

## PRIVATE SALES DEEDS IN LAND DISPUTES: WEAKNESSES IN EVIDENCE AND REGISTRATION OBSTACLES

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### ABSTRACT

This normative legal study examines the validity of private deeds of sale and purchase (AJB) and their standing as evidence in land ownership disputes in Indonesia. Utilizing a qualitative literature review, the research analyzes primary regulations including the Civil Code, the Agrarian Law, and the Land Registration Government Regulation. The findings reveal a fundamental legal hierarchy between notarial/PPAT deeds and private deeds. Notarial deeds possess perfect evidentiary strength, executive force, and are the sole legal basis for registering land rights transfer at the Land Office. Conversely, private deeds have only relative evidentiary value, contingent upon signature authentication and corroborating evidence. The legal consequence is severe: transactions based on private deeds cannot be registered, preventing the legal transfer of ownership and leaving the buyer without formal state protection. In court disputes, private deeds are treated as preliminary evidence but are insufficient to establish ownership; judges typically order the creation of a notarial deed or award compensation rather than directly granting property rights. The study concludes that while private deeds may prove the existence of a contractual agreement, they fail to produce the definitive legal effects of notarial deeds, especially concerning land registration and conclusive proof of title. This legal uncertainty underscores the critical importance of formalizing land transactions through authorized officials to ensure security of tenure and prevent protracted disputes.

**Keywords:** Private Deed, Notarial Deed, Land Sale and Purchase, Land Registration, Evidence, Ownership Dispute, Legal Certainty.

### INTRODUCTION

The transfer of land ownership rights within the Indonesian legal system is a juridical event regulated with stringency, primarily aimed at guaranteeing legal certainty, administrative order, and protection for rightful owners. This process cannot be equated with the transfer of rights over movable goods, considering land possesses the characteristic of immobility, high economic value, and a close connection to social aspects and community living space. On this basis, formal law requires a specific juridical act to transfer these ownership rights. One of the most common juridical acts is a sale and purchase agreement, which must be formalized into an authentic deed prepared by or before an authorized public official. This regulation is not merely an administrative formality, but a preventive evidentiary mechanism designed to prevent future disputes. An authentic deed, within the legal construction of evidence, possesses perfect evidentiary power concerning what was seen,

heard, and done by the public official in the execution of their duties (Husin et al., 2025). This provides a very strong position for the interested parties.

Regulations concerning the creation of land sale deeds are directly linked to the principles of publicity and registration of land rights. Indonesia's land registration system, which is negative with a positive element, aims to provide public information regarding the legal status of a plot of land (Annas et al., 2025). This information is recorded in land books and land title certificates. For a transfer of rights to be recorded within this registration system, an authentic deed recognized by the Land Office is required. This is where the role of the Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT) becomes central, as a public official granted special authority by the state to create deeds for the transfer of land rights. The deed prepared by or before a PPAT, subsequently referred to as an authentic Sale and Purchase Deed (Akta Jual Beli or AJB), functions as the primary gateway for registering the transfer of rights at the Land Office. Without this document, the registration process will face obstacles or even rejection.

However, within the social and economic practices of society, not all land sale transactions follow these formal procedures. A practice known as an "underhanded" sale exists, where parties create a written agreement themselves or even rely solely on a verbal agreement without the presence of a PPAT. The document resulting from such a transaction is commonly referred to as an underhanded Sale and Purchase Deed. The persistence of this practice is motivated by various factors, such as the desire to avoid notarial and tax fees, a lack of legal knowledge, or transaction urgency. Within civil law, the sale and purchase agreement itself is valid as long as it fulfills the conditions for a valid agreement as regulated in the Civil Code. This means that, as an agreement, an underhanded sale can bind the parties who created it. In other words, this agreement has private legal force between the parties concerned, even though it was not witnessed by an authorised official. However, formal validity alone does not guarantee effectiveness and certainty in its implementation (Rizky & Darmawan, 2024). Problems arise when this agreement must be proven before a third party or submitted for administrative purposes such as registration at the Land Office, as well as when a dispute over ownership arises (Sani et al., 2025).

The primary legal dilemma lies in the differing evidentiary status between an authentic AJB and an underhanded AJB. The authentic AJB, as a deed prepared by a public official,

possesses binding evidentiary force until contrary proof demonstrates the deed is false or obtained unlawfully (Arthur et al., 2024). In contrast, an underhanded AJB only has the evidentiary force of an underhanded writing. Its evidentiary power is weaker, as the authenticity of the signatures and its contents can be contested by the parties or by a third party who suffers loss. In a land ownership dispute, the position of the holder of an underhanded AJB is far more vulnerable compared to the holder of an authentic AJB, especially when facing a third party who registered their right based on an authentic deed or already possesses a certificate. This disparity in evidentiary strength is a source of complexity in dispute resolution.

Therefore, this literature study aims to comprehensively dissect the validity and position of an underhanded Sale and Purchase Deed as a means of evidence, particularly within the context of land ownership disputes. The analysis will focus on a comparative assessment of the legal strength of an underhanded AJB versus an AJB prepared before a Notary/PPAT. Subsequently, the study will examine the legal consequences arising from the use of an underhanded AJB on the land registration process at the Land Office. Finally, the study will analyze how courts evaluate and adjudicate land ownership disputes involving an underhanded AJB as the primary piece of evidence. Through this approach, a systematic understanding is expected to be obtained regarding the risks and legal consequences of the practice of underhanded land sales within the Indonesian legal system.

The practice of underhanded land sales creates serious legal uncertainty concerning the moment ownership rights transfer from the seller to the buyer. According to the law, ownership rights over land only transfer after registration of the transfer of rights is conducted at the Land Office and the buyer's name is recorded as the new rights holder in the certificate. To be able to register, an authentic deed from a PPAT is required. In an underhanded transaction, although money and physical possession of the land may have changed hands, juridically and formally, ownership rights have not transferred because there is no authentic deed to serve as the basis for registration. This situation creates an ambivalent legal state, where the buyer feels they have become the owner based on the agreement and physical handover, but in the land register, the seller's name is still recorded as the legal owner. This gap is often exploited maliciously, for instance, if the seller engages in a double

sale with another party and creates an authentic deed for the second buyer, or if the seller applies for a replacement certificate due to loss and then transfers the land to another party.

The position of an underhanded AJB as evidence in court proceedings constitutes a complex problem. On one hand, the judge cannot summarily dismiss the existence of such a document, as in principle it is a written proof indicating the existence of an agreement. On the other hand, this piece of evidence is highly susceptible to rebuttal. The opposing party can easily dispute the authenticity of the signature, claim the document was created under duress, or that its contents do not reflect the true agreement. To strengthen the position of an underhanded AJB, its holder must submit other supporting evidence, such as witnesses present during the transaction, proof of payment (receipts, bank transfers), or proof of physical possession of the land by the buyer. This evidentiary process becomes convoluted, time-consuming, costly, and its outcome is never certain. In many cases, even if the buyer can prove the transaction occurred, the judge still cannot directly grant ownership rights due to the obstacle of formal requirements concerning registration.

The most tangible legal consequence of using an underhanded AJB is the obstruction or prevention of the land registration process at the Land Office. Based on the Government Regulation on Land Registration, the Land Office can only record a transfer of rights based on a PPAT deed. An underhanded AJB is not a required document. A buyer possessing only this document will have their registration application rejected. To overcome this, conversion efforts are often undertaken by creating a deed of acknowledgment of debt with mortgage rights or another deed before a notary, the actual purpose of which is a sale, a practice that can be considered legal circumvention (*fraus legis*). Alternatively, a lawsuit can be filed in court to compel the seller to sign a PPAT deed. However, such a lawsuit can only be filed if the underhanded sale agreement is recognized by the judge, which again returns to the aforementioned difficult problem of proof. These administrative barriers render the land's status unclear and prone to dispute for an extended period.

The high economic value of land and the limited availability of land in various regions, especially in urban areas, have increased transaction intensity and the potential for ownership disputes. In such a situation, a proper understanding of the legal consequences of each transaction form becomes an urgent need for society, legal practitioners, and policymakers. Many prospective land buyers, particularly from the middle to lower economic

strata, choose underhanded transactions because they are perceived as easier and cheaper, without realizing the substantial long-term legal risks. This study is important to provide a clear mapping of the differing legal consequences between formal and informal transactions, thereby serving as material for public education and encouraging the choice of safer transactions that provide legal certainty. Educational efforts to prevent the risk of disputes through the selection of secure transaction forms are in line with the principles of legal protection and dispute prevention in various civil relationships (Syarifudin et al., 2025).

The development of jurisprudence from the Supreme Court regarding land disputes involving underhanded deeds shows an interesting dynamic in legal interpretation. Court decisions are not always consistent in addressing this type of evidence. Some rulings may emphasize substantive justice aspects by recognizing the underhanded transaction if supported by other strong evidence, while other rulings insist on formal aspects and dismiss the lawsuit due to the absence of an authentic deed. A review of this jurisprudential development is crucial for understanding the judicial thought trends and the parameters judges use in deciding similar disputes. This understanding is very useful for advocates in formulating evidentiary strategies in court.

From the perspective of policy and agrarian law reform, an evaluation of the practice of underhanded sales and its impact on the land registration system constitutes valuable input. If this practice remains widespread, it may indicate that the formal registration system and transaction costs are perceived as too expensive, complicated, or inaccessible for a portion of society. Such evaluations must take into account the community's perspective on fairness and the credibility of the implementing institutions, as well as the importance of the community's point of view in assessing agrarian policies (Mohammad, 2023). This study can identify critical points that cause the public to avoid formal procedures. The results of this identification can serve as considerations for the government to design simplified procedures, fee subsidies, or more effective outreach programs, to encourage public participation in the formal legal system and ultimately strengthen legal certainty in national land ownership.

This research aims to analyze the validity and position of an underhanded Sale and Purchase Deed as evidence in land ownership disputes. Specifically, the research seeks to examine and compare the legal strength and the juridical consequences arising from a Sale and Purchase Deed created authentically before a Notary/PPAT with one created

underhandedly, based on the Civil Code, the Notary Office Law, and the law of evidence. The second objective is to analyze the position and effectiveness of an underhanded Sale and Purchase Deed as evidence in court proceedings, including how judges evaluate such evidence and what supporting evidence is required to strengthen it. The third objective is to examine the legal consequences of using an underhanded deed on the administrative process of land registration at the Land Office in accordance with agrarian legislation. The theoretical contribution of this research is expected to enrich academic discourse in the field of civil law, particularly property law, contract law, and the law of evidence. Practically, the research results can serve as a guide for the public in understanding the risks of underhanded transactions, a reference for notaries/PPAT and advocates in providing legal advice, and evaluation material for the government in formulating policies that can reduce the practice of land sales outside the formal system.

## RESEARCH METHOD

This research employs a normative literature study method with a qualitative approach, designed to analyze, interpret, and synthesize legal norms and doctrinal constructions relevant to the research focus. According to Crotty (1998), qualitative research aims to understand complex social reality by exploring meaning from texts and conventions. In legal research, this means exploring and interpreting primary and secondary legal texts to build a deep understanding of a legal issue. Primary data sources in this research consist of legislation regulating the research material, namely the Civil Code, the Notary Office Law, the Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA), the Government Regulation on Land Registration, and various related implementing regulations concerning PPAT. Secondary data sources include legal textbooks, scholarly journal articles (national and international), expert commentaries on legislation, and court decisions (jurisprudence) that discuss similar disputes and have attained legal finality.

The literature review was conducted with a systematic strategy to ensure the breadth and depth of source material. The search was focused on literature discussing contract law, property law (specifically land ownership rights), the law of evidence, and the role of authentic and underhanded deeds in the transfer of rights. Searches were performed through legal databases such as SINTA and the academic search engine Google Scholar. The inclusion

criteria applied were literature published within a specific timeframe and substantively addressing the legal aspects of informal land transactions or the comparative evidentiary strength of deeds. Literature that was general without in-depth legal analysis, or that only discussed sociological aspects without connection to legal construction, was subject to exclusion.

Data analysis was conducted using qualitative content analysis and thematic synthesis techniques. The initial stage involved an in-depth reading of all collected literature to identify key legal concepts, principles, and arguments. A coding process was then applied to these texts to extract specific themes aligned with the research questions, such as "evidentiary strength of deeds," "registration requirements," and "dispute resolution." The interactive analysis model from Miles and Huberman (1994), encompassing data reduction, data display, and conclusion drawing, was applied to organize the findings. Synthesis was performed by comparing, contrasting, and linking various perspectives from different literature sources to build a coherent argument. Research quality assurance was maintained through the principle of source triangulation, which involves comparing and confirming interpretations obtained from one type of source (e.g., legislation) with another (e.g., jurisprudence or expert doctrine). This is intended to produce an analysis that is comprehensive, in-depth, and scientifically accountable.

## RESULTS AND DISCUSSION

### Legal Strength and Juridical Consequences: Authentic Deeds versus Underhanded Deeds

The fundamental distinction between an authentic deed (*akta otentik*) and an underhanded deed (*akta di bawah tangan*) is rooted in the Indonesian Civil Code (*Kitab Undang-Undang Hukum Perdata* or KUHPerdata). Article 1868 KUHPerdata defines an authentic deed as a deed prepared in the form prescribed by law, by or before a public official authorized to do so in the place where the deed is made. This definition contains three cumulative elements: a specific form according to law, preparation by or before a public official, and the official's authority based on the location of preparation. In the context of land sales, the public official in question is the Land Deed Official (Pejabat Pembuat Akta Tanah or PPAT). Meanwhile, an underhanded deed is a deed signed underhandedly, created without the intermediation of a public official (Sari et al., 2025). The basis for this regulation is Article

1874 KUHPperdata. This dichotomy is not merely a procedural difference, but an essential distinction with implications for the nature, function, and legal strength of the document itself. The authentic deed is presented as an instrument of the state to guarantee certainty and order in important legal relationships, whereas the underhanded deed reflects the freedom of the parties to prove their legal relationships through self-management.

The most crucial difference lies in the evidentiary strength of each deed. Article 1870 KUHPperdata stipulates that an authentic deed constitutes conclusive proof between the parties, their heirs, and those who derive rights from them, concerning everything stated in the deed as truly performed by the parties appearing, and further concerning everything that the public official in the deed mentions as occurring before them. This clause of "conclusive proof" has a specific legal meaning: the authentic deed is presumed true and binding regarding what was seen, heard, and done by the public official (Islamy, 2024). To contest the truth of the contents of an authentic deed, the contesting party must file an action for forgery of the deed (*gugatan tegenbewijs*) by proving that the deed is false or forged. This is a very high standard of proof. Conversely, an underhanded deed, according to Article 1875 KUHPperdata, only has evidentiary force if its signature is acknowledged by the person against whom the deed is to be used, or if the signature is legally recognized as genuine. If the signature is disputed, the burden of proof that the deed is authentic shifts to the party submitting it.

The direct juridical consequence of this evidentiary strength manifests in the executory realm. An authentic deed containing an acknowledgment of debt (*akte van schuldbekentenis*) or an agreement that expressly grants authority for execution has executory force equivalent to a court decision that has obtained permanent legal force, as regulated in Article 224 of the *Het Herziene Indonesisch Reglement (HIR)* and Article 258 of the *Reglemen Indonesia yang Diperbaharui (RBg)*. This means the creditor can directly request the execution of the deed from the court without needing to undergo a lengthy civil lawsuit to obtain a condemnatory judgment first (Wahid et al., 2024). This executory force is a highly significant legal privilege that accelerates settlement and provides certainty of collection. An underhanded deed, however clear its contents, never possesses executory force. To collect based on an underhanded deed, the party claiming entitlement must first file a civil lawsuit in court to obtain recognition and a judgment on the deed's contents. This

difference makes the authentic deed a far more effective and efficient instrument in commercial transactions requiring performance guarantees.

However, the executory power of this authentic instrument may be blocked if the debtor is declared bankrupt. In the event of bankruptcy, all individual collection efforts, including enforcement based on authentic instruments, must be suspended (known as a "stay of execution") and handed over to a collective mechanism under the supervision of a trustee. This shows that although authentic deeds provide a very strong position, their effectiveness ultimately depends on the debtor's solvency. It is in this case that bankruptcy law and PKPU play a role as a special legal regime to resolve debt disputes fairly and orderly among all creditors when the debtor defaults (Dirgantara et al., 2025). An analysis of the impact of default on the legal position of the parties confirms that the effectiveness of a right or claim is highly dependent on the ability and intention of the parties to fulfil their obligations (Aryanto et al., 2023).

In the context of land law, this difference becomes increasingly absolute and has concrete consequences for the transfer of rights. Law Number 5 of 1960 concerning the Basic Agrarian Law (Undang-Undang Pokok Agraria or UUPA), as the national umbrella agrarian law, in Article 19, mandates land registration to guarantee legal certainty. The technical implementation of this registration is further regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Article 37 of PP 24/1997 explicitly states that to register the transfer of land rights, the rights holder must submit to the Head of the Land Office a PPAT deed containing the legal act. This provision is imperative. The legal consequence is very clear: A Sale and Purchase Deed created before a PPAT (an authentic deed) is the only document that can legally serve as the basis for an application to register a transfer of rights (Budidarmo & Kalyana, 2024). Without this deed, the Land Office legally cannot record the change in the rights holder's name in the land book and issue a new certificate in the buyer's name (Khusna et al., 2025).

The absence of a PPAT deed traps an underhanded land sale transaction in an incomplete juridical status. Although the sale and purchase agreement itself is valid under Article 1320 KUHPerdara (consensus, capacity, specific object, lawful cause), and although physical delivery (levering) of the land may have occurred, the legal transfer of ownership (zakelijke overdracht) has not taken place. Ownership rights over land only transfer after

registration at the Land Office (Girinatha & Renaya, 2023). Therefore, the buyer in an underhanded transaction only has an obligatory property right (*recht van vordering*), namely the right to demand the seller fulfill their performance (in this case, to create a PPAT deed), but does not yet have a real property right (*zakelijk recht*), which is the ownership right itself. The buyer's position is very weak because the seller's name is still recorded as the legal owner in the land register, potentially leading to issues such as double sales or attachment by the seller's creditors.

Regulations concerning PPAT, primarily regulated in the Regulation of the State Minister of Agrarian Affairs/Head of the National Land Agency Number 3 of 1997 concerning Implementing Provisions of Government Regulation Number 24 of 1997, provide a guarantee of quality and integrity for the deeds created. The PPAT, as a public official, has the obligation to examine the validity and completeness of supporting documents, ensure the legal capacity and free will of the parties, and explain the contents and legal consequences of the deed being created (Shofianingrum & Sudirman, 2024). This procedure is a form of preventive legal protection inherent to the authentic deed. Conversely, an underhanded deed is created without the supervision and guidance of a competent official. There is no neutral third party ensuring that the parties fully understand the legal implications they are signing, or that there is no coercion or fraud. This increases the risk of defects in consent, substantial errors in wording, or fraud, which will only be revealed later when a dispute arises.

The position of an underhanded deed in a land ownership dispute becomes highly problematic when confronting a third party in good faith. For example, Seller (A) sells his land to First Buyer (B) with an underhanded deed. Subsequently, A sells the same land to Second Buyer (C) by creating an authentic PPAT deed. C then registers the transfer of rights and obtains a certificate. In a conflict between B (holder of the underhanded deed) and C (holder of the certificate), the law will tend to protect C. The tendency of the law to protect bona fide purchasers (C) in land rights disputes such as this is the focus of a separate study on liability in land disputes (Pratika et al., 2024). C is protected by the basic principle of publicity of land registration and the principle of good faith. The land certificate provides strong evidence that C is the rights holder. Meanwhile, B only has a civil claim against A for default, but it is very difficult to annul C's right to the land, unless B can prove that C had prior knowledge of the transaction with B (*mala fide*). An underhanded deed does not have the strength to defeat

formal evidence in the form of a certificate derived from an authentic deed (Arthur et al., 2024).

From the perspective of state administration, the authentic deed functions as an instrument of control and a reliable data source. Every PPAT deed must be registered in the Deed Register Book and reported to the Land Office. This creates a clear and accountable audit trail, useful for statistics, planning, and supervision in the land sector. The validity and authenticity of data in the legal system heavily depend on the credibility of its source. The authentic deed from a PPAT qualifies as a credible data source because it is created by a state-appointed official bound by an oath of office and a code of ethics. Conversely, an underhanded deed is not recorded in any administrative system, has no guarantee of authenticity, and cannot be independently verified without a time-consuming legal process (Al-Mursyidi & Yaqin, 2024). This renders it a weak and unreliable data source for the state.

However, the recognition of underhanded deeds within the Indonesian legal system cannot be completely disregarded. As a piece of written evidence, it retains a place in the law of evidence. It can be used as *prima facie* evidence (*begin van bewijs*), or as evidence combined with other means of proof such as witnesses, presumptions, and admissions to form the judge's conviction. In a dispute between the parties who created the underhanded deed themselves, the deed can serve as sufficiently strong evidence if it is not contested (Anandari et al., 2023). However, its application is highly restricted to the internal legal relationship between the signatory parties. It practically has no efficacy against third parties or against state administration. This is the primary limitation that sharply distinguishes it from the authentic deed, which, in contrast, possesses broad efficacy and is recognized by all parties and by the state.

Consequently, it can be concluded that the difference between an authentic deed and an underhanded deed is not merely one of gradation, but rather of kind and hierarchy. The authentic deed is a product of the exercise of public function, endowed with perfect evidentiary strength and, in certain cases, executory force, and serves as the sole key to accessing the system for registering land rights. The underhanded deed is a product of individual contractual freedom, with evidentiary strength that is relative and extremely limited in its scope of application. Success in managing the risks of this contractual freedom is highly dependent on the consistent application of the principle of good faith by the parties

(Irfansyah et al., 2024). The choice to use one form of deed over the other is not a neutral one, but rather a strategic decision that will determine the degree of legal certainty, protection against risk, and the future effectiveness of right enforcement. In transactions concerning high-value objects requiring absolute certainty, such as land, the use of an underhanded deed carries very significant legal risks that almost always outweigh the short-term economic benefits it offers.

### **The Position of the Underhanded Sale and Purchase Deed as Evidence in Land Ownership Disputes**

The initial position of an underhanded Sale and Purchase Deed as evidence in court begins with the formal verification process of the document's own validity. According to civil procedural law regulated in the *Herziene Indonesisch Reglement* (HIR) and the *Reglement op de Burgerlijke Rechtsvordering* (RBg), every submitted written document must meet formal requirements. The judge will examine whether the underhanded deed contains essential elements such as the identities of the parties, a description of the land object, the price, the date, and signatures. The absence of any of these elements can diminish its probative value. Furthermore, in accordance with Article 1875 of the Civil Code, the evidentiary force of an underhanded deed only arises if the signatures of the parties are acknowledged (Masud et al., 2022). Therefore, the first step taken by the judge is often to request the parties, especially the opposing party whose name appears in the deed, to acknowledge or deny their signature. If the signature is acknowledged, then the deed has evidentiary force as documentary proof between the signatory parties. However, this acknowledgment does not automatically prove the truth of the entire contents of the deed, but only proves that the parties signed a document.

If the signature is denied, the position of the underhanded deed becomes instantly very weak. The party submitting the deed must prove the authenticity of the signature. This process of proof can be carried out by comparing the signature in the disputed deed with signatures in other documents whose authenticity is already acknowledged, or by requesting the testimony of a graphology expert. This process increases the complexity and cost of the case and prolongs its resolution (Choirunnisa & Halim, 2022). Even if the authenticity of the signature can be proven, the opposing party can still raise objections regarding the material

truth of the deed's content, for example by stating that the deed was made under threat, fraud, or substantial mistake regarding the object. Thus, an underhanded deed rarely stands alone as conclusive evidence. It always requires the support of other evidence to construct a convincing proof.

Within the evidentiary construction in court, an underhanded deed typically functions as prima facie evidence (*begin van bewijs*) indicating a presumption of a legal relationship. Based on Article 173 HIR and 315 RBg, prima facie written evidence can be strengthened by witnesses. This means the existence of an underhanded deed can open the way for the judge to hear testimony from witnesses regarding the transaction that took place. Although weak, the existence of this early written evidence creates clarity regarding the legal relationship between the parties, a principle of clarity that also forms the basis of protection in the legal construction of agreements (Kurniawan et al., 2024). Without any written deed at all, a land sale agreement cannot actually be proven by witnesses due to the prohibition in Article 1902 of the Civil Code, which prohibits proof by witnesses for agreements exceeding a certain value. The existence of an underhanded deed, however weak, serves as an exit from this prohibition of proof by witnesses (Rini, 2023). It shifts the case from a zone where proof by witnesses is prohibited to a zone where witnesses can be presented to strengthen or explain the contents of the existing written deed.

The effectiveness of an underhanded deed depends heavily on the quality and consistency of the supplementary evidence presented. The most common and important supporting evidence is proof of payment. Receipts, checks, bank transfer proofs, or payment records showing the flow of funds from the buyer to the seller can provide strong corroboration. If the amount and timing of the payment correspond to what is stated in the underhanded deed, this will reinforce the presumption that the transaction truly occurred. Another crucial piece of evidence is proof of physical possession (*bezit*) of the land. Photographs, letters from the village head or neighborhood association regarding possession, proof of land tax payment by the buyer, or statements from neighbors witnessing the buyer's management of the land all serve to prove that the agreement in the deed was executed in reality, not merely remaining on paper (Retnowati & Boediningsih, 2022).

The interaction of an underhanded deed with a land title certificate held by another party creates a highly challenging arena for proof. For example, in a dispute between the

holder of an underhanded deed (Party A) and the holder of a certificate derived from a PPAT deed (Party B), the judge will be confronted with two pieces of documentary evidence of different strengths. A land certificate constitutes strong evidence of title according to Article 19 paragraph (2) point c of the Basic Agrarian Law in conjunction with Article 32 of Government Regulation 24/1997. The certificate provides a presumption that its holder is the rightful owner. To overcome this presumption, Party A must not only prove the validity of the underhanded deed and the execution of the transaction, but also prove that Party B obtained their certificate in bad faith (*mala fide*). This means Party A must demonstrate that Party B had knowledge of the prior transaction with A at the time B purchased the land. This constitutes a very heavy burden of proof, as it concerns a person's subjective knowledge and intent (Arrahman et al., 2023).

Decisions of the Supreme Court provide guidance on how to evaluate the effectiveness of an underhanded deed in concrete disputes (Arrahman et al., 2023). Jurisprudence shows that judges do not automatically dismiss a claim merely because the primary evidence is an underhanded deed. Judges will examine the totality of the submitted evidence comprehensively. If the submitted evidence (the underhanded deed, proof of payment, witnesses, proof of possession) forms a conviction that a sale transaction truly occurred and was executed, then the judge can issue a decision recognizing that legal relationship. However, this recognition usually takes the form of a judgment ordering the seller to create a PPAT deed or pay compensation, not a decision that directly transfers ownership. The judge cannot order the Land Office to register the right in the buyer's name based solely on an underhanded deed, as this would contradict the formal requirements in Government Regulation 24/1997.

The legal consequence of using an underhanded deed also affects the type of lawsuit that can be filed. A holder of an underhanded deed who wishes to obtain ownership rights cannot directly file a claim for *rei vindicatio* (vindication of ownership) because they are not yet the legal owner (Asael & Suhadi, 2025). The appropriate type of lawsuit is a claim for unlawful act (*onrechtmatige daad*) if the seller refuses to create a PPAT deed after receiving payment, or a claim for specific performance to compel the seller to fulfill their obligation to create a PPAT deed. In these types of lawsuits, the underhanded deed serves as the primary evidence of an agreement that must be performed. As an alternative to this lengthy and costly

litigation process, the parties may consider dispute resolution through mediation (Saputra et al., 2022). Unlike the holder of a PPAT deed who can directly apply for registration at the National Land Agency, the holder of an underhanded deed must undergo a lengthy and costly litigation process merely to obtain a right that should be obtainable administratively.

Regarding the principle of protecting third parties in good faith, the underhanded deed has very limited binding force. This principle, reflected in various court decisions, protects a person who acquires a right to land in a lawful manner, for a reasonable price, and without knowledge of a prior right of another person (Antoni et al., 2024). An underhanded deed, which is unregistered and unknown to the public, cannot be used to impose an obligation or annul a right acquired by a third party in good faith based on an authentic deed. Even if it is later proven that the seller committed an unlawful act by selling land that was already sold, the legal recourse for the holder of the underhanded deed remains a claim for compensation against the seller, not the annulment of the right of the third party who has obtained a certificate. This is the greatest point of vulnerability for the underhanded deed: its lack of efficacy against third parties.

On the other hand, the effectiveness of an underhanded deed can increase significantly if accompanied by the seller's acknowledgment in court. An admission (*bekentenis*) as an independent form of evidence under Article 1923 of the Civil Code can strengthen the position of an underhanded deed. If, during trial, the seller admits to having sold the land and received the price, and acknowledges the authenticity of the signature on the underhanded deed, then the combination of this admission and the written deed can constitute very strong evidence for the buyer. However, this situation rarely occurs, as a seller who subsequently reneges or is in dispute will typically deny both the signature and the contents of the deed. Admission usually only occurs in situations where the seller does not intend to repudiate the transaction but is merely hindered by technical or financial constraints from creating a PPAT deed (Nasution, 2025).

From the above exposition, it can be concluded that the effectiveness of an underhanded sale and purchase deed as evidence is conditional and highly dependent on the factual configuration and body of evidence in a given case. It is not a form of evidence possessing intrinsic strength like an authentic deed. Its value is instrumental and relational; it is effective only when supported by other mutually reinforcing evidence, and only effective

within the relationship between the signatory parties. In land ownership disputes involving claims to land ownership, an underhanded deed rarely serves as decisive, winning evidence. It more frequently functions as the foundation for building a claim of default or an unlawful act, the outcome of which is monetary compensation, not land ownership. Thus, although it holds a position as a means of evidence, its effectiveness in achieving the ultimate goal of obtaining land ownership is severely limited and fraught with uncertainty.

### **The Impact of Underhanded Sale and Purchase Deeds on Land Registration Administration**

The first and most direct legal consequence of using an underhanded Sale and Purchase Deed is administrative rejection by the Land Office of the application to register the transfer of rights. The registration procedure is rigidly regulated in Government Regulation Number 24 of 1997 concerning Land Registration. Article 37 paragraph (1) of this regulation explicitly states that to register the transfer or conveyance of a right, the rights holder is obligated to submit to the Head of the Land Office a PPAT deed containing the legal act. This provision is exhaustive and does not provide an alternative. Registration officials at the Land Office, in performing their duties, act based on the instruction of this regulation. If the submitted document is not a PPAT deed but an underhanded deed, then the application cannot be processed further, either technically or legally. This rejection is not discretionary; it is a legal obligation for the official to refuse documents that do not meet the formal requirements stipulated by law (Nasution, 2025). Consequently, the primary entry point into the formal registration system is firmly closed to the holder of an underhanded deed.

A subsequent consequence of this rejection is the halting of the process known in land administration as the "rights registration system." This system is a series of activities beginning with the creation of a PPAT deed, followed by the reporting of the deed by the PPAT to the Land Office, then examination by a land examination official, and concluding with entry in the land book and issuance of a certificate. An underhanded deed cannot initiate this sequence. The consequence is that there will be no examination of the transaction's validity by a land examination official, a process that functions as an administrative filter to detect potential legal defects such as disputes, mortgages, or transfer prohibitions (Al Imron, 2022). Without this examination, a transaction that is materially flawed but contained in an

underhanded deed remains undetected by the system, meaning the legal risk is borne entirely by the parties, particularly the buyer.

The legal status of the land in the land register remains unchanged and static. The name recorded in the land book and certificate is still that of the former seller. This creates a paradoxical situation: physically and economically, the land may be controlled and utilized by the buyer, but juridically, formally, and administratively, the seller is still considered the rights holder by the state (Nasution, 2025). This condition violates the publicity principle of land registration, which holds that the land book should reflect the true state of a land parcel's legal status. The gap between the facts on the ground and the data in the register is the primary source of legal uncertainty and the potential for future disputes.

This condition also results in the buyer's inability to perform subsequent legal acts concerning the land in question. For example, the buyer may wish to resell the land, donate it, or use it as collateral for a debt by encumbering it with a mortgage. To perform all these legal acts, a land certificate in the buyer's name is required. Since the certificate is still in the seller's name, the buyer lacks the legal capacity to undertake such acts. If the buyer proceeds to sell the land based on their underhanded deed, they create a new chain of uncertainty, as the second buyer will also face the same problem: an inability to register their right (Yuningsih et al., 2024). Thus, an underhanded deed freezes the land in an unproductive legal status, hindering land circulation and its utilization as economic capital.

From the perspective of the rights and obligations arising from registration, the buyer loses access to the legal protection afforded by the state through a certificate. A land certificate, as regulated in Article 32 of Government Regulation 24/1997, is a document evidencing a right that serves as strong proof concerning the physical and juridical data contained therein. This strong evidentiary force means the data in the certificate is presumed correct until proven otherwise in court. The holder of an underhanded deed does not possess this legal instrument. They cannot present a certificate in their name as proof of ownership (Hidayat et al., 2024). When dealing with third parties or the government, their position is extremely weak. For instance, in a boundary dispute with a neighbor, the buyer cannot use the certificate as a reference because it is not in their name.

A major administrative risk is the possibility of the seller obtaining a replacement (duplicate) certificate. Since the original certificate is often handed over to the buyer in an

underhanded transaction, a seller acting in bad faith can report the loss of the certificate to the Police and apply for a replacement certificate at the Land Office. The procedure for issuing a duplicate is governed by Government Regulation 24/1997 and its implementing regulations. If the seller successfully obtains a duplicate, they once again possess an authentic document proving their ownership from an administrative standpoint. With this duplicate, the seller can easily transfer the land to another party by creating a new PPAT deed. The Land Office, which has no record of the underhanded transaction, will process the application because its data shows the seller is still recorded as the rights holder. The buyer will be entangled in a highly complex dispute to prove that the duplicate certificate was obtained in bad faith (Anggusti et al., 2022).

Underhanded deeds also create problems in fulfilling tax obligations related to the transfer of rights. Every transfer of land rights is subject to Land and Building Acquisition Duty (Bea Perolehan Hak atas Tanah dan Bangunan or BPHTB). The obligation to pay BPHTB arises at the moment of the legal act transferring the right. In transactions with a PPAT deed, the transaction value is stated in the deed and serves as the basis for calculating the BPHTB. The registration process at the Land Office can only proceed after payment of the BPHTB is proven by a clearance stamp from a bank or the Tax Service Office. In an underhanded transaction, there is no integrated tax withholding or collection mechanism. The buyer and seller may intentionally avoid this obligation. However, this creates its own legal risk, namely the potential for future tax audits and sanctions (Masud et al., 2022). Furthermore, the absence of BPHTB payment proof provides an additional reason for the Land Office to reject a registration application, even if an underhanded deed were somehow to be submitted.

The absence of registration also impacts the certainty for third parties intending to establish security rights or to execute a seizure. For instance, a seller may have a debt to a bank. The bank will conduct collateral checks by reviewing the land certificate, which remains in the seller's name. Based on this, the bank may accept the land as security and encumber it with a mortgage right. This is one of the most detrimental legal consequences for buyers, arising from transactions without adequate legal protection (Darmawan et al., 2023). This mortgage will be registered at the Land Office and recorded on the certificate. When the bank executes the mortgage due to the seller's default, the buyer who physically possesses the land will be confronted with this execution. The buyer must file an objection (*verzet*) or a

separate lawsuit to prove they had purchased the land, a process that is protracted and uncertain in its outcome. The third party in good faith (in this case, the bank) is protected by law (Putri & Sumanto, 2024).

Efforts to convert an underhanded deed into a document acceptable to the Land Office are often undertaken through legally risky methods. One common method is to create a deed of acknowledgment of debt before a notary, where the debt is secured against the relevant land through a right of mortgage (for unregistered land) or a promise to grant a mortgage. This transaction constitutes a circumvention of the law (*fraus legis*), as its substance is a sale but it is disguised as a loan agreement to avoid the PPAT deed requirement. Such a practice can be annulled in court for being contrary to public order and the purpose of the law. Furthermore, if the debtor (seller) is declared bankrupt, this mortgage or mortgage promise can be suspected as an act detrimental to other creditors (Wahyuningsih et al., 2024) and can be cancelled based on bankruptcy law to protect the rights of all creditors (Priyanto et al., 2023). In the bankruptcy system, protection of concurrent creditors from such practices and the trustee's responsibility to manage assets fairly are central issues (Prabowo et al., 2024).

The formal legal recourse available to the buyer is to file a lawsuit in court to demand the seller be compelled to create a PPAT deed or to request the transaction be annulled and the purchase price returned. However, this litigation process itself is an indirect legal consequence of using an underhanded deed. The process consumes years, requires significant attorney and court fees, and its outcome is never guaranteed. Even if the buyer prevails and obtains a judgment affirming their right, enforcing the judgment to compel the seller to sign a PPAT deed can pose a new problem if the seller disappears or deliberately evades. A final and binding court judgment can be submitted in lieu of a PPAT deed for registration, but this path is essentially a lengthy and tortuous remedial effort that would have been unnecessary had the transaction been conducted formally from the outset (Prakoso et al., 2024).

Considering all these legal consequences, it can be concluded that the use of an underhanded Sale and Purchase Deed is not merely impractical; it actively creates obstacles, risks, and uncertainty within the land administration system. It severs the link between the factual ownership on the ground and the state's recording system, obstructs access to formal

legal protection, creates opportunities for abuse by irresponsible parties, and ultimately forces the parties into a costly litigation cycle to rectify a situation that could have been avoided. Therefore, from an administrative and legal certainty perspective, the underhanded deed functions as a disruptive factor that undermines the primary objective of land registration: to create legal certainty, order, and protection of land rights.

## CONCLUSION

Based on the comprehensive analysis conducted, it can be concluded that underhanded Sale and Purchase Deeds occupy a legally weak and high-risk position compared to authentic deeds prepared before a Land Deed Official (PPAT). Normatively, the fundamental difference lies in evidentiary strength. An authentic Sale and Purchase Deed provides conclusive proof and possesses certain executory force; it is the sole document recognized by the Government Regulation on Land Registration as a legally valid basis for registering a transfer of rights at the Land Office. Conversely, an underhanded deed only has relative evidentiary strength contingent upon acknowledgment of the signature and requires support from additional evidence. Its juridical consequences are immediate and severe: a transaction based on an underhanded deed cannot be recorded in the land registration system, meaning ownership does not transfer legally, the certificate remains in the former seller's name, and the buyer is deprived of formal legal protection from the state. In court disputes, the position of an underhanded deed is instrumental but not determinative; its effectiveness is heavily dependent on supporting evidence, and the resulting judgment typically orders the creation of a PPAT deed or awards damages, not a direct recognition of ownership rights.

The findings of this study carry significant implications for various stakeholders. For the general public, particularly prospective land buyers, the primary implication is the critical need for high legal awareness to avoid underhanded transactions. The choice to transact informally to save on notarial and tax costs in fact creates far greater risks of future loss, both financially and in terms of certainty of rights. For legal practitioners such as notaries, PPATs, and advocates, these findings affirm the importance of their educational and consultative role in advising clients about the severe consequences of underhanded deeds, and their duty to consistently uphold formal requirements in all land transactions. The application of ethical

principles in risk and transaction management, as required in corporate financial management, is also relevant as a guideline for legal professionals and policy makers in creating an integrity-based property transaction system (Putra & Arifin, 2023). For Land Offices and agrarian policymakers, the implication of this study is the necessity to evaluate the factors driving the prevalence of underhanded sales practices. If formal transaction costs are deemed too high or procedures too complex, then bureaucratic simplification and a review of service tariffs are needed to encourage public participation in the formal legal system. Furthermore, massive and sustained socialization regarding the risks of underhanded deeds should be intensified.

Based on these conclusions and implications, several constructive suggestions are proposed. First, to the Ministry of Agrarian Affairs and Spatial Planning/National Land Agency (ATR/BPN), to develop more aggressive and accessible socialization and technical guidance programs, for instance through cooperation with village/sub-district governments, dissemination of informational materials in simple language, and the use of digital media, to enhance public understanding of the importance of PPAT deeds. Second, to professional organizations for notaries and PPATs (the Indonesian Notary Association and the PPAT Association), to initiate pro bono legal service programs or affordable fee schemes for low-income communities wishing to conduct land transactions lawfully, thereby reducing economic barriers without sacrificing legal certainty. Third, to the academic community and legal research institutions, to conduct further empirical research to map in detail the sociological and economic reasons underlying the public's choice of underhanded transactions, so that resulting policy recommendations can be more targeted and effective in shifting public preference toward formal transactions.

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