

## The Optimization of Legal Protection for Land Buyers in Buying and Selling Disputed Land

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**Abstract.** *Land in human life has an important function, therefore the law is tasked with providing legal protection and legal certainty for land buyers. Land that is in a state of dispute often creates problems for land buyers who lack information on the status of existing land. So that in reality the practice of buying and selling land often ignores existing consumer protection. Therefore, writing this article aims to discuss the relevance of the value of justice in consumer protection in buying and selling land. As for this writing using sociological juridical method. Based on the research conducted, it was found that the data is in the form of protection for buyers who have paid off in the sale and purchase of troubled land is not fair, this is due to the legal culture of sellers who are often dishonest regarding land status, and there are third parties related to the seller who also claim rights to a land that is also to the detriment of the buyer. The existence of efforts through the judiciary in its development is quite long and expensive. The lack of assurance of legal certainty and legal protection for troubled land buyers will ultimately undermine the principle of legal objectives according to Islam and at the same time the mandate of the Pancasila and the 1945 Constitution of the Republic of Indonesia, this will of course violate social justice for all Indonesian people.*

*Keywords: Fairness; Protection; Relevance; Value.*

### 1. Introduction

In its development it is clear that the politics of agrarian law in Indonesia has clearly regulated matters of land rights so that the use of land in terms of socio-cultural, economic and national development interests will be easily realized in this country.

Ownership of land is the right of the people in Indonesia to obtain legal certainty and legality over land that is controlled or owned, in this case proof of ownership by having a land certificate issued by the National Land Agency (BPN). Obtaining

land ownership can be through inheritance, buying and selling and grants and all transactions of transferring land ownership are regulated by the government as regulated by the 1945 Constitution Article 33 Paragraph (3) states; Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people<sup>1</sup>and its implementation is regulated in the Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Agrarian Regulations<sup>2</sup> which regulates all procedures and techniques regarding land in the Republic of Indonesia.

Land is one of the natural resources for human life and is one of Indonesia's assets which has a very important social function for the Indonesian people to increase people's prosperity and welfare. So that its designation needs to be determined and regulated by law. The important role of land for human life makes the need for land increase along with development and economic developments that require land in the form of land. In everyday life land often becomes disputes, disputes and conflicts even up to court hearings. This arises because land has a very important role for people's lives so that people try to acquire land by justifying all kinds of ways to obtain the land even though they have to take other people's land by transferring ownership rights to the land. To avoid disputes, disputes and conflicts, legal norms are formed which must be obeyed by community members.

Communities need to register their land in order to obtain a land title certificate which functions as a strong means of proving the ownership of land rights and to obtain guarantees of legal certainty. However, the strength of this proof is not absolute because it can still be paralyzed by other evidence which can prove otherwise. Buying and selling land is one of the transfers of land rights and this does not only include buying and selling, but this transfer of ownership can be due to grants, exchanges, grants of wills and other actions intended as a transfer of ownership rights to the land.

The Deed of Sale and Purchase is an authentic deed as the strongest evidence having an important role in every legal relationship in people's lives which can strictly determine rights and obligations so as to guarantee legal certainty and at the same time be able to avoid disputes. If there is a dispute over the authentic deed as evidence, it is the strongest evidence and has perfect evidentiary power in court. Article 1867 of the Civil Code which reads: "Evidence in writing is carried out with authentic writing (deeds) or with private writings (deeds)"<sup>3</sup>. So the deed is valid evidence in an agreement. "Authentic deed is a letter made by or in the presence of a public official who has the power to make it, creating sufficient

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<sup>1</sup> The 1945 Constitution Article 3 Paragraph (3)

<sup>2</sup>Act No. 5 of 1960 – Basic Agrarian Regulations

<sup>3</sup>Article 1867 Civil Code

evidence for both parties and their heirs and all people who have rights from it, namely regarding everything, which is mentioned in the letter and also regarding what was stated in the letter as a notification only, but what was later only what was notified was directly related to the subject matter in the deed.

Regarding the authentic deed of sale and purchase, sale and purchase is also regulated in Article 1868 of the Civil Code which specifically regarding authentic deed of sale and purchase reads: An authentic deed of sale and purchase is a deed drawn up in a form determined by law by or before a public official authorized for that place deed made<sup>4</sup>. The value of the strength of proof attached to an authentic deed of sale and purchase, especially in a sale and purchase agreement, is regulated in article 1870 of the Civil Code in conjunction with Article 285 RBG, namely: perfect and binding, so that an authentic deed of sale and purchase can stand alone without the need for assistance or support of other evidence.<sup>5</sup>.

An authentic deed of sale and purchase may have the power of proof and the minimum limit may turn into proof of the beginning of writing, that is, if an equal and decisive opponent's evidence is submitted against it. So what needs to be understood here is that the authentic deed of sale and purchase is proof that is perfect and binding but not decisive or coercive.

The subject of buying and selling land, there are 4 conditions regarding the validity of an agreement buying and selling land rights, namely:

- a. Agreement terms that bind him (both parties mutually agree to enter into a sale and purchase agreement that is absolute)
- b. Capable requirements (parties who have fulfilled the legal adult requirements, are of sound mind and are not under guardianship)
- c. Requirements for certain matters (regarding land area, location, certificate, inherent rights)
- d. Conditions for the cause (the contents and objectives of the agreement must be clear and based on the wishes of both parties)

If there is a transfer of ownership rights to land, the new owner will get his own land and must register it at the local Land Office, which previously made the deed before the PPAT. Transfers of land rights and ownership rights to housing units through buying and selling, bartering, grants, inclusion in the company, and other legal acts of transferring rights (except auctions) can only be registered if proven by a deed drawn up by the authorized PPAT. An authentic deed of sale and purchase can be canceled by the District Court if there is evidence saying

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<sup>4</sup>Article 1868 of the Civil Code

<sup>5</sup>Article 1870 of the Civil Code

that the authentic deed of sale and purchase was made to contain legal defects through examination in court. Because of how the deed of sale and purchase is canceled because it contains legal defects that must be proven in court.

The occurrence of problems in the transfer of land rights that occur often harm land buyers who have good intentions because their rights are not fulfilled even though they have carried out all their obligations. This can be seen in the case of falsification of land certificates in Cilacap, which can be seen in the case of buying and selling land where a plot of land in the name of Saminah out of need was sold to Inan's brother, the sale and purchase then based on Saminah's land being reversed in the name of Inan, one week later it was discovered the plot of land owned by Saminah was the same as the plot of land that she sold to Inan's brother and was sold back to Ms. Amanah. It was later found out that the certificate belonging to Ms. Saminah that was handed over to Ms. Amanah turned out to be fake.<sup>6</sup>In this case, the deed of sale and purchase is made at two different notaries. However, the Notary should be able to carry out an examination regarding the status of the certificate prior to the land sale and purchase deed.

## **2. Research Methods**

The method used is the sociological juridical method where this research does not only examine the text of legislation but also the implementation of law in the field.

## **3. Result and Discussion**

### **3.1. Optimization of Legal Protection for Land Buyers in Buying and Selling Disputed Land**

The term land in our language can be used in various meanings. So in its use it is necessary to be given a limit, so that it is known in what sense the term is used. In land law the term "land" is used in a juridical sense, as an understanding that has been given official boundaries by the BAL. Article 4 of the UUPA states that:

*On the basis of the state's right to control as referred to in Article 2, it is determined that there are various rights to the surface of the earth, called land, which can be given to and owned by people, either individually or jointly with other people and entities.*

Based on the description above, it can be understood that land in a juridical sense is the surface of the earth. The meaning of the earth's surface is that part of the land that can be claimed by any person or legal entity. Therefore, the rights arising from rights to the surface of the earth including buildings or objects

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<sup>6</sup>Personal interview with Amanah as a Community Affected in the Case of Forgery of Land Certificates in Cilacap, the interview was conducted on 12 May 2022.

contained thereon constitute a legal issue. The legal issues in question are issues related to the adherence to principles relating to the relationship between land and plants and the buildings on it.

Land is given to and owned by people with the rights provided by the UUPA, is to be used or utilized. Land rights are rights that give authority to those who have the right to use or take advantage of the land they claim. Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) defines land as the surface of the earth, thus land rights are rights over the surface of the earth. Furthermore, paragraph (2) emphasizes that even though ownership rights to land are only on the surface of the earth, its use is not only on the land itself, but also on the surface of the earth, water and space above it. What is meant by land rights, are land rights as stipulated in Article 16 of the Basic Agrarian Law, especially primary land rights.<sup>7</sup>

In its development, buying and selling land has not been able to guarantee legal protection for land buyers. This is because there are still many cases of law violations in land buying and selling transactions which are detrimental to the buyer. Sudarman as the buyer from Cilacap City explained that his party felt disadvantaged in a land sale and purchase transaction in which the land certificate given to him turned out to have several heirs who legally inherited rights over a plot of land that had been paid for by him. At first he did not know that the land he had bought turned out to have a dispute over inheritance. Sudarman, who bought it from one of the heirs, knew that the land parcel was not attached to the inheritance rights of more than one heir.<sup>8</sup>

Then in the Demak area there was a land dispute case between the buyer and the party who inhabited the land. At first Bambang sold a plot of land in the Cilacap Regency area of 200 square meters, it was discovered that Bambang's land was inhabited by Jatmiko, who was initially allowed by Soeprodjo as the heir and Bambang's parents, Bambang, who needed some funds to finance his son's schooling, also sold the inherited land. After the land was bought by Markum for 250 million rupiah, Jatmiko, who mediates Bambang's land that had been sold to Markum, was reluctant to move. This made it difficult for Markum to use the land he had bought from Bambang. Markum has used various family methods to ask Jatmiko to move from the land he had bought from Bambang. But it failed. In the end, Markum took a civil settlement in court. This settlement is long and at high cost as well.<sup>9</sup>

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<sup>7</sup>Ali Achmad Chomzah, 2002, *Hukum Pertanahan Seri Hukum Pertanahan 1 Pemberian Hak Atas Tanah Negara Seri Hukum Pertanahan II Sertifikat Dan Permasalahannya*, Prestasi Pustaka, Jakarta, p. 1.

<sup>8</sup>Sudarman, Personal interview with the buyer of the inherited land who was harmed by an inherited land dispute in Cilacap City on August 10, 2022.

<sup>9</sup>Markum, interview with the party who suffered from the sale and purchase of land as a result of the right to live from a third party on the land being sold in the Cilacap Regency area, on August 11, 2022.

Then the next case occurred in Cilacap City. In 1998 Suryatno bought a paddy field for Rp. 50,000,000, - to Wanto Khoirun who is his adoptive father. After Wanto Khoirun died in 2019, Suryatno gave rights to Binti as his daughter to take over the land rights he had bought to Wanto, because the sale and purchase was not accompanied by the submission of letter D during the land sale and purchase transaction between Suryatno and Wanto, finally Yuli, as the son of Wanto, was not willing to hand over the letter D of the land that had been bought by Suryatno to Wanto, Yuli also did not admit that there had been a payment of money for the purchase of land by Suryatno to his father.<sup>10</sup>

So it is clear that often the seller or those who have an interest in the land being traded often do not have good ethics. The principle of good faith, according to Subekti, is one of the most important joints in contract law.<sup>11</sup> Furthermore, Subekti argues that an agreement in good faith is carrying out an agreement by relying on the norms of decency and decency.<sup>12</sup> The obligation to perform contracts based on good faith is universally recognized in the principles of international contract law. International recognition is contained in the preamble to the 1969 Vienna Convention which stated: "The principles of free consent and of good faith and *the pacta sunt servanda* rule are universally recognized". In addition, in UNIDROIT (The International Institute for the Unification of Private Law) Article 1.7. stated "each party must act in accordance with good faith and fair dealing in international trade" and "the parties may not exclude or limit their duties".<sup>13</sup> Based on this, the principle of good faith is a universal principle that must be applied to every agreement.

In the Black's Law Dictionary it is explained that good faith is: "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fairness dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."<sup>14</sup>

The definition of good faith in contracts is clearly explained in the National Civil Law Symposium organized by the National Legal Development Agency (BPHN) which determines that good faith should be interpreted as follows:<sup>15</sup>

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<sup>10</sup>Binti, interview with the party who was harmed by the sale and purchase of land as a result of the right to live from a third party on the land being sold in Cilacap City, on August 14, 2022.

<sup>11</sup>Subekti, 1996, *Pokok-Pokok Hukum Perdata*, PT. Intermasa, Cet.XXVIII, Jakarta, p.4

<sup>12</sup>Ibid., p. 5

<sup>13</sup>Cindawati, 2014, *Prinsip Good Faith (Itikad Baik) dalam Kontrak Bisnis Internasional*, Mimbar Hukum, Vol.26 No.2, June 2014, Universitas Gajah Mada, Yogyakarta, p.191

<sup>14</sup>Henry Campbell Blacks, *Black's Law Dictionary*, 4th Edition, St. Paul, Minnesota, USA, West Publishing Co., 1984, p.713

<sup>15</sup>National Legal Development Agency (BPHN), National Civil Law Symposium, National Legal Development Agency (BPHN) Cooperation, Faculty of Law, Gadjah Mada University, Yogyakarta,

1. Honesty in making contracts;
2. At the drafting stage it is stressed, if the contract is made in the presence of an official, the parties are considered to have good faith (although there are also opinions that express objections);
3. As propriety in the implementation stage, namely related to a good assessment of the behavior of the parties in carrying out what has been agreed in the contract, solely for the purpose of preventing inappropriate behavior in implementing the contract.

Based on the understanding of good faith in the contract/agreement, the main element is honesty. The honesty of the parties in this agreement includes honesty on personal identity and honesty on the wishes and goals of the parties. Honesty is the main element in making agreements/contracts because the dishonesty of one of the parties to the agreement/contract can result in losses for the other party. First, as an illustration, there is one party who is dishonest at the beginning of making the agreement, regarding his identity, of course, it is very likely that he will not carry out the contents of the agreement because the initial goal is simply to get achievements from the other party but instead he acts to carry out his achievements. Second, the parties were dishonest from the start about the purpose of the agreement/contract being made. As an illustration, person A owes person B, person A has not been able to pay off his debt according to schedule to person B, so person A intends to guarantee his assets to person B, but instead of the parties making a debt agreement with a guarantee agreement through fiduciary or mortgage rights, but the parties enter into a binding sale and purchase agreement with a buyback option. This illustration shows that the parties are dishonest in the purpose of making a contract/agreement because the agreement made is not in accordance with the actual purpose. The agreement is legally void and the cancellation of the agreement is of course detrimental to the parties to the agreement.

The definition of good faith in the National Civil Law Symposium is in line with the opinion of JMVan Dunne where in the 3 phases of the agreement, namely: the pre contractuale, contractuale phases, and post contractuale phases, the principle of good faith must be attached to each phase of the agreement.<sup>16</sup>In connection with the phases of the agreement, each has different legal consequences if there is bad faith. The existence of bad faith in the pre contractuale phase can result in being prosecuted by the party with bad

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21-23 December 1981. in Agus Yudha Hernoko, *The Principle of Proportionality in Commercial Contracts*, Laksbang Mediatama, Yogyakarta, 2008, p. 141.

<sup>16</sup>Agus Yudha Hernoko, 2008, *Hukum Perjanjian : Asas Proporsionalitas Dalam Kontrak Komersial*, Laksbang Mediatama, Yogyakarta, p.118

intentions not only civilly but also criminally. This theory is used to explore, analyze and describe the implementation of good business ethics in the implementation of electronic contracts in the field of commodity futures investment business carried out by customers and futures brokerage companies in Indonesia.

The various cases above have clearly resulted in the absence of clear legal guarantees regarding legal protection for land buyers so far. This results in legal injustice. Justice that humanizes humans, or justice that "*ngewongke wong*".<sup>17</sup> As is well known, the legal empire is the empire of reason, intention and feeling of a human child, wherever he is living his life. This is in line with the principle in the theory of dignified justice which cares about taking advantage of the opportunities God has given it to help others through thinking activities; humanizing humans or "*ngewongke wong*".<sup>18</sup> The various cases above have clearly resulted in justice and human rights for land buyers who have prioritized good ethics in buying and selling land.

#### 1. Principle Relevance *Maqashid Al-Syari'ah* in Consumer Protection On Buying and Selling Land

The purpose of law according to Islam is basically regulated in principles of *Maqashid Al-Syari'ah*, on the principle of *Maqashid Al-Syari'ah* it is explained that the law must be able to protect five things, while the five things are:<sup>19</sup>

- 1) Religion;
- 2) Intellect;
- 3) Soul;
- 4) Property;
- 5) Descendants.

Then realizing justice, justice according to Islam in this case is equate something with other things both in value and in terms of size so that it is not one-sided or in favor of one another. Furthermore, justice also means siding with the truth.<sup>20</sup> Basically Allah SWT is referred to as "The Most Just and Wise towards His servants, meaning that all human actions will not affect the justice of Allah SWT, good and bad human actions will receive their own rewards. This can be seen in Chapter 41 Verse 46 of the Quran which states that "whoever does a good deed, the reward is for himself and whoever does an evil deed, the sin is for himself, and your Lord has never wronged your servants. -His".<sup>21</sup> Meanwhile *Jumhur Ulama* agreed that all the companions of the Prophet SAW were fair and there

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<sup>17</sup>Teguh Prasetyo, 2015, *Keadilan Bermartabat, Perspektif Teori Hukum*, Nusamedia, Bandung p. 2

<sup>18</sup>Ibid., p. 22.

<sup>19</sup>Ibid., p. 48.

<sup>20</sup>Ibid., p. 51.

<sup>21</sup>Ahmad Tohaputra, 2000, *Al-Qur'an Dan Terjemahannya*, CV. As Syifa, Semarang, p. 185.



was no need to discuss the justice of the companions of the Prophet SAW which can be seen in the narrations of the Hadith.<sup>22</sup>

Based on the various explanations above, it is clear that there is a close relationship between the objectives of law according to Islam, the objectives of land law, and the objectives of law in the context of state objectives as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. in the existence of a good mandate for the purpose of law according to Islam, according to land law, and national law that religious and human values and justice need to be absorbed in national legal politics, in other words that national legal politics needs to rely on Pancasila which is the crystallization of these mandates dynamically born from the culture and values of society. The lack of assurance of legal certainty and legal protection for troubled land buyers will ultimately undermine the principle of legal objectives according to Islam and at the same time the mandate of the Pancasila and the 1945 Constitution of the Republic of Indonesia, this will of course violate social justice for all Indonesian people.

#### 4. Conclusion

Protection for buyers who have paid off in the sale and purchase of troubled land is not fair, this is due to the legal culture of sellers who are often dishonest regarding land status, and there are third parties related to sellers who also claim rights to a land that is also to the detriment of the buyer. The existence of efforts through the judiciary in its development is quite long and expensive.

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