

# Concrete Form of Legal Protection Against Buyers in Good Faith in The Buy and Buy of Land

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## ABSTRACT

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The principle of good faith receives less attention than other principles in civil law literature. This study aims to determine how buyers who buy and sell land in good faith are protected by the law. The normative legal research methods used in this study are utilized. One concrete form of legal protection for buyers who act in good faith is that if a judge decides that the buyer is a buyer who acts in good faith, he or she must also decide the status of the sale and purchase that has taken place. These are the findings of the research study that are the subject of the discussion. Is the sale and purchase object still the buyer's property, or does the sale and purchase status end and the buyer has to pay back the seller the money? Rather than having to file a lawsuit in court, which takes a considerable amount of time and cannot guarantee buyers' certainty of legal protection, this type of thing is certain to be sufficient to provide buyers in good faith with protection.

*Keywords:* Legal Protection, Buyer, Good Faith

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## 1. INTRODUCTION

A contract or agreement is the first step toward meeting needs and interests so that people can always communicate with one another at different times, places, and during different kinds of events. Preferably, true to form in associations, arrangements are adjusted between the two players. Practically speaking, in the public arena, uneven arrangements frequently happen, overlooking the standards of the understanding. Article 1313 of the Common Code (hereinafter abridged to the Common Code) discovers that an arrangement is a demonstration by which at least one individual tie themselves to at least one individual. As indicated by Subekti, an understanding is an occasion where one individual makes a guarantee to someone else or where two individuals guarantee each other to complete something" [1].

According to Article 1320 of the Civil Code, an agreement for a deed must satisfy subjective requirements, such as the agreement of those who bind themselves and the capacity to make something meaningful, for it to be valid. The incompetent party or the party who granted the agreement (permission) has the right to request its cancellation. The agreement (permission) is not free. Aside from that, it needs to meet the objective requirements of an agreement, which are that it needs to be about a specific subject. This means that the agreement needs to be about a specific object and a legal cause. In other words, the agreement's content and purpose need to be based on things that aren't against the law, like decency and order. Trading as per the definition in Article 1457 of the Common Code, trading is: "Trading is an understanding, by which one party ties himself to give up an item, and the other party to follow through on the cost that has been guaranteed." The terms "buying" and "selling" indicate that one party engages in "selling" while the other engages in "buying." As per [2], "In each understanding, there are two sorts of subjects. The first can be an individual, to be specific the vender and purchaser, and the second can be an individual or a legitimate element. The two lawful subjects in a deals and buy understanding each have privileges and commitments." As a result, the term "buying and selling" encompasses two mutually reinforcing actions: the seller's obligation to transfer ownership of an item and the buyer's obligation to pay the

agreed-upon sum. The terms "buying" and "selling" indicate that one party "buys" from another, whereas the other party "sells" something. As a result, the term "buying and selling" encompasses two simultaneous actions. Buying and selling are only referred to as selling in English, and this is only seen from the seller's perspective [1].

Buying and selling is a consensual agreement, which means that when the seller and the buyer come to an agreement about the main things (essentials), like the price of the goods, the agreement becomes valid and binding on both parties. According to Article 1458 of the Civil Code, the sale and purchase are deemed to have occurred between the two parties as soon as they reach an agreement regarding the object and its price, even if the object has not yet been delivered or the price has not been paid. This explains the consensual nature of this transaction. With this understanding, the gatherings concerned have arrived at a concordance of will, implying that what one needs is likewise what different needs. This "agreement" fulfilled these two requirements [3].

According to the Civil Code, buying and selling have an obligatory nature, which means that the sale and purchase have not transferred ownership rights unless they give the buyer the right to demand that ownership rights be transferred to the goods being sold. This clause says that if a product that has been sold but not delivered is resold by the seller and given to a second buyer, the item becomes the second buyer's property and the first buyer can sue the seller. One of the most important principles in a sales and purchase agreement is good faith. The principles of consensualism, freedom of contract, and *pacta sunt servanda* receive more attention in various works on civil law than the principle of good faith. However, the position of the principle of good faith is extremely significant, regardless of whether we are aware of it. Everything must be based on good faith before the parties can move toward, accept, and finally put into action an agreement. The sale and purchase agreement will almost certainly become embroiled in a dispute and harm one or both parties if it is not based on good faith.

In the normative realm, efforts to protect buyers who act in good faith are the primary manifestation of the existence of the principle of good faith in relation to buying and selling. Because it places two innocent parties (the original rights holder and the buyer in good faith) in a position to ask who should be considered right, the decision on civil disputes related to the issue of buyers in good faith presents a legal dilemma. Originally, the principle of good faith was a special legal principle that only applies to contract law in civil law. It turns out that the principle of good faith has evolved into a general legal principle as well as a specific legal principle [4].

In judicial practice, buyers with good intentions appear to be expected to be protected at this time. However, the individuals who are considered to be buyers acting in good faith are not clearly defined by the applicable laws and regulations. Article 1338, passage (3), of the Common Code just expresses that the understanding should be made in view of entirely pure intentions yet in addition doesn't determine who the completely honest intentions purchaser is. This might be reasonable in light of the fact that the guideline of completely pure intentions is in the space of values that are difficult to determine as substantial standards and obviously make sense of them. Concentrates on entirely honest intentions can be tracked down in different lawful texts. However, there hasn't been a single law or doctrine that defines what "good faith" means as a legal norm or rule and how it relates to "good faith" as a legal principle up until this point [5].

The legal issue obtained based on the background above is the extent to which good faith in sales and purchase agreements exists in society and the ways to resolve it if a dispute occurs. Here, the role of the judge is very decisive; apart from resolving disputes at that time, it is also to provide

a more accurate formulation for legal certainty, the right basis for considerations for the creation of justice in society, especially in considering the element of good faith in buying and selling disputes, especially in land buying and selling.

## 2. METHODS

This study employs normative approaches to legal research. The conceptual approach and the statutory approach are the two types of approaches that are utilized. Primary and secondary legal materials, such as books, journals, and other relevant literature, are the sources of the legal materials used. The document study technique was used for the material collection. The document study method involves collecting relevant legal materials from library sources and organizing them in a methodical manner according to the research problem. The examination method for lawful materials is that after the legitimate materials have been gathered, an investigation is completed to get the last contention as a solution to the exploration issue. The analysis techniques for legal materials include descriptive techniques, comparative techniques, evaluation techniques, and argumentation techniques. This research uses descriptive techniques by describing a legal event that occurred somewhere.

## 3. RESULTS AND DISCUSSION

### 3.1 The Prudential Principle in the Element of Good Faith

A principle is a basis or something that becomes the basis for thinking or an opinion. Principle, according to the Blacks Law Dictionary, is "a fundamental truth or doctrine, as of law: a comprehensive rule or doctrine which furnishes a basis or origin for others," the essence of which is, principle is teachings on basic truths for the formation of comprehensive legal rules [6]. When talking about law, the first thing that comes to mind is statutory provisions, namely the rules established by legislation. The common characteristic of principles and rules is that they provide direction or guidance for human attitudes, and therefore both can be used as benchmarks or measures for assessing human actions. No matter how complete the rules are enshrined in legislation, it is still impossible to reproduce the law directly from existing regulations. So that rules do not simply manifest as a series of dead letters, they must be interpreted; rules even presuppose interpretation ([7]

Nieuwenhuis explains the functional relationship between principles and legal provisions (rechtsgels) as follows:

1. Legal principles function as system builders. These principles not only influence positive law, but also, in many ways, create a system. A system cannot exist without principles.
2. These principles form a system of checks and balances with each other. These principles often point in the opposite direction; what would seem to be principles are obstacles to legal provisions. Because they point in opposite directions, the principles restrain each other so that there is balance [8].

According to Mahadi, legal principles are not legal norms that can be used directly in practice, so their contents need to be made more concrete. This means that a legal principle is formulated abstractly and generally and must be concretized into a positive legal norm if it is to be used in legal practice [9]. Legal principles serve as guidelines when dealing with difficult cases, but also generally in terms of applying rules. Legal principles form the context for the necessary interpretation of legal rules. With regard to this interpretive function, legal principles, for the sake of legal rules, require moral and ethical involvement. Even though rules (law) must be explained starting from the background of principles and legal principles must be concretized in rules, one problem remains unsolved, namely how to explain the existence of legal principles in relation to positive law [10]. The existence of legal principles, according to Soedjadi, is a condition sine quanon for legal norms because they contain moral and ethical values, which direct the formation of laws

that fulfill philosophical values with a sense of justice and truth at the core, sociological values that are in accordance with existing cultural values. applicable in society, as well as juridical values that are in accordance with applicable law [11].

Based on the description above, an understanding of these legal principles can be developed in relation to the contract law rules that apply in Indonesia (see the Civil Code and other related and relevant positive legal rules). Thus, it can be understood that the principles of contract law also function as philosophical fundamentals whose existence is a condition sine qua non for legal norms in the rules of contract law, which aim to provide appropriate or appropriate direction according to the law (*rechmatig*) in making contracts [9]. The principles of contract law also function as philosophical guidelines for the formation of legal norms in contracts and guidelines for resolving contractual legal cases. Henry P. Panggabean stated that studying the principles of agreements has an important role in understanding various laws regarding the validity of agreements. The developments that occur in a legal provision will be easier to understand after knowing the principles related to the problem [8].

Indonesian contract law recognizes five important principles that are commonly used, one of which is the principle of good faith. The Big Indonesian Dictionary defines good faith as trust, firm belief, intention, or (good) will. Good faith was defined as follows at the 1981 National Civil Law Symposium put on by Badan Pembinaan Hukum Nasional (BPHN):

1. Integrity when negotiating contracts.
2. Although there are opinions that express objections, it is emphasized at the drafting stage that the parties are considered to be acting in good faith if the contract is signed in the presence of an official.
3. As fitting in the execution stage, which is connected with a decent evaluation of the way of behaving of the gatherings in completing what has been concurred in the agreement, it is exclusively pointed toward forestalling improper conduct in carrying out the agreement

The term good faith is known in the Western legal tradition, which is applied in the legal systems of Continental Europe (the Netherlands and France), and in England which adheres to the Common Law system. In England, good faith is classified into two forms:

1. Good faith performance, which is related to propriety (objective) or reasonableness in implementing the contract; and
2. A good faith purchase relates to purchases based on the intentions of the parties to the contract (a contracting party's subjective state of mind); good faith is fully assessed based on ignorance, suspicion, and notification relating to the contract. These two forms require cooperation between the parties to not cause harm to each other. ([12])

Good faith is referred to as "te goede trouw" in Dutch civil law and "de bonne foi" in French civil law. It basically entails three types of behavior on the part of the parties when making and enforcing a contract: first, the parties must keep their promises or words; second, the parties must not take advantage of one of them by acting in a misleading way; and third, the parties must fulfill their responsibilities and act in an honorable and honest manner even though these responsibilities [13].

In the sale and purchase agreement, there is a precautionary principle. This must be taken into account in the sale and purchase agreement. The principle of caution (duty of care) in buying and selling land is still very little touched on. In the initial development of Indonesian legal literature, the thoughts of Subekti and Boedi Harsono, for example, did not mention the existence of an obligation for buyers to apply the precautionary principle. Referring to [10], he argues that "in the current development of civil society, a prospective buyer can be said to be in good faith if, before buying land or using land as collateral for a debt, he first examines the legitimacy of the owner." The role of PPAT in this case as an assistant in organizing land registration is very important. A person

is considered to have acquired land in good faith if he or she does so in accordance with the applicable laws and regulations, does not encroach on or occupy another person's land, and the village or district head issues a proof of tax patuk/landrente, girik, pipil, kekitir, or quotation letter.

Next, Ridwan Khairandy explained more concretely the obligations of the parties in a land sale and purchase transaction, so that a buyer could be categorized as having good intentions. According to Ridwan Khairandy, a person can be categorized as a buyer in good faith if he fulfills the principle of prudence in carrying out transactions or negotiations. Good faith at the pre-contract stage is an obligation to notify, explain, and examine material facts for the parties relating to the subject being negotiated. [12]. Good faith in a pre-contract requires the parties to explain and examine the material facts of the land object that is the subject of the sale and purchase transaction. It was explained that the existing cases were dominated by cases related to buying and selling and also related to the transfer of rights. From this perspective, these problems can actually be approached from the perspective of subjective good faith in the transfer of rights regulated by Articles 530–537 (bezit in good faith) and Article 1386 of the Civil Code (payment in good faith).

### 3.2 Legal Protection for Buyers in Good Faith in Buying and Selling Land

The concept of good faith provisions encompasses unwritten norms that have gained legal status as an independent source of law. These norms are considered objective because they require conduct to align not with individual opinions but with commonly accepted standards of good faith. Breaching the principle of good faith within a contract renders it invalid under Article 1320 of the Civil Code, as it fails to meet both subjective and objective validity conditions. To safeguard well-intentioned parties in agreements, a legal framework is necessary to ensure certainty. This includes recourse through judicial institutions for buyers who feel disadvantaged.

A significant development in protecting land buyers occurred with the issuance of Supreme Court Circular Letter (SEMA), stemming from plenary sessions addressing pertinent legal issues. SEMA Number 7 in 2012, titled "Legal Formulation of Plenary Meeting Results of the Supreme Court Chamber as a Guide to Court Duties Implementation," clarified that buyers acting in good faith are afforded protection, even if subsequent investigation reveals the seller lacked rightful ownership. Moreover, in 2016, Supreme Court Circular Letter Number 4 of 2016 outlined guidelines from the Civil Chamber, specifying criteria for protecting buyers who act in good faith, including:

In letter A of the civil chamber agreement dated October 9, 2014, the definition of a buyer acting in good faith is refined as follows:

According to Article 1338, paragraph 3 of the Civil Code, the following criteria must be met for buyers to be protected:

1. Carry out the buying and selling of land objects using valid procedures and documents as determined by statutory regulations, namely:
  - a. Land purchased through an open auction or;
  - b. Acquire land prior to the Land Deed Official (in accordance with Government Regulation 24 of 1997 or;
  - c. The provisions of customary law are followed when purchasing unregistered or customary land, namely:
    - a) Done with cash and in plain sight (in the presence of the local village head or lurah or with their knowledge).
    - b) Preceded by research on the status of the land of the sale and purchase object, which, on the basis of this research, demonstrates that the seller owns the land of the sale and purchase object.
    - c) The purchase was reasonably priced.
2. Exercise caution by researching matters relating to the land object under contract, among others:
  - a. The vender is the individual who is qualified for or has freedoms to the land that is the object of offer and buy, as per verification of proprietorship, or;

- b. Either the land or item being traded is not confiscated;
- c. There is no collateral or mortgage on the land being traded, or;
- d. Information and a record of the legal relationship between the certificate holder and the certified land have been obtained from BPN.

According to [10], legal protection entails actions or efforts aimed at shielding society from arbitrary actions by authorities that deviate from the rule of law, thereby fostering order and peace to allow individuals to enjoy their inherent dignity as human beings. In cases where one party fails to fulfill their obligations under a sale and purchase agreement, buyers acting in good faith may seek recourse under Article 1267 of the Civil Code. This article grants the aggrieved party the choice to either compel the other party to fulfill their obligations, provided it is still feasible, or to rescind the agreement while seeking compensation for costs, losses, and interest.

Article 1320 of the Civil Code stipulates conditions for the validity of agreements, emphasizing that failure to meet objective criteria renders the agreement null and void, implying that it is considered non-existent from inception.

Legal protection is a fundamental principle of the rule of law, manifesting in two primary forms: preventive and repressive. Preventive legal protection is primarily aimed at averting harm. According to Satjipto Rahardjo [11], legal protection entails safeguarding human rights against infringement, ensuring that individuals can fully exercise their legal entitlements. Conversely, C.S.T. Kansil [7] defines legal protection as encompassing various legal measures to provide mental and physical security against disturbances and threats from any party. [3] posits that legal protection involves actions to assist legal subjects through the use of legal instruments.

When purchasing certified land, buyers are advised to act in good faith by verifying the certificate's validity at the land office in conjunction with the seller. They should present the original certificate and may request an SKPT (Land Registration Certificate) to confirm the absence of issues, consistency between the owner's records and those at the land office, the land's history of ownership, its size, and related details.

Furthermore, if the buyer in the court decision falls into the category of having good intentions, then he is entitled to legal protection. One form of legal protection for buyers with good intentions is being able to file legal action by suing the court. These legal measures are intended to place buyers with good intentions in their position as legal subjects protected by law. Of course, to get better legal protection, buyers in good faith must be able to prove themselves as buyers in good faith. However, this form of protection is still considered very risky and cannot fully protect buyers who have good intentions. According to the author, one concrete form of legal protection for buyers who have good intentions is if, in a court decision, the judge has decided that the buyer is a buyer with good intentions, then in his decision the judge must also determine the status of the sale and purchase that have been carried out. Does the sale and purchase object remain the property of the buyer, or is the sale and purchase status canceled and the seller must return the money paid by the buyer? This kind of thing is certainly enough to provide protection to buyers who have good intentions rather than having to file a lawsuit in court, which takes quite a long time and cannot guarantee certainty of legal protection for buyers.

## CONCLUSION

One concrete form of legal protection for buyers who have good intentions is if, in a court decision, the judge has decided that the buyer is a buyer with good intentions, then in his decision, the judge must also determine the status of the sale and purchase that have been carried out. Does the sale and purchase object remain the property of the buyer, or is the sale and purchase status canceled and the seller must return the money paid by the buyer? This kind of thing is certainly enough to provide protection to buyers who have good intentions rather than having to file a lawsuit in court, which takes quite a long time and cannot guarantee certainty of legal protection for buyers.



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