

## **Legal Protection for Buyers in Good Faith in Land Sale Agreements Under Hand Without The Presence of The Seller (Case Study of Court Decision Number 81/PDT.G/2024/PN.Son)**

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**Abstract.** *A buyer in good faith is a buyer who is unaware of any defects or flaws in a sale or purchase. Legal protection for buyers in good faith is based on Article 1338 of the Civil Code concerning agreements that must be executed in good faith and SEMA Number 7 of 2012, which guarantees legal protection for buyers in good faith. This research uses a case approach and a statute approach. Efforts to gain clarity and understanding of the problem based on court decisions and judges' considerations. Secondary data Obtained from library materials, the data is usually arranged in the form of documents including books, documents, research results embodied in reports and so on. Obtained from primary, secondary and tertiary legal materials. The results of the study show that the legal protection of buyers in good faith is based on Court Decision Number 81 / PDT.G / 2024 / PN.Son, namely stating that the buyer (Defendant) is a buyer in good faith and stating that the Defendant's actions are acts of breach of promise (Wanprestasi), this is in accordance with the theory of preventive legal protection which means that the buyer obtains the land rights in good faith based on the sale and purchase agreement. The judge's legal considerations in this case are in line with the theory of legal certainty, namely conducting a local inspection, to find facts in the field, and conducting an examination of evidence and witnesses and conducting an analysis of the sale and purchase agreement. The decision of the District Court at Level 1 has not yet become final, if there is an appeal, the results of this decision can be inversely proportional to the next decision.*

**Keywords:** *Court Decision; Good Faith Buyer; Land Sale and Purchase.*

## 1. Introduction

In Indonesia, land sales and purchases are often conducted verbally or in writing, without the involvement of a notary or authorized official. Agreements not made before a notary or authorized official are referred to as private deeds. Private sales and purchases are sometimes only evidenced by a receipt as proof of the sale and purchase. The act of buying and selling land rights evidenced only by a receipt, without a deed of sale made before a PPAT, will certainly be very detrimental to the buyer, because the buyer has no legal certainty regarding the transfer of rights to the land they purchased. Normatively, the certificate that has been purchased does not provide evidence of the transfer of rights to the land in question, and the certificate is still in the name of the seller, even though it has been handed over to the buyer.

Civil Case of Sorong District Court No. 81/PDT.G/2024/PN.Son. In this case, there was a problem with the sale and purchase transaction of land underhand which was paid in cash with a receipt and a land sale and purchase agreement letter which was not made before an authorized official as evidence of the transaction. Although the buyer had held the land certificate, the AJB letter had not been made for the name change process. When the buyer wanted to process the AJB at the PPAT, the seller refused to attend, the buyer had shown good faith by contacting the seller directly and giving a warning letter sent to the seller's residence, but the seller ignored it.

Referring to the provisions of Article 38 paragraph (1) of PP Number 24 of 1997 concerning Land Registration, it regulates the presence of the parties carrying out legal acts in making deeds, namely the seller and the buyer. However, in the case to be studied, the seller refused to be present in making the Deed of Sale and Purchase before the PPAT, therefore the buyer requires legal certainty to make the Deed of Sale and Purchase without the presence of the seller based on the private sale and purchase agreement that has been made.

This research aims to know and analyze legal protection and judges' considerations in making decisions for buyers in good faith in private land sale and purchase agreements based on Decision No. 81/PDT.G/2024/PN.Son.

## 2. Research Methods

The research method is a normative research method consisting of the Case Approach and Statute Approach methods, the Library Research data collection method and the data analysis used is descriptive qualitative.

### **3. Results and Discussion**

#### **3.1. Legal Protection for Good Faith Buyers in Private Land Sale and Purchase Agreements Based on Decision No. 81/PDT.G/2024/PN.Son**

A good faith buyer is a buyer who does not know and cannot be considered to have known any defects in the process of transferring rights to the land he purchased. From the results of the literature review, it can be seen that there is an agreement among the authors that a good faith buyer should be interpreted as an honest buyer, not knowing any defects in the goods purchased.<sup>98</sup> According to the Supreme Court of the Republic of Indonesia, it has regulated good faith buyers through the Supreme Court Circular Letter (SEMA), namely SEMA No. 4 of 2016, in the General Civil section regarding the criteria for good faith buyers who need to be protected based on Article 1338 part 3 of the Civil Code as follows:

1. Carry out the sale and purchase of the land object in accordance with the legal procedures and documents as determined by statutory regulations, namely:

- a. Purchase of land through public auction, or
- b. Purchase of land in the presence of a Land Deed Making Officer (in accordance with the provisions of Government Regulation Number 24 of 1997 concerning Land Registration) or
- c. Purchase of customary/unregistered land carried out according to customary law, namely:

1) Done in cash and openly (in the presence of/with the knowledge of the local Village Head/Lurah).

2) This is preceded by a search regarding the status of the land object of the sale and purchase, which based on this search shows that the land object of the sale and purchase belongs to the seller.

3) The purchase was made at a decent price

2. Exercise caution by investigating matters relating to the promised land object, including:

- a. The seller is the person who has the right/has the rights to the land that is the object of the sale and purchase, according to proof of ownership or
- b. The land/object being bought and sold is not in confiscated status or
- c. The land/object being bought and sold is not under collateral/mortgage status or

d. For certified land, information has been obtained from the National Land Agency and the history of the legal relationship between the land and the certificate holder.

Legal protection for buyers in good faith in the Civil Case Decision for Default No. 81/PDT.G/2024/PN.Son:

1. Declaring that the buyer (Defendant) is a buyer in good faith and stating that the Defendant's actions are acts of breach of promise (Wanprestasi), this is in accordance with the theory of preventive legal protection which is interpreted as legal protection of property between the buyer and the object in this case is the right to land. This protection is given because he obtained the right to the land in good faith. The sale and purchase agreement is the perfect basis for the buyer to maintain the rights to the land he purchased, but the sale and purchase agreement which is evidence of the sale and purchase between the seller and the buyer is not carried out before a notary so that the agreement becomes a private deed.

2. Declaring the VALIDITY of the underhand sale and purchase agreement/underhand deed and allowing the Buyer to use the court decision as the Sale and Purchase Deed (AJB) in the name change process, this is in accordance with repressive legal protection which means that everyone must be treated fairly and equally before the law. Based on the judge's consideration through several trials, collecting written evidence and by presenting witnesses, taking statements and conducting a thorough check of land documents/certificates. And based on the provisions of Article 1320 of the Civil Code regarding the requirements for the validity of the agreement that the agreement is valid because it does not violate the provisions of laws and regulations, but in this case the agreement is an underhand deed because the agreement was not made before an authorized official. An underhand deed will have the same force as an authentic deed if there is no objection from the parties who entered into the sale and purchase agreement in the said deed. The basic principle in the theory of legal protection, namely the principle of justice, is in accordance with the judge's decision regarding the immediate decision which states that the judge's decision can be used like a sale and purchase deed in the certificate name change process.

### **3.2. Judge's Considerations in Legal Protection for Good-Faith Buyers Based on Decision No. 81/PDT.G/2024/PN.Son**

Legal reasoning Legal reasoning is defined as the search for "reason" regarding the law or the search for the basis for how a judge decides a legal case. Legal reasoning is part of a court decision in deciding a case by formulating and compiling legal considerations. Judges in formulating, compiling, and deciding a case with legal reasoning must be careful, systematic, and use correct and good

Indonesian. These legal considerations must be complete, containing facts of the event, legal facts, the formulation of legal facts, and the application of legal norms, both in law and in the context of the case.

positive, customary law, jurisprudence and legal theories and others that reflect the principles of legal certainty, justice and benefit for the parties. The judge's legal reasoning is closely related to the main duties of a judge, namely to receive, examine and try and resolve every case submitted to him, then the judge examines the case and finally judges which means giving the interested party their rights or law.

In analyzing the legal considerations taken by the Panel of Judges in Civil Case Number 81/PDT.G/2024/PN.Son, in accordance with the applicable principles of civil procedural law, the following is an explanation of the judges' considerations in this case:

#### 1. Summons and Absence of Defendant

In the Legal Considerations, the Judge considered that the Defendants had been legally and properly summoned according to their domicile but did not attend the trial. The Defendants' absence was not caused by a legitimate obstacle and they did not order another person as their legal representative to appear before the trial. This is in accordance with Article 125 HIR (Herzien Inlandsch Reglement) which regulates default decisions (in absentia), namely decisions handed down by the court to a defendant who is not present at the trial even though he has been properly summoned. However, due to the presence of the co-defendant, the court's decision is not considered a default decision.

#### 2. Local Inspection (plaatselijk opnemning)

In Legal Considerations, the Judge conducts a local inspection (plaatselijk opnemning) referring to Article 189 paragraph (2) Rbg, Article 180 paragraph (1) and paragraph (2) Rbg, SEMA Number 7 of 2001 concerning Local Inspections which have the aim of determining the certainty regarding the location, area, and boundaries as well as all matters relating to the disputed land object. Inspection of the disputed object is important to provide a clear picture of the disputed object and support the Judge's Decision based on the facts revealed in the field. This is in accordance with the theory of legal certainty, namely that a statutory regulation must also be based on a fact, namely by conducting a local inspection to determine the truth of ownership and the truth of the location of the land and the address listed in the land certificate...

#### 3. Evidence and Witnesses

In the Judge's Legal Considerations, the evidence submitted by the Plaintiff was examined, including the Sale and Purchase Agreement and the Payment Receipt.

The use of written evidence and 2 witnesses shows that the judge is trying to gather comprehensive information before making a decision, this is in line with the principle of proof in civil procedural law, where the party filing the lawsuit has the burden to prove their arguments. This burden of proof is regulated in Article 163 HIR and 283 RBg while valid evidence is regulated in Article 164 HIR and 284 RBg. The judge's consideration through evidence and witnesses is in line with the theory of legal certainty which states that the law must be formulated clearly, namely with the burden of proof carried out by the Plaintiff to prove a truth, while the collection of comprehensive information regarding the evidence is carried out by the Judge before making a decision on a case which will later apply to the parties involved in the case.

#### 4. Analysis of the Sale and Purchase Agreement

In Legal Considerations, the Judge analyzed the sale and purchase agreement between the Plaintiff and Defendant 1, based on the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement and the obligations that must be fulfilled by each party. In this case, the judge emphasized that Defendant 1 did not fulfill his obligation to process the sale and purchase deed before the PPAT after the time specified in the agreement, this is a violation of Article 4 paragraph 2 of the agreement. This action is categorized as a breach of contract, which is the legal basis for the Plaintiff. The judge's consideration regarding the analysis of the sale and purchase agreement based on the provisions of applicable laws is in line with the theory of legal certainty that positive law is law. In Article 1320 of the Civil Code, there are conditions for the validity of the agreement which contain subjective and objective conditions, if the subjective conditions are not met then the agreement can be canceled and if the objective conditions are not met then the agreement is null and void.

#### 5. Certificate Ownership and Transfer of Name

In the theory of legal certainty, which states that law must be based on facts, the judge's consideration of the certificate, namely conducting a site inspection and analyzing the sales and purchase agreement, must comply with applicable laws and regulations. The judge's decision regarding the immediate decision is a decision that must be implemented according to its function, namely being used like a Deed of Sale and Purchase in the process. Change the name on the certificate so that the buyer can obtain full ownership rights to the land.

#### 6. Verdict and Court Costs

In deciding a case, the decision of the panel of judges must reflect the principle of justice in civil procedural law where the judge must provide a balanced decision based on the facts and evidence available. The decision of the judge at the Level 1 District Court is not yet final and binding, therefore the decision can be changed at any time if an appeal or cassation is held. In deciding the court

costs, the judge is based on a private deed where the deed has regulated the payment of court costs by the defendant if a dispute arises in the future.

#### **4. Conclusion**

Legal protection for buyers in good faith based on Court Decision Number 81/PDT.G/2024/PN.Son, namely Declaring that the buyer (Defendant) is a buyer in good faith and stating that the Defendant's actions are acts of breach of promise (Wanprestasi), this is in accordance with the theory of preventive legal protection which means that the buyer obtained the land rights in good faith based on the sale and purchase agreement. Declaring the sale and purchase agreement VALID based on the provisions of Article 1320 of the Civil Code regarding the conditions for the validity of the agreement that the agreement is valid because it does not violate the provisions of statutory regulations, but in this case the agreement is a private deed because the agreement was not made before an authorized official. A private deed will have the same power as an authentic deed if there is no objection from the parties who entered into the sale and purchase agreement in the deed. The basic principle in the theory of legal protection, namely the principle of justice, is in accordance with the judge's decision regarding the immediate decision which states that the judge's decision can be used like a sale and purchase deed in the certificate name transfer process. The judge's considerations in deciding the Civil Case of Default Number 81/PDT.G/2024/Son are the judge's legal considerations in this case in line with the theory of legal certainty, namely conducting a local inspection, to find facts in the field, and conducting an examination of evidence and witnesses to obtain comprehensive information and conducting an analysis of the sale and purchase agreement based on applicable laws and regulations, the District Court Decision at Level 1 has not yet become final, if there is an appeal, the results of this decision can be inversely proportional to the next decision.

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