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## Juridical Review of Oral Land Sale and Purchase Agreements in the Community According to Customary Law in Central Kalimantan

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**Abstract:** This research examines the juridical review of the practice of oral land sale and purchase agreements in indigenous communities in Central Kalimantan. Indigenous people still maintain oral-based sale and purchase mechanisms that are considered valid according to local customary law, as long as they are witnessed by traditional leaders and fulfill elements of trust and mutual agreement. Although recognized by custom, this kind of agreement has the potential to cause agrarian conflicts because it does not have sufficient evidentiary power before national law. This research uses a normative juridical approach, by reviewing legislation and interviews with indigenous community leaders. The results show that customary law and national law have common ground in the recognition of land rights, but there needs to be synchronization so that indigenous peoples do not lose their rights due to the lack of written evidence. This research emphasizes the importance of legal protection of local practices through formal recognition and recording mechanisms in accordance with local customary values.

**Keyword:** Oral Agreement, Land Sale and Purchase, Customary Law, Central Kalimantan, Legal Protection.

### INTRODUCTION

Land has a very important economic, social and cultural value in the lives of the Indonesian people. As a high-value asset, land is also part of community identity, especially for indigenous peoples. In various regions, such as in the Dayak Ngaju community of Central Kalimantan, land is not only property but also has historical and spiritual values that are passed down from generation to generation (Don Arfan, 2016). Therefore, the practice of buying and selling land in the community is often based on trust and oral agreement without requiring written documents as regulated in national law (Risa Ariyani, 2022).

On the other hand, Indonesian agrarian law requires any change in land ownership status to be documented in writing or officially registered. The Basic Agrarian Law and government regulations contained in PP No. 24 of 1997 related to land administration emphasize that in land law authentic deeds become the main evidence in land sale and purchase transactions issued

officially by land deed officials (PPAT). This regulation aims to provide legal certainty and security of rights for those directly involved in the sale and purchase agreement. However, this provision often conflicts with customary law practices, where land transactions prioritize trust over formal documents.

The legal problem that often arises is the difference between customary law, which prioritizes trust and oral agreements, and positive law, which regulates administrative formalities. Article 1338 of the Civil Code regulates freedom of contract, namely that any agreement made orally is often difficult to obtain valid evidence in resolving legal disputes. On the other hand, Article 1321 of the Civil Code regulates the nullity of agreements made due to defects of will, such as fraud, mistake, or coercion. In the case of oral land sale and purchase that occurs in the Dayak Ngaju customary community, often the agreement does not have written documentation that can be used as evidence if one party feels disadvantaged or objects to the contents of the agreement (Soerojo Wignodipoero, 1995) which corroborates the evidence. This means that the community feels a loss of legal protection in the process of transferring land rights based on oral agreements.

Based on this, this research is important to examine more deeply how Dayak Ngaju customary law regulates the practice of oral land sale and purchase (Ter Haar, 1994) and how it intersects with the national legal system. On the one hand, customary law provides space for simpler and trust-based buying and selling practices (Boedi Harsono, 2005), but on the other hand, the national law of the written document community as a form of protection for land ownership, this research aims to provide an overview of how customary law and positive law have different principles, where customary law prioritizes community values, while positive law relies on written regulations. They can be harmonized to create legal certainty for indigenous peoples, especially.

## **METHOD**

The author in preparing this article uses normative juridical research methods, namely legal research conducted by examining secondary data in the form of primary, secondary and tertiary legal materials. In this research, a normative approach is used with the main focus on juridical studies of the validity and legal force of oral land sale and purchase agreements based on applicable laws and regulations as well as customary law norms recognized in the national legal system.

The method of data collection in this research is carried out through literature studies which include laws and regulations, documents, books, journals, and other literature relevant to the issues studied. This literature study aims to collect secondary data in order to obtain a theoretical basis and analysis material in the study. The data analysis technique studied. This literature study aims to collect secondary data in order to obtain a theoretical basis and analytical material in research.

The data analysis technique used is qualitative analysis, which will produce a juridical study of the validity and legal force of oral land sale and purchase agreements in customary law communities in Central Kalimantan. The results of this research will be presented in the form of a scientific work that focuses on a normative review of the agreement.

## **RESULTS AND DISCUSSION**

### **Terms of Sale and Purchase According to Ngaju Dayak Customary Law in Central Kalimantan**

In Dayak Ngaju customary law in Central Kalimantan, buying and selling is a form of agreement or transaction that is regulated by custom and has special provisions that are different from national law. The following are general provisions regarding buying and selling according to Dayak Ngaju customary law.

- a. Voluntary and agreed principle

Buying and selling must be done by mutual consent (no coercion). There must be an agreement between the seller and the buyer regarding price, goods, and delivery time.

b. Witness Attendance

It is usually done in the presence of witnesses or customary elders (damang or mantir adat), especially if the transaction is of large value. This witness ensures that the transaction is customarily legal and avoids disputes later on.

c. Goods Sold Must Have Clear Ownership

The item being sold must be the legal property of the seller. In the case of land or heirloom property, there must be the approval of the extended family or traditional leaders

d. Payment Can Be Phased

Payment can be made directly (Cash) or in installments, depending on the agreement. If payment is not made in full, the goods usually do not fully transfer ownership by custom.

e. Dispute resolution

In the event of a dispute, the settlement is carried out in a customary manner first through customary institutions. Customary law prioritizes mediation and consensus to resolve buying and selling conflicts.

f. Customary Sanctions

Violations of customary buying and selling provisions can be subject to customary sanctions in the form of certain fines or penalties, known as "singer" for example, in the case of divorce, there is a singer provision that must be paid by the party who commits divorce without valid reasons.

The stages in the process of buying and selling land according to Dayak Ngaju customary law in Central Kalimantan, which reflects customary principles and involves elements of the community and local government:.

a. Creating a Pilot

The initial stage is known as the "stub" or land site sale:

1. The seller and prospective buyer together review the location of the land to be sold.
2. The aim is to ensure physical and factual land boundaries in the field.
3. This pilot also signaled the seriousness of both parties and formed the basis for further deliberations.

b. Preparation of Land Declaration Letter

After the stub is done, a letter of declaration of land ownership is made by the seller, the letter contains:

1. Identity of seller and buyer
2. The size of the land and its boundaries,
3. Land status (inheritance, grant, or private property)
4. Willingness to sell without coercion

This letter is usually signed by witnesses, traditional leaders, and acknowledged by the village head.

c. Involvement of Neighboring People and Bordering Landowners

The people who own the adjacent land are directly involved, in order to avoid boundary conflicts in the future. They will testify that they recognize the land boundary and agree to it, and this statement is also put in writing or becomes part of the minutes of the sale and purchase.

d. Involving Village Government and Traditional Leaders

The village government (village head and officials) and traditional leaders such as Damang or Mantir Adat should be involved. Their function is to act as arbiters and customary authorizers, assessing whether the land is customarily legal to sell, and providing legal protection for both parties. This process is usually carried out in the village hall or a place of customary deliberation

e. Endorsement by Village Head and Damang

After all of the above stages have been passed, the sale and purchase process will be legalized or endorsed by; the village head (administratively), Damang (customarily). This legalization can take the form of a sale and purchase certificate, customary minutes, signature and official seal of the village and customary institution. This legalized document becomes the basis for the validity of the transfer of land rights, both according to adat and as a guide in state administration. In practice, despite customary and village legalization, a formal certificate from the national land agency (BPN) is still required for the land to be recognized by national law. However, in the Dayak ngaju community, the endorsement of the damang and village head has very strong social and customary power, often considered sufficient as legal proof of ownership.

The parties authorized or involved in legalizing the sale and purchase of land according to Dayak Ngaju customary law are:

a. Head of RT (Rukun Tetangga)

The RT head is the element of government closest to the community, and in the context of customary land sale and purchase, the RT acts as the first to know about the transaction. He provides an initial introduction or recommendation stating that the land being sold is indeed within the RT area and is not under dispute. The RT's recommendation becomes the administrative basis for further processes at the village and adat levels.

b. Village Mantir Adat

Mantir adat is a representative of customary institutions at the village level who understands local customary rules and norms. In buying and selling transactions, the mantir adat has a function as;

1. Customary supervisors, who ensure that the transaction process does not contravene customary law
2. The main witness from the customary side,
3. Submit a report or recommendation to the damang, if required.

He also verifies that the seller is indeed the legal owner of the land according to custom, and that there are no objections from family or other parties.

c. Damang

The Damang is the customary leader at the sub-district level or in a particular customary area. He has the highest authority in terms of customary ratification including:

1. Determined that the sale and purchase process was in accordance with the provisions of Dayak Ngaju custom,
2. Providing a stamp and signature as a formal customary endorsement,
3. Keeping records of transactions for future customary law purposes,

The intervention of the damang is important if the land being sold is an ancestral inheritance or is located in an area governed by adat.

d. Village Head

The village head represents the formal government at the village level. He is in charge of legalizing the transaction from the administrative side, not just from the customary side. The role of the village head includes:

1. Issuing a certificate of sale and purchase,
2. Keep copies of documents for village archives,
3. Officially protect the legal rights of buyers and sellers.

In some cases, the village head also mediates between adat and national law, especially if land is to be certified through the

In customary law, violations of the terms of the sale and purchase agreement are generally subject to sanctions that are social, moral, and sometimes also customary in the local community. These sanctions are not always formally stated as in positive law, but are adjusted to local norms and agreements. If the sanctions have been mutually agreed upon and outlined in a letter of agreement, then the sanctions have moral and social binding force for the parties involved. Usually, the agreement is known by the parties with direct interests as well as people

around the location of the object of sale and purchase, such as traditional leaders, village heads, or the surrounding community. This is important because the existence of social sanctions in customary societies serves as a means of control and enforcement of norms.

Sanctions imposed may include:

1. Return of money or property: if the buyer or seller reneges on a promise, then one party is required to return the payment or land.
2. Social ostracism: offenders may be ostracized from traditional activities or lose the trust of the community.
3. Customary fines: in some communities, there are provisions for the payment of fines in the form of money, animals or other items as per local custom.
4. Restoration of good name: offenders may be required to perform rituals or traditional apologies as a form of responsibility.

Because these agreements are local and witnessed by the surrounding community, the strength of the law rests more on social and collective norms, not formal state institutions. However, as long as it does not conflict with national law, customary law is still respected as a valid source of law in Indonesia.

In the Dayak Ngaju indigenous community, proof in buying and selling does not solely rely on written documents as practiced in formal state law, but emphasizes oral evidence rooted in customary values and communal beliefs:

#### a. The Position of Oral Evidence in Proof of Sale and Purchase

Oral evidence has a high position in the evidentiary system of buying and selling according to Dayak Ngaju custom. This is due to:

1. The communal nature of the community: in daily life, social and economic interactions are based more on shared beliefs and agreements that are conveyed orally.
2. Absence of written documents: in many traditional cases, there are no written contracts, so sale and purchase agreements are more often conveyed verbally in the presence of customary witnesses.
3. Trust in witnesses: witnesses are considered to have integrity and are respected by the community, so their testimony carries strong evidentiary weight.

#### b. Persons Involved in Oral Evidence

In the practice of buying and selling according to Dayak Ngaju customary law, the parties who play a role in oral evidence include:

1. Seller and buyer: both parties provide direct statements regarding the agreement and the transaction process carried out
2. Customary witness (Traditional witness): usually an elder or respected person in the community (traditional leader, mantir adat) who witnesses the transaction or hears the parties' confessions.
3. Traditional leaders (damang or mantir adat): these figures serve as arbiters and decision-makers if disputes arise. They also validate testimonies based on customary norms.

Community elders or people considered neutral and trustworthy: may not be formal figures, but are widely recognized as wise and honest.

#### The Role of Family in Proof of Sale and Purchase

In the Dayak ngaju social structure, the family plays an important role, including in buying and selling. The role of the family includes:

1. As an internal witness: Family members often witness or are involved in the buying and selling process, especially when it comes to inherited property or family-owned land.

2. Providing social legitimacy: family approval is often a condition for a sale to be valid, especially if it involves customary land or high-value objects.
3. Protector of rights: the family can defend family members who have been harmed in the sale and purchase, as well as lodge objections or defenses in customary forums.
4. Mediator in case of conflict: families from both sides can be involved in peace efforts before the matter goes to the customary court.

### **Factors Behind Indigenous Peoples in Central Kalimantan Choosing Oral Sale and Purchase**

Indigenous people in Central Kalimantan, especially Dayak Ngaju, have their own way of carrying out economic activities, including buying and selling. One of their characteristics is that they rely more on oral agreements than written agreements. There are several profound reasons that explain this tendency:

a. Tradition and heritage

Oral agreements have become part of the cultural heritage that has been maintained for generations. In the view of indigenous peoples, agreements that are spoken in front of others are considered valid and binding, especially if witnessed by traditional leaders or community elders. They believe that the value of words spoken honestly is stronger than writing that can be falsified.

b. Limited Access to Formal Education and Law

Inland parts of Central Kalimantan have limited access to formal education and state legal services. This leads communities to rely more on familiar traditional methods, including oral agreements that do not require literacy or understanding of written law.

c. Belief in Social Ties and Customs

The close social ties within indigenous communities make them believe in moral bonds and social responsibility more than written contracts. When a person breaks an oral agreement, it is not only their personal affairs that are damaged, but also their family's reputation before the indigenous community. This becomes a strong binding force to stick to the agreement.

d. The role of traditional leaders as a covenant.

In Dayak society, oral agreements are often ratified in the presence of traditional leaders such as the *damang* and *mantir adat*. These figures are not only witnesses, but also moral guarantors of the agreement. The community respects their decisions and their role in making oral agreements valid in the eyes of *adat*.

e. Simplicity and efficiency of process

Oral buying and selling procedures are considered more practical and faster without the need to create complicated documents. Especially in a society where life is still very dependent on nature and time, efficiency is one of the important values maintained in every transaction

Trust and family values play a very central role in sustaining oral buying and selling practices among indigenous communities. In this context, economic transactions are not merely understood as the exchange of goods or services for financial gain, but also as part of social interaction based on ancestral values passed down through generations. Trust becomes a kind of unwritten "social contract", but also has a very strong moral force in the eyes of the indigenous community. The words spoken in the agreement are considered sacred and binding, as they involve a person's good name and dignity in their social sphere.

In addition, the value of kinship strengthens the trust structure because it creates a sense of collective responsibility and solidarity between individuals. Blood relations, kinship and emotional closeness mean that the buying and selling process is not conducted on a purely transactional basis, but also considers aspects of mutual respect, trust and social harmony. Under these conditions, the existence of a formal legal system is often considered irrelevant, as conflict resolution is done through deliberation, involving traditional leaders and using cultural norms as the main reference.

This practice also shows that indigenous peoples have their own economic and legal systems that are no less complex and functional than modern systems. They are able to maintain the stability and sustainability of the local economy through values derived from local wisdom. Even in the midst of modernization and globalization, the practice of oral buying and selling is still sustainable because it is considered more in line with the social structure of indigenous peoples. Therefore, it is important to understand that in indigenous communities, the values of trust and kinship are not just complements, but the main pillars that govern the entire dynamics of their economic and social interactions.

The role of traditional leaders in ensuring the validity of oral sale and purchase agreements is very important, especially in traditional communities that still uphold traditional values. Here are some of the main roles:

a. As a customary witness

Traditional leaders function as witnesses who observe and socially record that the transaction has been carried out and agreed by both parties.

b. Guaranteeing legitimacy according to the law there is

Although in state law (positive) oral agreements are difficult to prove, in customary law, oral statements witnessed by traditional leaders are considered valid and socially binding.

c. Mediate and resolve disputes

In the event of a dispute or violation of the contents of the agreement, traditional leaders act as arbiters and judges based on applicable customary norms.

d. Maintain the integrity of the transaction process

With the presence of traditional leaders, the buying and selling process is conducted openly and honestly, in accordance with local values, thus strengthening trust between parties.

e. Traditional documenting

Although not in written form, figures ofadat often have collective memories and traditional record-keeping that become the living archives of communities

So, even though it is not written down, the presence and recognition of customary figures gives the oral agreement a strong legitimacy in the eyes of the indigenous community.

The shift in buying and selling practices from oral to written due to the influence of state law and modernization: The reasons include:

a. Legal certainty: the state encourages written forms of transactions so that they can be used as valid evidence in the eyes of the law in the event of a dispute

b. Administration and documentation: in modern systems, written records of transactions are required for financial records, audits, and tax reporting.

c. Trust and professionalism: written contracts provide a sense of security for the parties to the transaction, especially on a large scale.

d. Digitization: technology allows written evidence in digital form to replace traditional oral practices.

Oral buying and selling has shifted to written form in line with the demands of modern administration and legal regulations

The preservation of customary law in the context of buying and selling can be done by adjusting the traditional practices of indigenous peoples so that they do not conflict with the provisions of national agrarian law. This means that customary law is still implemented but must be within the corridors of regulations that have been established by the state, such as the Basic Agrarian Law (UUPA). Thus, customary law is not abolished, but recognized and preserved as long as it does not conflict with the principles of applicable national law. The provision of sanctions if one of the parties violates the agreement must refer to the provisions agreed upon in the contents of the agreement. If the agreement is in the form of a sale and purchase agreement, then sanctions are usually listed in one of the articles that regulate the consequences of violations.

The form of sanctions in the sale and purchase agreement can be:

a. Compensation (Financial Compensation) The offending party is obliged to pay a sum of money to compensate for the losses incurred by the offender.

b. Unilateral cancellation of the agreement

If the breach is considered severe, the aggrieved party may cancel the agreement and demand the return of the money or goods.

c. Fines (Penalties)

A fine of a certain amount is usually imposed in case of late payment or delivery of goods.

d. Dispute resolution

In the event of a dispute, the agreement may specify that the dispute be resolved through mediation, arbitration or court.

e. Seizure or transfer of rights

f. In some land or vehicle sale agreements, it can be mentioned that the party who breaches or loses rights to the goods being bought and sold.

In various regions, especially those that still uphold the value of ancestral traditions, there are still community groups that practice customary agreements without involving written documents. This form of agreement is generally conveyed directly and relies on the memory and trust between the parties involved. In the life of indigenous communities, oral agreements are considered valid because they have become part of hereditary customs that are strictly maintained by traditional leaders and the local community.

## CONCLUSION

Oral land sale and purchase agreements in the Ngaju Dayak community in Central Kalimantan are a valid and binding form of transaction according to customary law, although they do not always fulfill the formal provisions of national law. This practice is based on the principle of agreement, the presence of customary witnesses, and high social trust between the parties, as well as involving traditional leaders and village government elements in its implementation. Oral evidence, delivered by witnesses and community leaders, has strong legal force because it is rooted in the communal values and collective beliefs of the community.

Factors such as ancestral traditions, limited access to written law and process efficiency contribute to the continuation of this practice. Dispute resolution also prioritizes deliberation mechanisms and social sanctions in accordance with customary norms, such as fines, social ostracism or restoration of good name.

From a juridical point of view, the practice of oral sale and purchase of land in indigenous communities needs to receive attention and recognition from the national legal system, as long as it does not conflict with applicable legal principles. Harmonization between customary law and national law is the key to providing legal certainty and protection of the rights of indigenous peoples, without eliminating the identity and values of local wisdom that have been maintained for generations.

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