binding Agreement and the principle of freedom of contract in Indonesian civil law. Overall, both decisions ended in the rejection of the lawsuit, but used different legal argumentative approaches to reach this conclusion.

3. Theoretical Overview of Legal Certainty from Jan Michiel Otto's Framework

The debate over the legitimacy of land sales and purchases using credit payment mechanisms has created a space for interpretation in legal practice in Indonesia. On one hand, land law recognizes the principle of clear and cash as the basic principle in the transfer of land rights, while on the other hand, the practice of gradual land sales through private agreements or Sales and Purchase Agreements has long been prevalent in society. The difference between the norms prevailing in real life and the norms understood in court decisions has the potential to create legal ambiguity. This situation makes it difficult for parties to obtain a clear picture of the legal standing of their sales and purchase transactions. As a result, legal uncertainty arises regarding whether land payments in installments can be considered valid and binding or whether they actually conflict with the principles of land law. Therefore, this issue is relevant to be analyzed using Jan M. Otto's theory of legal certainty, which emphasizes the importance of consistency between legal norms, their application, and their implementation in society.

According to Jan M. Otto, legal certainty is not only measured by the existence of written and formally enforced laws and regulations. Legal certainty also requires that these rules be clearly understood, consistently applied by law enforcement officials, and result in decisions that are predictable by the public (Antono & Ernawati, 2026). Furthermore, Otto emphasizes the importance of an independent judiciary and impartial judges in examining and deciding cases. The resulting decisions must also gain social legitimacy so that they are accepted by the public as a form of fair dispute resolution. Equally important, court decisions must be effectively enforced so that they do not remain merely normative documents. Legal certainty, according to Otto, is a system that connects norms, institutions, law enforcement, and public acceptance in an integrated manner (Suhartini et al., 2024).

Judicial impartiality is a key prerequisite for realizing a judicial system with integrity. An impartial judge will objectively assess the facts, evidence, and legal arguments of the parties, without being influenced by personal interests or external pressures. This attitude is crucial because a judge's decision not only resolves individual disputes but also shapes the direction of legal development through precedent and legal considerations (Suhartini et al., 2024). When the public perceives that a judge acts neutrally and impartially, public trust in the judiciary will increase. Conversely, if a decision is perceived as arising from non-objective considerations, the legitimacy of the judiciary may be undermined. Therefore, judicial impartiality is closely linked to the quality of law enforcement and the level of public trust in the national legal system.

In legal practice, not all issues are explicitly and thoroughly regulated by statutory regulations. In certain circumstances, such as

the issue of land sales and purchases made through private agreements, judges are often faced with situations that require legal interpretation. Although land law recognizes the principle of clear and cash, there are still different opinions on whether this principle applies to the entire contractual relationship between the parties or only to the process of transferring land rights. In such circumstances, the judge's opinion is a crucial factor in forming a decision. However, this broad scope for interpretation also opens up the possibility of multiple interpretations among judges examining similar cases. As a result, cases with relatively similar substance have the potential to result in different decisions depending on the interpretive approach used by the panel of judges.

Normative ambiguity essentially refers to a situation where a legal rule does not clearly define the rights, obligations, or legal consequences arising from a legal act. In such situations, the parties cannot predict with certainty how the law will be applied to their actions. This ambiguity then encourages judges to interpret the law to fill in the gaps or clarify the unclear meaning of the norm. However, the broader the scope for interpretation, the greater the potential for subjective considerations to enter the legal discovery process. While this subjectivity is not always negative, it still has the potential to result in different decisions in cases with similar characteristics (Rishan, 2022). Therefore, normative ambiguity is a factor that can reduce the level of legal certainty in a legal system.

Although judicial interpretation is an integral part of the law enforcement process, its use must be based on applicable statutory provisions. In civil cases, there is a binding principle for judges: judges are supposed to wait and not seek a case. This means that judges merely examine and decide cases based on the arguments, evidence, and demands submitted by the parties (Afriana et al., 2022). This doctrine demonstrates that judges are not norm-makers free to determine the law according to their own will, but rather law enforcers tasked with discovering and applying the law appropriately. Therefore, every form of interpretation must be conducted rationally, objectively, and legally accountable. Furthermore, the principles of justice and impartiality must remain the primary foundation to ensure that decisions do not deviate from the objectives of the law. Therefore, judicial interpretation remains necessary to address normative ambiguity, but must be conducted within the framework of positive law and the principles of fair trial to maintain legal certainty and public trust in the judiciary.

Conclusion

Referring to the judge's decision in Sangatta District Court Decision Number 25/Pdt.G/2024/PN.Sgt and East Kalimantan High Court Decision Number 218/PDT/2024/PT.SMR, it can be concluded that the two decisions have different legal considerations in assessing the same dispute. The District Court places more emphasis on the implementation of the agreement and the fulfillment of the rights and obligations of the parties in the agreed contractual relationship. In contrast, the High Court pays greater attention to the validity of the land sale and purchase payment scheme by credit or carried out privately without a Deed of Sale and Purchase, grounding its considerations on the clear and cash principles in land law. This difference in approach indicates a lack of clarity in norms resulting from the meeting between the land law as *lex specialis*, which requires the transfer of rights to be carried out clearly and in cash before the Land Deeds Official, and the agreement law in the Civil Code as *lex generalis*, which

recognizes the validity of private agreements as long as they meet the requirements for a valid agreement. This situation demands legal interpretation by judges to address the ambiguity of norms that arise in practice. However, such interpretation must be conducted objectively, rationally, and impartially to avoid further legal uncertainty. In line with Jan M. Otto's theory of legal certainty, legal certainty is determined not only by the existence of written regulations but also by the consistency of legal application and the integrity of judges as law enforcers in producing fair and predictable decisions for the public.

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