

# THE EXISTENCE OF THE VALUE OF JUSTICE IN CONSUMER PROTECTION IN THE SALE AND PURCHASE OF LAND

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## Abstract

*Land in human life has an important function, because the law has the duty to provide 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 existing land status. So that in fact the practice of buying and selling land often neglects existing consumer protection. Therefore, writing this article aims to discuss the existence of the value of justice in consumer protection in the sale and purchase of land. As for this writing using sociological juridical methods. Based on the research conducted, it was found that data in the form of protection for buyers who have made repayment in the sale and purchase of problematic land is not yet fair, this is because the legal culture of the seller is often dishonest regarding the status of the land, and there are third parties related to the seller who are also demanding rights. -Right to a land which is also detrimental to the buyer. The existence of efforts through the judiciary in its development is quite long and expensive. Due to the lack of guarantee of legal certainty and legal protection for troubled land buyers, it will ultimately injure the principles 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 certainly violate social justice for all Indonesian people.*

**Keywords:** *Buying and Selling, Justice, Value, Legal Protection, Existence.*

### A. Background

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

Ownership of land is the right of the people in Indonesia to obtain legal certainty and legality of land that is controlled or owned, in this case it is proven by having a land certificate issued by the National Land Agency (BPN). To obtain land ownership, it can be through inheritance, sale and purchase and grants and all transfers of land ownership are regulated by the government as regulated by the 1945 Basic Shrimp Law Article 33 Paragraph (3) states; Earth, water and natural resources contained therein are controlled by the state and is 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 Basic Agrarian<sup>2</sup> Regulations which govern 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 that its designation needs to be determined and regulated by legislation. The important role of land for human life makes the need for land increase along with development and economic development that requires land in the form of land. In everyday life, land often becomes disputes, disputes and conflicts even up to court proceedings. This arises because land has a very important role in community life, so that people try to acquire land by justifying all kinds of ways to get the land even though they have to take other people's land by transferring their ownership rights to the land. To avoid disputes, disputes and conflicts, legal norms are formed that must be obeyed by community members.

Communities need to register land in order to obtain land title certificates which serve as a strong means of proof of ownership of land rights and to secure legal certainty. However, the strength of this proof is not absolute because it can still be paralyzed by other evidence that can prove otherwise. The sale and purchase of land is one of the transfers of rights over land and this does not only include buying and selling, but the transfer of ownership can be due to grants, exchanges, giv-

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1 The 1945 Constitution Article 3 Paragraph (3)

2 Law No. 5 Year 1960 - Basic Agrarian Regulations

ing of wills and other actions that are intended to transfer ownership rights to the land.

The Sale and Purchase Deed is an authentic Deed as the strongest evidence that has an important role in every legal relationship in the life of the community that can explicitly 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: “Evidence in writing is carried out in authentic writing (deed) or under hand (deed)”<sup>3</sup>. So a deed is valid evidence in an agreement. “An authentic deed is a letter that is made by or in front of a competent public employee who will make it, creating sufficient evidence for both parties and their heirs as well as all those who have rights from it, namely regarding all matters mentioned in the letter and also about what is stated in the letter as a notification only, but what is then said is only what is being told is directly related to the subject of the deed.”<sup>4</sup>

Regarding the authentic deed of sale and purchase, sale and purchase is also regulated in Article 1868 of the Civil Code, which in particular regarding the authentic deed of sale and purchase, which reads: An authentic deed of sale and purchase is a deed made in a form determined by law by or before a public official who is authorized to do so in place deed made<sup>5</sup>. The value of the power of evidence attached to the authentic deed of sale and purchase, especially in the sale and purchase agreement regulated in article 1870 of the Civil Code in conjunction with Article 285 of the RBG is: perfect and binding, so that the authentic deed of sale and purchase can stand alone without the need for help or support of other evidence.<sup>6</sup>

An authentic deed of sale and purchase may have the strength of proof and the minimum limit may turn into preliminary written evidence, that is, if an equivalent and decisive counter evidence is submitted against it. So what needs to be understood here is that the authentic proof of sale and purchase Deed is perfect and binding evidence but it is not decisive or compelling.

For the subject of buying and selling land, there are 4 conditions regarding the validity of a land sale and purchase agreement, namely:

1. Terms of agreement that bind itself (both parties agree to enter into an absolute sale and purchase agreement)
2. Eligibility requirements (parties who have met the adult requirements according to the law, are healthy in mind and are not under interdiction)
3. Conditions for certain matters (regarding the size of the land, its location, certificate, inherent rights)
4. Terms of cause (the content and purpose of the agreement must be clear and based on the wishes of both parties)

With the transfer of title to land, the new owner will get his / her land and is obliged to 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 sale and purchase, exchange, grants, income in companies, and other legal acts of transfer of rights (except auction) can only be registered if proven by deeds made by the authorized PPAT. An authentic deed of sale and purchase may be canceled by the District Court if there is evidence stating that the authentic deed of sale and purchase is actually made to contain legal defects through an examination in court. Because of how the sale and purchase deed is canceled because it contains legal flaws that must be proven in court.<sup>7</sup>

3 Article 1867 of the Civil Code

4 Sri Endah Wahyuningsih, *Urgensi Pembaharuan Hukum Pidana Materiel Indonesia Berdasarkan Nilai-Nilai Ketuhanan Yang Maha Esa*, Jurnal Pembaharuan Hukum, Volume I No.1 January-April 2014, p. 17-23

5 Article 1868 of the Civil Code

6 Pasal 1870 KUH Perdata

7 Sri Endah Wahyuningsih, *The Implementation of Punishment Theories in the Verdict of Narcotics Case by Judge in Indonesia*, TEST Engineering and Management, ISSN 0193-4120, Mach-April

Problems in the transfer of land rights that occur often disadvantage land buyers who have good intentions because their rights are not fulfilled even though they have carried out all their obligations. So to get his rights, a buyer with good intentions must take a long legal route, spend additional time and cost, as in the examples of cases of land sale and purchase disputes below:

1. Case number 48 / Pdt.G / 2018 / PN Kds in this case a land buyer with good intentions must take the execution route at the Kudus District Court to get his rights because the previous owner did not want to give up control of the land that had been sold.<sup>8</sup>
2. Case number 4 / Pdt.G / 2019 / PN Kds, in this case the previous land owner sued the buyer who had good intentions by planning an illegal act that seemed to have been carried out during the land sale and purchase transaction in the hope that the court could invalidate the land certificate published by the 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 fees.<sup>9</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 that is being traded so that the buyer with good intentions must file a lawsuit to the Kudus District Court to be able to get his rights. The Kudus District Court partially disregarded the lawsuit and stated that the plaintiff was the legal owner of the land.<sup>10</sup>

Based on this background, the authors are interested in conducting research with the title “The Existence of Fairness Values in Consumer Protection in Land Buying and Selling”.

## **B. Problem Formulation**

The issue that will be discussed in this article is related to the existence of the value of justice in protecting consumers in buying and selling land.

## **C. Method**

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

## **D. Discussion**

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

The term land in our language can be used in various meanings. So in use it needs to be defined, 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 a definition that has been legally defined by the LoGA. Article 4 of the UUPA states that:

On the basis of the right to control of the State as meant in Article 2, it is determined that there are various rights to the surface of the earth, which are called land, which can be given to and owned by persons, either alone or together with other people and bodies. law.

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 surface of the earth is as part of the land that can be walked by any person or legal entity. Therefore, the rights that arise over the rights to the surface of the earth including buildings or objects contained therein are a legal issue. The legal issue in question is a problem related to the adherence of principles relating to the relationship between land and plants and the buildings on it.

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2020, P 2797.

8 [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.

9 [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.

10 [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.

Land given to and owned by people with the rights provided by UUPA, is to be used or utilized. Land rights are rights that give authority to those who have the right to use or benefit from 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 the rights to the earth's surface. Furthermore, paragraph (2) states that although the ownership of land rights is only on the surface of the earth, its use is not only on the land itself, but also on the earth's surface, 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, particularly rights to primary land.<sup>11</sup>

In its development, the sale and purchase of land has not been able to guarantee legal protection for the land buyer. This is because there are still many cases of legal violations in land buying and selling transactions that have caused many losses to the buyer. Sudarman as the buyer from the City of Kudus explained that his party felt disadvantaged in the land sale and purchase transaction in which the land certificate given to him turned out to be several heirs who legally inherited rights over one plot of land that had been paid for by him. At the beginning, he did not know that the land he had purchased had an inheritance dispute over it. Sudarman, who bought from one of the heirs, knew that the land parcel had no inheritance rights for more than one heir. As a result of the sale of land unilaterally by one of the heirs to him, as a result Sudarman had to deal with the issue of land disputes which also cost a lot of money, even though the sengekta land had been paid in full.<sup>12</sup>

Then in the Demak area there are cases of land disputes between the buyer and those who inhabit the land. At first Bambang sold a plot of land in the W Gedung area of 200m<sup>2</sup>, it is known that he was occupied by Jatmiko, who was initially permitted by Soeprodo as Bambang's heir and parents, Bambang, who needed a number of funds to pay for his children to go to school, also sold the land. the inheritor. After Markum bought the land for 250 million rupiah, Jatmiko, who mediated Bambang's land which had been sold to Markum, was reluctant to move. This resulted in Markum having difficulty in the functioning of the land he had bought from Bambang. Markum has taken various familial methods to ask Jatmiko to move from the land he had bought from Bambang. But it failed. Finally, Markum took a civil solution in court. This settlement took a long time and came at a high cost.<sup>13</sup>

Then the next case occurred in Kedung Jati, Grobogan Regency. In 1998 Suryatno bought a plot of rice field for Rp. 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 over the land he had bought to Wanto, because the sale and purchase was not accompanied by the handing over of letter D during the land sale and purchase transaction between Suryatno and Wanto. Yuli, as the son of Wanto, is not willing to hand over the letter D of land that has been purchased by Suryatno to Wanto. Yuli also does not admit that there has been any payment of money for the purchase of land by Suryatno to his ayanh. Binti, who felt aggrieved, took legal action to court but was rejected because the sale and purchase agreement was not accompanied by a purchase and pur-

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11 Ali Achmad Chomzah, *Hukum Pertanahan Seri Hukum Pertanahan I Pemberian Hak Atas Tanah Negara Seri Hukum Pertanahan II Sertifikat Dan Permasalahannya*, Prestasi Pustaka, Jakarta, 2002, hlm. 1

12 Sudarman, Wawancara pribadi dengan pihak pembeli tanah waris yang dirugikan akibat sengketa tanah waris di Kota Kudus pada 10 Agustus 2020.

13 Markum, interview with the party who is disadvantaged from the sale and purchase of land due to the existence of the right to live from a third party on the land sold in the W Gedung Area, Demak Regency, on August 11, 2020.

chaseagreement between parties.<sup>14</sup>

So that it is clear that often the seller and parties with an interest in a land that is being traded often do not have good ethics. According to Subekti, the principle of good faith is one of the most important pillars in contract law.<sup>15</sup> Furthermore, Subekti argues that an agreement in good faith is to carry out an agreement by relying on the norms of decency and morality<sup>16</sup>. The obligation to perform contracts based on good faith is universally recognized in the principles of international contract law. In this international recognition there is a 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”. 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 duty”<sup>17</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 consists of (1) honesty in belief or purpose, (2) faithfulness to one’s duty or obligation, (3) observance 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>18</sup>

The definition of good faith in the contract is clearly explained in the National Civil Law Symposium organized by the National Law Development Agency (BPHN) which determines that good faith should be interpreted as follows:<sup>19</sup>

1. Honesty in making contracts;
2. At the stage of development, 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 appropriateness 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, with the sole purpose of preventing inappropriate behavior in the implementation of 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 on one’s identity and honesty on the will and goals of the parties. Honesty is the main element in making an agreement / contract because dishonesty of one party in the agreement / contract can result in losses for the other party. First, as an illustration, there is one party who is dishonest in the initial agreement making, regarding his identity, of course, it is likely that he will not carry out the contents of the agreement

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14 Binti, interview with the party who suffered from the sale and purchase of land due to a third party’s right to live on land sold in Kedung Jati, Grobogan Regency, on August 14, 2020

15 Subekti, *Pokok-Pokok Hukum Perdata*, PT. Intermedia, Cet.XXVIII, Jakarta, 1996., hlm.4

16 *Ibid*, hlm.5

17 Cindawati, *Prinsip Good Faith (Itikad Baik) dalam Kontrak Bisnis Internasional*, Mimbar Hukum, Vol.26 No.2, Juni 2014, Universitas Gajah Mada, Yogyakarta, 2014, hlm.191

18 Henry Cambell Blacks, *Black’s Law Dictionary*, 4th Edition, St. Paul, Minnesota, USA, West Publishing Co, 1984, hlm.713

19 Badan Pembinaan Hukum Nasional (BPHN), *Simposium Hukum Perdata Nasional*, Kerjasama Badan Pembinaan Hukum Nasional (BPHN), Fakultas Hukum Universitas Gadjah Mada, Yogyakarta, 21-23 Desember 1981. dalam Agus Yudha Hernoko, *Asas*

because the initial goal is solely to get achievements from other parties but otherwise he acts to carry out his achievements. Second, the parties were not honest from the start about the purpose of the agreement / contract was made. As an illustration, A is in debt to B, Person A has not been able to pay off his debt according to schedule to B, so Person A intends to pledge his assets to B, but instead of the parties making a debt agreement with a guarantee agreement through fiduciary or mortgage, but the parties make a sale and purchase binding agreement with a buyback option. The illustration shows that the parties are not honest in the purpose of making the contract / agreement because the agreement made is not in accordance with the real purpose. The agreement has been legally canceled and with the cancellation of the agreement, of course it is 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 J.M. Van Dunne where in the 3 stages of the agreement, namely: pre contractuale, contractuale phase, and post contractuale phase, the principle of good faith must be attached to each phase of the agreement.<sup>20</sup> In connection with the phase of the agreement, each has a different legal effect if there is bad faith. The existence of bad faith in the phase before the contractual agreement (pre-contractuale) can result in the prosecution of the party who is not well-connected, not only in a civil manner but also criminally. This theory is used to explore and analyze and describe the implementation of good business ethics in the implementation of electronic contracts in the 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 resulted in legal injustice. Justice that humanizes humans, or justice that *ngewongke wong*.<sup>21</sup> As is well known, the empire of law is the empire of reason, initiative and taste of a human child, wherever he is living his life. This is in line with the principles in the theory of dignified justice who care about taking advantage of the opportunities given to him by God to help others through thinking; humanizing humans or *ngewongke wong*.<sup>22</sup> The various cases above have clearly resulted in a side of justice and human rights for land buyers who have prioritized good ethics in buying and selling land.

## 2. The Existence of Fairness Values in Consumer Protection in Land Buying and Selling

The purpose of law according to Islam is basically regulated in the principles of *maqsid al-Sharia*, in the principle of *maqsid al-Syariah* it is explained that law must be able to protect five things, while the five things are:<sup>23</sup>

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

Then realizing justice, justice according to Islam in this case is equating something with another thing both in value and in size so that it is not biased or partial to one another. Furthermore,

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20 J.M. Van Dunne dalam Agus Yudha Hernoko, *Hukum Perjanjian : Asas Proporsionalitas Dalam Kontrak Komersial*, Laksbang Mediatama, Yogyakarta, 2008, hlm.118

21 Teguh Prasetyo, 2015, *Keadilan Bermartabat, Perspektif Teori Hukum*, Nusamedia, Bandung hlm. 2

22 *Ibid*, hlm. 22.

23 *Ibid*, hlm. 48.

fair also means siding with the truth.<sup>24</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, the good and bad of human actions will receive their own reward. This can be seen in the Quran Chapter 41 Verse 46 which states that “whoever does righteous deeds will be rewarded for himself and whoever does evil deeds, then his sins are for himself, and your Rabb never persecutes his servants. -His”<sup>25</sup>. Meanwhile Jumbuh Ulama agreed to state that all the companions of the Prophet SAW were fair and there was no need to discuss the justice of the companions of the Prophet SAW which can be seen in the Hadith narrations.<sup>26</sup>

Based on the various kinds of 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 the objectives of the state as stated in the Fourth Paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia. In the presence of a good mandate on the objectives of law according to Islam, according to land law, and national law that religious and humanitarian values and saints need to be absorbed in national legal politics, in other words that national legal politics need to rely on Pancasila which is the crystallization of these mandates. which is born from the culture and values of society dynamically. The uncertainty of legal certainty and legal protection for troubled land buyers will ultimately injure the principles 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 certainly violate social justice for all Indonesian people.

#### E. Conclusion

1. Protection for buyers who have made payment in the sale and purchase of problematic land has not been fair, this is due to the legal culture of the seller who is 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 which is also detrimental to the buyer. The existence of efforts through the judiciary in its development is quite long and expensive.
2. As a consequence The insecure legal certainty and legal protection for problematic land buyers will ultimately injure the principles 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 certainly violate social justice for all Indonesian people.

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24 *Ibid*, hlm. 51.

25 Tohaputra Ahmad, *Al-Qur'an Dan Terjemahannya*, CV. As Syifa, Semarang, 2000, hlm. 185.

26 *Ibid*, hlm. 1072

Ahmad Tohaputra, 2000, *Al-Qur'an Dan Terjemahannya*, CV. As Syifa, Semarang

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