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## Legal Protection for Good Faith Buyers in Land Sale and Purchase Transactions (Study of Decision Number 3915 K/Pdt/2022)

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**Abstract:** Land is an essential need for humans. Because it is used to fulfill basic human needs such as shelter and food production. Land is used to meet human needs. Soil is an important part of human life. What needs to be understood is that land is a place to live, as a means of residence and humans obtain land by managing and utilizing land as much as possible. In the utilization and acquisition of land, of course there is government involvement and authority. In writing this thesis, the author raised a dispute case originating from the Supreme Court Court Decision Case Number 3915 K/Pdt/2022. Initially, the Plaintiff (PT Grow Selamat Makmur) and the Defendant (PT Surya Cipta Khatulistiwa) were involved in a sale and purchase agreement for 24 plots of land in Bogor Regency through Deed No.05 dated 16 July 2018. These lands had title certificates, including Title Certificates. Building Use and Use Rights Certificates, with details of 15 Building Use Rights Certificates and 9 Use Rights Certificates. In this agreement, it was agreed that the land price would be Rp. 550,000/m<sup>2</sup>, as well as payment procedures which reach a total of Rp. 119,560,000,000, although the land area has not been re-measured by the local Land Agency, the Buyer (Plaintiff) has paid the price according to the agreement. Based on the problems studied, the type of research is normative legal research, where law is conceptualized as what is written in statutory regulations (law in books) or law is conceptualized as rules or norms which are benchmarks for human behavior that is considered appropriate. Normative legal research refers to legal norms contained in regulations or laws related to Supreme Court Decision No. 3915 K/Pdt/2022.

**Keyword:** Land, Wan Performance, Agreement, Civil

### INTRODUCTION

Land is an essential need for humans. It is used to fulfill basic human needs such as shelter and food production. Land is utilized to fulfill human needs. Land is an important part of human life. What needs to be understood is that land is a place to live, as a means of residence and humans obtain land by managing and utilizing land as much as possible. In the utilization and acquisition of land, there is certainly government involvement and authority in it.

Land for human life has a multidimensional meaning. First, economically, land is a means of production that can bring prosperity. Secondly, politically, land can determine one's position in community decision-making. Third, as cultural capital, it can determine the high and low social status of the owner. Fourth, land is sacred, because at the end of life everyone will return to the land<sup>1</sup>.

In the legal dimension, land is an object included in human social rights that requires legal strengthening in order to be defended against other parties. This is based on an awareness that land has a very important meaning for humans as individuals and communities, for development and for the state<sup>2</sup>. With legal certainty, the subject can carry out the contents of his land rights safely from interference from other parties. In other words, the implication is to avoid disputes in the land sector.

Several supporting regulations, be it Government Regulations, Presidential Decrees, Presidential Regulations, and other regulations issued by the heads of technical agencies in the field of agrarian or land are evidence of the government's seriousness in strengthening and strengthening the basic foundation of land in Indonesia. The Basic Agrarian Law as the foundation of national agrarian or land law, the Basic Agrarian Law is based on customary law on land, as the original law of the majority of the Indonesian people<sup>3</sup>.

Land disputes are disputes over ownership or control between individuals, legal entities or institutions that do not have a broad socio-political impact. The emphasis on not having a broad impact is what distinguishes the definition of a land dispute from the definition of a land conflict. Land disputes can be in the form of administrative disputes, civil disputes, criminal disputes related to ownership, transactions, registration, guarantee, utilization, control and customary rights disputes<sup>4</sup>. Many land cases originate from buying and selling. Land sales in Indonesia based on Law Number 5 of 1960 concerning Basic Agrarian Regulations must be carried out clearly and in cash. The nature of light and cash is the nature of buying and selling land according to customary law which is recognized based on Article 5 of the Basic Agrarian Law which reads:

"The agrarian law applicable to the earth, water and airspace is customary law, insofar as it does not contradict the national and State interests, which are based on national unity, with Indonesian socialism as well as with the regulations contained in this Law and with other laws and regulations, all with due regard to the elements that rely on religious law."

Bright and cash means that the transfer of land rights is carried out in the presence of an authorized public official, in this case a Land Deed Official.

And the payment is made in cash and simultaneously. Evidence of the legal act of buying and selling land is presented in the form of a Deed of Sale and Purchase by a Land Deed Official. The Deed of Sale and Purchase is one of the documents required for the issuance of a certificate in the name of the new right holder. On the other hand, the land title certificate itself is a proof of right that serves as a strong evidentiary tool regarding the physical and juridical data contained therein, as long as the physical and juridical data is in accordance with the data contained in the measurement certificate and land title book concerned. Such is the provision of Article 32 paragraph (1) of Government Regulation Number 24 of 1997 which has been amended by Government Regulation Number 18 of

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<sup>1</sup> Heru Nugroho, *Menggugat Kekuasaan Negara*, (Surakarta: Muhammadiyah University Press, 2001), hal. 237

<sup>2</sup> Rusmadi Murad, *Menyingkayp Tabir Masalah Pertanahan, Rangkaian Tulisan dan Materi Ceramah*, (Jakarta: Mandar Maju, 2007), hal. 60

<sup>3</sup> Boedi Harsono, *Hukum Agraria Indonesia, Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*, (Jakarta: Universitas Trisakti, 2013), hal. 3.

<sup>4</sup> Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, (Jakarta: Lembaga Pemberdayaan Hukum Indonesia, 2005), hal. 122.

2021 concerning Management Rights, Land Rights, Stuan Rumah Susun, and Land Registration.

Article 19 of the Basic Agrarian Law states that the land registration system in Indonesia uses a negative registration system, but with positive elements that follow. This means that the evidentiary value of the certificate does not refer to absolute or not absolute, but rather to the evidentiary power of the certificate itself. Basically, a certificate of land rights is a tool used as strong evidence of ownership of land rights as long as the physical and juridical data contained in it are correct.

Initially, the Plaintiff (PT Tumbuh Semangat Makmur) and the Defendant (PT Surya Cipta Khatulistiwa) were involved in a sale and purchase agreement of 24 parcels of land in Bogor Regency through Deed No.05 dated July 16, 2018. The lands have title certificates, including Building Rights Title Certificates and Use Rights Certificates, with details of 15 parcels of Building Rights Title Certificates and 9 parcels of Use Rights Certificates.

In this agreement, a land price of Rp. 550,000,/m<sup>2</sup> was agreed upon, as well as payment procedures that totaled Rp. 119,560,000,000. Although the land area had not been re-measured by the local Land Agency, the Buyer (Plaintiff) had paid the price according to the agreement.

Subsequently, there was an Addendum that amended the agreement, canceling the purchase of two parcels of land, and adding the purchase of another parcel of land at a fixed price. However, the actual land area was to be re-measured by the 2nd Defendant.

In the first re-measurement, the Defendant carried it out without notice to the Plaintiff, resulting in a land area of approximately 221,446 m<sup>2</sup>, including issues related to the measured land. However, the Certificate from the Defendant II stated that the results of this measurement were no longer valid after the second re-measurement was conducted, which rendered the results of the first re-measurement invalid as valid evidence of the land area purchased by the Plaintiff from the Defendant.

The problem that arose in the field was that after the Plaintiff tried to secure the land he purchased from the Defendant, various problems occurred. Although it was agreed in Deed No. 05 and Addendum No. 02 that the Defendant should clean up and resolve all issues that arose on the land before handing it over to the Plaintiff in a clean and clear condition, in reality there were a number of issues that impeded this process.

To resolve these issues, the Plaintiff has submitted a protest and subpoena to the Defendant and invited the Defendant to a meeting to find a solution. A meeting between the Plaintiff and the Defendant was held, with the presence of the Notary of the 1st Defendant. During the meeting, it was agreed that a second re-measurement would be carried out, in which the lands with problems would be excluded from the calculation of the land area purchased by the Plaintiff from the Defendant. The results of this second re-measurement would form the basis for calculating the land price to be paid by the Plaintiff to the Defendant.

The second re-measurement of the land became a point of contention. The Plaintiff and Defendant agreed to conduct a second re-measurement that was transparent and without objection from either party. However, in the first re-measurement, the Defendant had done so secretly without informing or involving the Plaintiff, which indicated the Defendant's lack of good faith.

Although it had been agreed to conduct a second re-measurement to resolve the issue, the Defendant deliberately failed to attend the second re-measurement, despite having been previously invited. The results of the second re-measurement conducted by the authorized officer showed that the area of land purchased by the Plaintiff from the Defendant in a clean and clear condition was approximately 191,893 m<sup>2</sup>.

With the results of the second re-measurement considered valid, the first re-measurement with a land area of approximately 221,446 m<sup>2</sup> was declared invalid based on the Certificate from the 2nd Defendant issued on January 25, 2021.

The Defendant has committed an act called default, i.e. non-compliance with the agreement, which consists of several improper actions. First, the Defendant did not return the overpayment made by the Plaintiff, in the amount of Rp. 14,148,550,000, despite being demanded three times by the Plaintiff. Secondly, the Defendant did not fulfill its obligation to resolve problems in the field and hand over the land in a clean condition in accordance with the agreement in Addendum Deed No: 02.

Thirdly, the Defendant has also not completed the settlement of the Building Rights Title Certificate No. IX: 8/Cipayung Girang, which had been partially purchased by the Plaintiff based on Deed Addendum No: 02. These actions have materially and morally harmed the Plaintiff.

Based on the background and case position above, the author intends to discuss and explore this case with the title "Legal Protection for Good Faith Buyers in Land Sale and Purchase Transactions".

## **METHOD**

Based on the problem under study, the type of research is normative legal research, where law is conceptualized as what is written in laws and regulations (law in books) or law is conceptualized as rules or norms that are a benchmark for human behavior that is considered appropriate. Normative legal research refers to legal norms contained in regulations or laws and regulations related to the Supreme Court Decision No. 3915 K/Pdt/2022. The nature of the research is descriptive analytical which describes, finds legal facts thoroughly, and examines systematically. In detail, it describes and discovers legal facts regarding Land Disputes in Cases of Default in Land Sale and Purchase Transactions in Indonesia.

The research used is a statutory approach (statue approach), and a case approach (case approach). The statutory approach is an approach with the aim of solving problems in order to directly examine regulations related to the legal issues under study and consistently identify the compatibility between one law and another. The statutory approach is carried out to examine all laws and regulations related to the legal issues being addressed<sup>5</sup>.

## **RESULTS AND DISCUSSION**

Based on Article 531 of the Civil Code, legal protection for buyers in good faith is protection given to buyers who acquire property rights in good faith, namely without knowing of any defects or defects in the process of transferring the goods. However, the buyer can only be considered to be in good faith if he has checked the validity of the acquisition of the goods he purchased in accordance with the principles set out in Supreme Court Circular Letter No. 4/2016 on the implementation of the formulation of the results of the 2016 plenary meeting of the Supreme Court Chambers as guidelines for the implementation of duties for the courts.

This Circular serves as a guideline for the courts regarding the definition of a good faith purchaser, as stated in the civil chamber agreement, and sets out the criteria for a good faith purchaser who needs to be protected under Article 1338 paragraph (3) of the Civil Code.

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<sup>5</sup> Johnny Ibrahim, *Teori & Metodologi penelitian hukum normatif*, (Malang; Bayumedia Publishing, 2012), hal. 392.

This protection applies if the sale and purchase of land is carried out with the legal procedures and documents prescribed by laws and regulations and with due care in examining matters related to the agreed land object.

The Civil Code does not explicitly state the form of legal protection that will be given to good faith buyers, other than provisions regarding the prosecution of compensation, costs and interest, and still provides opportunities for parties who feel entitled to recover land sold by parties who are not entitled. In resolving the land dispute between PT Tumbuh Semangat Makmur (Plaintiff) and PT Surya Cipta Khatulistiwa (Defendant), the Panel of Judges in Supreme Court Decision Number 3915 K/Pdt/2022 considered several important aspects. First, the judges reviewed the initial agreement in Deed No.05 dated July 16, 2018 and Addendum No.02, which stipulated the purchase of 24 plots of land at an agreed price and payment procedure, as well as the provision that the land must be handed over in a clean and problem-free condition.

The Judge also took note of the Defendant's re-measurement of the land without notice to the Plaintiff, which resulted in the invalidation of the first measurement results. The Plaintiff objected to the Defendant's actions which were deemed not to have been in good faith, especially as the measurements were conducted unilaterally. Subsequently, a meeting between the two parties involving a notary resulted in an agreement to conduct a second re-measurement in a transparent manner. However, the Defendant's absence at the second re-measurement strengthened the Plaintiff's position that the Defendant had not complied with the agreement.

The results of the second re-measurement showed a land area of approximately 191,893 m<sup>2</sup>, which was then considered a valid result. The judge considered that the first measurement, which showed an area of 221,446 m<sup>2</sup>, was no longer valid. In their deliberations, the judges also considered the Defendant's default in not returning the overpayment of Rp. 14,148,550,000 and failing to hand over the land in a clean condition and not completing the splitting of the Building Rights Title Certificate. All of these considerations led the Panel of Judges to decide that the Defendant had committed a default and must be held responsible for the losses suffered by the Plaintiff, both materially and morally. This decision reflects the court's efforts to uphold justice by ensuring that agreements that have been agreed upon are carried out honestly and transparently and provide legal protection to the injured party.

## CONCLUSION

Land disputes are disputes over ownership or control between individuals, legal entities or institutions that do not have a broad socio-political impact. The emphasis on not having a broad impact is what distinguishes the definition of a land dispute from the definition of a land conflict. Land disputes can be in the form of administrative disputes, civil disputes, criminal disputes related to ownership, transactions, registration, guarantee, utilization, control and customary rights disputes.

Legal protection for land rights holders in land registration can be realized when three cumulative conditions have been met, including the issuance of land certificates that are 5 years old or more, the process of issuing certificates is based on good faith and the land is physically controlled by the right holder or his authority.

## REFERENCE

- Amiruddin dan Zainal Asikin. *Pengantar Metode Penelitian Hukum edisi revisi*. (Jakarta: PT Raja Grafindo Persada, 2019).
- Arie S. Hutagalung. *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, (Jakarta: Lembaga Pemberdayaan Hukum Indonesia, 2005).

- Friedrich, Carl Joachim, *Filsafat Hukum Perspektif Historis*, (Bandung: Nuansa dan Nusamedia, 2004).
- Harsono, Boedi. *Hukum Agraria Nasional: Sejarah Pembentukan Undang-Undang Pokok Agraria, Isi dan Pelaksanaannya*. (Jakarta: Universitas Trisakti, 2013).
- Huijber, Theo. *Filsafat Hukum Dalam Lintasan Sejarah*, Cet. VIII, (Yogyakarta: Kanisius, 2017).
- Ibrahim, Johnny. *Teori & Metodologi penelitian hukum normatif*. (Malang; Bayumedia Publishing, 2012).
- Nugroho, Fajar Adhitya. "Perlindungan Hukum Bagi Pembeli Terhadap Jual Beli Hak Atas Tanah yang Dilakukan Secara di Bawah Tangan (Studi Kasus di Kota Malang)". *Jurnal Mahasiswa Hukum Universitas Brawijaya*. Tahun 2016.
- Setiono. *Rule of Law (Supremasi Hukum)*. (Surakarta: Magister Ilmu Hukum Program Pascasarjana Universitas Sebelas Maret, 2004).
- Soehadi, *Tanya Jawab Hukum Agraria*. (Surabaya: Karya Anda. 2001).