

## The Urgency of the Principle of Balance in Consumer Protection in Land Buying and Selling

Dzaka Imtiyaz Iqbal

Faculty of Law, Universitas Islam Sultan Agung (UNISSULA), Indonesia, E-mail: [DzakalmtiyazIqbal.std@unissula.ac.id](mailto:DzakalmtiyazIqbal.std@unissula.ac.id)

**Abstract.** Land has an important function in human life, therefore the law is tasked with providing legal protection and legal certainty for land buyers. Land that is in dispute often creates problems for land buyers who have minimal information about the status of the existing land. So in reality the practice of buying and selling land often ignores existing consumer protection. Therefore, the aim of writing this article is to discuss the urgency of balancing values in consumer protection when buying and selling land. This writing uses sociological juridical methods. Based on the research conducted, data was found in the form of the protection for buyers who have made payments in the sale and purchase of problematic land is not yet balanced, this is due to the legal culture of sellers who are often dishonest regarding the status of the land, and the existence of third parties related to the seller who also claim rights to a land contribute to the loss of the buyer. The development of efforts through the judiciary is quite long and expensive. Consequently, the lack of guaranteed legal certainty and legal protection for problematic land buyers will ultimately harm the principles of legal objectives according to Islam and at the same time the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. This will certainly violate social balance for all Indonesian people.

**Keywords:** Buying; Protection; Selling; Value.

### 1. Introduction

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

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

land ownership can be done through inheritance, buying and selling and grants and all land ownership transfer transactions are regulated by the government as regulated by the 1945 Constitution. Article 33 Paragraph (3) states; Earth, water and the natural resources contained therein are controlled by state and used for the greatest prosperity of the people<sup>1</sup>and its implementation is regulated in Law of the Republic of Indonesia Number 5 of 1960 concerning Basic Regulations on Agrarian Principles<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 wealth which has a very important social function for the Indonesian people in order to increase the prosperity and welfare of the people. So the designation needs to be determined and regulated by law. The important role of land in human life means that the need for land increases along with development and economic developments that require land in the form of land. In everyday life, land is often the subject of disputes, disputes and conflicts, even leading to court hearings. This arises because land has a very important role in people's lives, so that people try to obtain land by using all kinds of means to obtain the land, even though they have to take land belonging to other people by transferring ownership rights to the land. To avoid disputes, disputes and conflicts, legal norms are formed that must be obeyed by members of society.

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

The Deed of Sale and Purchase is an authentic Deed as the strongest evidence which has an important role in every legal relationship in people's lives which can clearly determine rights and obligations so as to guarantee legal certainty and at the same time avoid disputes. If there is a dispute, the authentic deed as evidence is the strongest evidence and has perfect evidentiary power in court. Article 1867 of the Civil Code which reads: "Proof by writing is carried out with authentic writings (deeds) or with writings (deeds) under the hand"<sup>3</sup>. So a deed is legal evidence in an agreement. "An authentic deed is a letter executed by or in the presence of a public employee who has the power to make it, providing

---

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

<sup>2</sup>Law No. 5 of 1960 – Basic Regulations on Agrarian Principles

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

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

Regarding authentic deeds of sale and purchase, sale and purchase are also regulated in Article 1868 of the Civil Code which specifically regarding authentic deeds of sale and purchase reads: An authentic deed of sale and purchase is a deed made in a form determined by law by or before a public official authorized to do so in the place the deed is made<sup>4</sup>. The value of the strength of evidence 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: perfect and binding, so that the authentic Deed of sale and purchase can stand alone without requiring the assistance or support of other evidence.<sup>5</sup>.

An authentic deed of sale and purchase can have the strength of proof and the minimum limit can be turned into initial written evidence, namely if equivalent and decisive opposing evidence is presented against it. So what needs to be understood here is that evidence of an authentic deed of sale and purchase is perfect and binding evidence but is not decisive or compelling.

On the subject of buying and selling land, there are 4 conditions regarding the validity of an agreement to buy and sell land rights, namely:

1. Terms of agreement that bind themselves (both parties mutually agree to enter into an absolute sale and purchase agreement)
2. Competent requirements (parties who have fulfilled the legal requirements of adulthood, are of sound mind and are not under guardianship)
3. Certain conditions (regarding land area, location, certificate, inherent rights)
4. Requirements for valid reasons (the content and purpose 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 receive the land he owns and is obliged to register it at the local Land Office, where the deed must first be made before the PPAT. The transfer of land rights and ownership rights to housing units through sale and purchase, exchange, gift, entry into a company, and other legal acts of transfer of rights (except auctions) can only be

---

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

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

registered if proven by a deed made by the authorized PPAT. An authentic deed of sale and purchase can be annulled by the District Court if there is evidence that the authentic deed of sale and purchase was made to contain legal defects through examination at trial. Because of how the sale and purchase deed is canceled because it contains legal defects which 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. So, to obtain their rights, buyers who have good intentions must take a long legal route, spending additional time and costs, as in the examples of several land sale and purchase dispute cases below:

1. Case number 48/Pdt.G/2018/PN Kds, in this case the land buyer with good intentions must go through execution at the Kudus District Court to obtain his rights because the previous owner did not want to give up control of the land that had been sold.<sup>6</sup>

2. Case number 4/Pdt.G/2019/PN Kds, in this case the land owner previously sued the buyer who had good intentions by planning an unlawful act which was apparently carried out during the land sale and purchase transaction in the hope that the court could cancel the land certificate issued by National Land Agency. However, the facts of the trial proved that the plaintiff only fabricated the story and in this case the Kudus District Court decided that the lawsuit was unacceptable and sentenced the plaintiff to pay trial costs.<sup>7</sup>

3. Case number 14/Pdt.G/2018/PN Kds in this case the plaintiff is a buyer with good intentions who has carried out all his obligations in the process of buying and selling land, but the seller does not want to hand over the land object being traded, so the buyer with good intentions must file a lawsuit to the Kudus District Court to be able to obtain his rights. The Kudus District Court granted part of the lawsuit and stated that the plaintiff was the legal owner of the land<sup>8</sup>.

Based on this background, the author is interested in conducting research with the title "The Urgency of the Principle of Balance in Consumer Protection in Land Buying and Selling".

## 2. Research Methods

The method used is a sociological juridical method where this research not only

---

<sup>6</sup> [http://sipp.pn-kudus.go.id/index.php/detil\\_perkara](http://sipp.pn-kudus.go.id/index.php/detil_perkara) accessed on February 15 2020.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

examines statutory texts but also the implementation of law in the field. The issue that will be discussed in this article is related to the urgency of balancing values in consumer protection when buying and selling land.

### **3. Result and Discussion**

#### **3.1. Current Implementation of Consumer Protection in Buying and Selling Land**

The term land in our language can be used in various meanings. So, it is necessary to define limitations in its use, 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 UUPA. Article 4 UUPA states that:

On the basis of the State's right to control as intended 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 alone or together with other people.

Based on the description above, it can be understood that land in the juridical sense is the surface of the earth. The meaning of the earth's surface is as part of the land that can be owned by every person or legal entity. Therefore, rights arising from rights to the surface of the earth, including buildings or objects located thereon, are a legal issue. The legal issues in question are issues related to the adoption of principles relating to the relationship between land, plants and buildings located on it.

Land is given to and owned by people with the rights provided by UUPA, for use or utilization. Land rights are rights that give authority to those who have the right to use or take advantage of the land they own. Article 4 paragraph (1) of Law Number 5 of 1960 concerning Basic Agrarian Principles (UUPA) defines land as the surface of the earth, thus land rights are rights to the surface of the earth. Furthermore, paragraph (2) emphasizes that although the ownership rights to land are only on the surface of the earth, the 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 rights to land as stipulated in Article 16 of the Basic Agrarian Law, especially rights to primary land.<sup>9</sup>

In its development, land buying and selling has not been able to guarantee legal protection for land buyers. This is because there are still many cases of legal violations in land buying and selling transactions which cause a lot of harm to

---

<sup>9</sup>Ali Achmad Chomzah, Land Law, Land Law Series 1, Granting Rights to State Land, Land Law Series II, Certificates and Problems, Selamat Pustaka, Jakarta, 2002, p. 1.

buyers. Sudarman, as the buyer from Kudus City, explained that his party felt disadvantaged in the land sale and purchase transaction where the land certificate given to him turned out to have several heirs who legally had the right to a plot of land that had been paid for by him. At the start, he did not know that the land he had purchased had a dispute over inheritance over it. Sudarman, who bought it from one of the heirs, knew that the plot of land did not have inheritance rights for more than one heir.<sup>10</sup>

Then in the Demak area there was a case of land dispute between the buyer and the party who lived on the land. Initially Bambang sold a plot of land in the Wedung area measuring 200 square meters. It was discovered that Bambang's land was occupied by Jatmiko, who had initially been permitted by Soeprodjo as Bambang's heir and parent. the heir. After the land was bought by Markum for 250 million rupiah, Jatmiko, who controlled Bambang's land which 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 taken various family methods to ask Jatmiko to move from the land he had bought from Bambang. But it failed. Finally, Markum took the route of civil settlement in court. This solution takes a long time and also has high costs.<sup>11</sup>

Then the next case occurred in Kedung Jati, Grobogan Regency. In 1998 Suryatno bought a plot of rice fields for IDR 50,000,000,- to Wanto Khoirun who is his adoptive father. After Wanto Khoirun died in 2019, Suryatno gave the right to Binti as his daughter to take possession of the land he had bought from 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, in the end Yuli, as Wanto's son, was not willing to hand over letter D for the land that Suryatno had purchased to Wanto, Yuli also did not admit that he had paid money for Suryatno's purchase of land to his father.<sup>12</sup>

So it is clear that often the seller or parties who have an interest in land being bought and sold often do not have good ethics. According to Subekti, the principle of good faith is one of the most important aspects of contract law.<sup>13</sup> Furthermore, Subekti is of the opinion that an agreement in good faith is carrying out the agreement by relying on the norms of propriety and

---

<sup>10</sup>Sudarman, Personal interview with buyers of inherited land who suffered losses due to inherited land disputes in Kudus City on 10 August 2020.

<sup>11</sup>Markum, interview with the party who suffered losses from the sale and purchase of land due to the residence rights of a third party on the land being sold in the Wedung area, Demak Regency, on 11 August 2020.

<sup>12</sup>Binti, interview with the party who suffered losses from the sale and purchase of land due to the residence rights of a third party on the land being sold in the Kedung Jati area, Grobogan Regency, on 14 August 2020.

<sup>13</sup>Subekti, Principles of Civil Law, PT. Intermasa, Cet.XXVIII, Jakarta, 1996., p.4

decency.<sup>14</sup>The obligation to carry out contracts in good faith is universally recognized in the principles of international contract law. This international recognition is in the preamble to the 1969 Vienna Convention which states: "The principles of free consent and of good faith and the pacta sunt servanda rule are universally recognized". Apart from that, 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>15</sup>Based on this, the principle of good faith is a universal principle that must be applied to every agreement.

In 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) observation of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."<sup>16</sup>

The understanding of good faith in contracts is clearly explained in the National Civil Law Symposium held by the National Legal Development Agency (BPHN) which determines that good faith should be interpreted as follows:<sup>17</sup>

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

Based on the definition of good faith in the contract/agreement, the main element is honesty. The honesty of the parties in this agreement includes honesty regarding their identity and honesty regarding the wishes and objectives of the parties. Honesty is the main element in making an agreement/contract

---

<sup>14</sup>Ibid, p.5

<sup>15</sup>Cindawati, Principles of Good Faith in International Business Contracts, Mimbar Hukum, Vol.26 No.2, June 2014, Gajah Mada University, Yogyakarta, 2014, p.191

<sup>16</sup>Henry Cambell Blacks, Black's Law Dictionary, 4th Edition, St. Paul, Minnesota, USA, West Publishing Co, 1984, p.713

<sup>17</sup>National Legal Development Agency (BPHN), National Civil Law Symposium, Collaboration with the National Legal Development Agency (BPHN), Faculty of Law, Gajah Mada University, Yogyakarta, 21-23 December 1981. in Agus Yudha Hernoko, Principle of Proportionality in Commercial Contracts, Laksbang Mediatama, Yogyakarta, 2008, p. 141.

because dishonesty by one party in the agreement/contract can result in losses for the other party. Firstly, as an illustration, there is one party who is dishonest at the start 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 his initial goal is simply to get achievements from the other party but instead he acts to carry out his achievements. Second, the parties were not honest from the start about the purpose of the agreement/contract being made. As an illustration, person A owes money to 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, the parties make a binding sale and purchase agreement with a buyback option. This illustration shows that the parties are dishonest in the purpose of making the contract/agreement because the agreement made is not in accordance with the true purpose. The agreement is legally void and the cancellation of the agreement will of course harm the parties to the agreement.

The definition of good faith in the National Civil Law Symposium is in line with JM Van Dunne's opinion that in the 3 phases of an agreement, namely: pre-contractual phase, contractual phase, and post-contractual phase, the principle of good faith must be attached to each phase of the agreement.<sup>18</sup>In connection with these phases of the agreement, each of them has different legal consequences if there is bad faith. The existence of bad faith in the phase before making a contract (pre contractual) can result in the party who has bad faith being prosecuted not only civilly but also criminally. This theory is used to explore, analyze and describe the implementation of good business ethics in implementing electronic contracts in the futures commodity 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. Balance that humanizes humans, or balance that ngewongke people.<sup>19</sup>As is 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 balance which is concerned with taking advantage of the opportunities given by God to help others through thinking activities; humanizing humans or ngewongke people.<sup>20</sup>The various cases above have clearly resulted in balance and human rights for land buyers who prioritize good ethics in buying and selling land.

---

<sup>18</sup>JM Van Dunne in Agus Yudha Hernoko, *Contract Law: The Principle of Proportionality in Commercial Contracts*, Laksbang Mediatama, Yogyakarta, 2008, p.118

<sup>19</sup>Teguh Prasetyo, 2015, *Dignified Justice, Legal Theory Perspective*, Nusamedia, Bandung p. 2

<sup>20</sup>Ibid, p. 22.



## 1. The Urgency of Balance Values in Consumer Protection in Land Buying and Selling

The objectives of law according to Islam are basically regulated in principles *Maqasid al-Syariah*, the principle of *Maqasid al-Syariah* explains that the law must be able to protect five things, the five things are:<sup>21</sup>

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

Then create balance, balance according to Islam in this case isto equate something with another thing both in value and size so that it is not biased or biased between one another. Furthermore, fairness also means siding with the truth.<sup>22</sup>Basically, Allah SWT is called "The Most Just and Wise towards His servants, meaning that all human actions will not affect the balance of Allah SWT, good and bad human actions will actually receive their own rewards. This can be seen in the Koran Chapter 41 Verse 46 which states that "whoever does good deeds, the reward will be for himself and whoever does evil deeds, the sin will be for himself, and your Rabb will never wrong his servants." - His".<sup>23</sup>Meanwhile, the Jumhur Ulama agreed to state that all the companions of the Prophet SAW were fair and there was no need to discuss the balance of the companions of the Prophet SAW which can be seen in the Hadith narration.<sup>24</sup>

Based on the various explanations above, it is clear that there is a close connection 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 to the 1945 Constitution of the Republic of Indonesia. in the existence of mandates regarding the objectives of law according to Islam, according to land law, and national law, that religious and human values and justice need to be absorbed into national legal politics, in other words, national legal politics needs to be based on Pancasila which is the crystallization of these mandates. which is born from the culture and values of

---

<sup>21</sup>Ibid, p. 48.

<sup>22</sup>Ibid, p. 51.

<sup>23</sup>Tohaputra Ahmad, Al-Qur'an and its translation, CV. As Syifa, Semarang, 2000, p. 185.

<sup>24</sup>Ibid, p. 1072

society dynamically. The lack of guaranteed legal certainty and legal protection for problematic land buyers will ultimately harm the principles of legal objectives according to Islam and at the same time the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. This will certainly violate social balance for all Indonesian people.

#### **4. Conclusion**

Protection for buyers who have made payments in the sale and purchase of problematic land is not yet balanced, this is due to the legal culture of sellers who are often dishonest regarding the status of the land, and the existence of third parties related to the seller who also claim rights to land contribute to the loss of the buyer. The development of efforts through the judiciary is quite long and expensive. The lack of guaranteed legal certainty and legal protection for problematic land buyers will ultimately harm the principles of legal objectives according to Islam and at the same time the mandate of Pancasila and the 1945 Constitution of the Republic of Indonesia. This will certainly violate social balance for all Indonesian people.

#### **5. References**

- Agus Yudha Hernoko, 2008, *Contract Law: The Principle of Proportionality in Commercial Contracts*, Laksbang Mediatama, Yogyakarta
- Agus Yudha Hernoko, 2008, *Principle of Proportionality in Commercial Contracts*, Laksbang Mediatama, Yogyakarta
- Ahmad Tohaputra, 2000, *Al-Qur'an and its Translation*, CV. As Syifa, Semarang
- Ali Achmad Chomzah, 2002, *Land Law Land Law Series 1 Granting Rights to State Land Land Law Series II Certificates and Problems*, Achievement Pustaka, Jakarta
- Binti, interview with the party who suffered losses from the sale and purchase of land due to the right to settle from a third party on the land sold in the Kedung Jati area, Grobogan Regency, on 14 August 2020
- Cindawati, 2014, *Principles of Good Faith in International Business Contracts*, *Mimbar Hukum*, Vol.26 No.2, June 2014, Gajah Mada University, Yogyakarta
- Henry Cambell Blacks, 1984, *Black's Law Dictionary*, 4th Edition, St. Paul, Minnesota, USA, West Publishing Co

[http://sipp.pn-kudus.go.id/index.php/detil\\_perkara](http://sipp.pn-kudus.go.id/index.php/detil_perkara) accessed on February 15 2020

Markum, interview with the party who suffered losses from the sale and purchase of land due to the right to settle from a third party on the land sold in the Wedung area, Demak Regency, on 11 August 2020

National Legal Development Agency (BPHN), National Civil Law Symposium, Collaboration with the National Legal Development Agency (BPHN), Faculty of Law, Gadjah Mada University, Yogyakarta, 21-23 December 1981

Subekti, 1996, Basics of Civil Law, PT. Intermasa, Cet. XXVIII, Jakarta

Sudarman, Personal interview with buyers of inherited land who suffered losses due to inherited land disputes in Kudus City on 10 August 2020

Teguh Prasetyo, 2015, Balance in Dignity, Legal Theory Perspective, Nusamedia, Bandung